

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Review Petition No. 155 of 2020**

The Superintending Engineer, P.W.D. (B & R) Bastar Circle, Jagdalpur,
Chhattisgarh

---- Applicant**Versus**

1. M/s Patil Construction And Infrastructure Ltd. Having Its Office At 3rd Floor, P M P M L Commercial Building No. 1, Pune (Through Its Authorized Signatory, Shaliwan Chandrakant Surwase)
2. Union Of India Through The Secretary, Ministry Of Road Transport And Highways, Transport Bhawan No. 1, Parliament Street, New Delhi
3. Chief Engineer (L W E) M O R T And H Transport Bhawan No. 1, Parliament Street, New Delhi
4. Regional Officer (North) M O R T And H N H Campus, Pension Bada, Raipur, Chhattisgarh
5. Engineer Liaison Officer, M O R T And H N H Campus, Pension Bada, Raipur, Chhattisgarh

---- Respondents

For Applicant	:	Mr. Jitendra Pali, Dy. Advocate General
For Respondent no.1	:	Mr. Harsh Wardhan, Advocate
For Respondents 2 to 5	:	Mr. Vivek Verma, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****30.09.2021**

1. The present review petition has been filed seeking review of the order dated 06.01.2020 passed by this Court in ARBR No. 44 of 2019. Vide the said order dated 06.01.2020 this Court had entertained an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 requesting for appointment of an Arbitrator in respect of the claim

raised by respondent no.1 herein against the applicant as also the Union of India in respect of the work executed by respondent no.1 pertaining to construction of various road projects in the State of Chhattisgarh.

2. Though the order was passed by this Court on 06.01.2020, the present review petition was filed after about one year on 19.11.2020. Meanwhile, in terms of the order passed by this Court on 06.01.2020, the sole Arbitrator appointed by this Court has already resumed the proceedings in the arbitration case. The applicant herein as also the concerned department of the Union of India have also entered appearance before the Arbitrator and the proceedings are going on.
3. It has also been informed to this Court by the learned counsel for respondent no.1 that the present applicant i.e. the State Govt. has already moved an application raising an identical objection under Sec.16 in respect of the maintainability of the proceedings before the Arbitrator, which is still pending and the learned Arbitrator has already framed issues for deciding the same.
4. The present review petition has been filed solely on the ground that the nature of contract and the work awarded to respondent no.1 Contractor is one which otherwise falls within the definition of "works contract" under the definition of Section 2 (i) of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter referred as "the Adhiniyam, 1983") and therefore the order passed by this Court in the arbitration application on 06.01.2020 in ARBR 44/2019 was not legally tenable and hence it needs to be reviewed.
5. The point of issue that has to be considered at this juncture is whether this Court in exercise of its power conferred upon it under Section 11

(6) of the Arbitration and Conciliation Act (hereinafter referred as “the AC Act”) can entertain a review petition after the application under Section 11(6) stands decided and the order also having been acted upon.

6. It would be relevant at this stage to take note of the fact that the order of this Court was passed upon the submission made by the counsel appearing for the parties before this Court. For ready reference the relevant portion of the order passed by this Court while deciding the application under Section 11(6) is reproduced hereinunder:

“4. According to the petitioner, inspite of the agreement getting revived, the respondents did not provide sufficient frontage and sight and other support required for the execution of the balance of work. Therefore the petitioner had approached the respondents for releasing them from the performance of balance of contract and for releasing the payments in respect of the work already executed by the petitioner. However, ignoring the request of the petitioner, the respondent No.5 again vide order dated 12.01.2019 rescinded the contract and ordered for forfeiture of the earnest money and the performance security. Immediately, thereafter the petitioner approached the respondents for constitution of a Dispute Resolution Board, which has not been considered by the respondents till date. The petitioner thereafter filed a writ petition before the High Court i.e. WPC No. 1316/2018. The High Court vide order dated 14.05.2018 disposed of the writ petition directing the respondents to constitute a Dispute Resolution Board. The respondents finally vide letter dated 23.03.2019 informed the petitioner about the constitution of the Board, which thereafter was disagreed by the petitioner and they requested for resolving the dispute by availing the recourse of Arbitration for settlement of dispute between the parties. The petitioner thereafter requested the respondents for appointment of an Arbitrator for settling the dispute. Since the respondents failed to respond to the request of the petitioner, the petitioner has approached this Court vide the present Arbitration Application under Section 11(6) of the Arbitration and Conciliation Act, 1996.

5. The learned Assistant Solicitor General Mr. B. Gopa Kumar entered appearance on behalf of the

respondents and both the parties agreed upon in view of Clause 25 of the General Conditions of Contract for settlement of the dispute by way of an Arbitration. Both the parties i.e. the applicant as well as the respondents proposed the name of Hon'ble Justice Satish K. Agnihotri, retired Chief Justice, High Court of Sikkim (who also is a former Judge of this High Court), as an Arbitrator.

6. In view of the joint proposal made by the parties in exercise of the powers conferred under Section 11(6) of the Act of 1996 under the authority given by Hon'ble the Chief Justice, I hereby appoint Hon'ble Mr. Satish K. Agnihotri, retired Chief Justice of the High Court of Sikkim (a former judge of this High Court) to act as an Arbitrator and arbitrate the dispute between the parties in accordance with the provisions of Arbitration and Conciliation Act, 1996."

7. As has been informed by the learned counsel for respondent no.1, the sole Arbitrator appointed by this Court has already initiated proceedings. All the parties have entered appearance and the pleadings have also been made. The State authorities have already raised an objection under Section 16 before the Arbitrator itself in respect of the maintainability of the proceedings, which is also subjudice before the Arbitrator. Moreover, this Court is of the firm view that once an application under Section 11(6) of the AC Act stands decided, this Court thereafter becomes "functus officio" and would not have any control in respect of the proceedings initiated thereafter. If at all if the order was not acceptable to the parties, they had a remedy of assailing the same at the appropriate stage before the appropriate forum, if not they also now have a remedy of raising this very objection before the Arbitrator which they in fact have raised and thereafter if the order of the Arbitrator goes against the objector, the remedy would be still available to the parties under Section 34.
8. If the contention of the learned counsel for respondent no.1 is to be accepted that the objection of the State under Section 16 had been

raised much before the review petition itself was filed and that the application under Section 16 has been entertained by the Arbitrator and issue has also been framed, under the circumstances, it would not be within the powers of this Court at this juncture to entertain the review petition in the given factual matrix of the case.

9. The review petition therefore deserves to be and is accordingly rejected reserving the right of the applicant State to avail other appropriate remedies available to them at the appropriate stage in case if the objection raised by them before the Arbitrator stands decided against them.

**Sd/-
P. Sam Koshy
Judge**