

HIGH COURT OF CHHATTISGARH AT BILASPUR
ARBITRATION REQUEST No. 28 of 2018

Creative Architects Through Proprietor Shri Prashant Agrawal, Residing At- Near Raj Bhawan, Old Daga Bhawan, Behind Tata Motors, Civil Lines Raipur, Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through the Secretary, Public Works Department, State of Chhattisgarh, Mahanadi Bhawan, New Raipur, Chhattisgarh.
2. Superintendent Engineer Public Works Department, Rajnandgaon Division, Durg Circle, Tehsil and District- Rajnandgaon, Chhattisgarh
3. Executive Engineer Public Works Department (Road/Building), Rajnandgaon Division Tahsil and District- Rajnandgaon, Chhattisgarh.

---Respondents

For Petitioner	:	Shri Ankur Agrawal, Advocate.
For Respondents	:	Shri Jitendra Pali, Dy. Advocate General.

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

13.08.2021

1. The present is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short, the Act, 1996) seeking appointment of an Arbitrator by the court.
2. Brief facts necessary for disposal of the present application is that the present applicant is a proprietorship firm running business of Consultancy and Architect. The respondents floated a tender on 11.05.2010 for providing architectural drawing and structural drawing services for the construction of proposed State Level Educational and Sports Training School cum Residential Building. The present applicant being qualified for participating in the said tender applied for the same and were found most suitable and was accordingly assigned the work of providing architectural drawing and structural drawing services for the aforementioned work.

- 3.** A contract was entered into between the parties on 05.08.2010. In terms of the agreement entered into between the parties, the applicant was required to conduct a detailed survey of site and to prepare a general site layout, development and sketch plans. The applicant was also required for providing of construction drawing structural design and also drawing for the service like internal road, water supply, sanitary and electrical works etc. The applicant was also required to provide for a model of the project and were required to provide periodical advise to the authorities under the respondents, in case, if required in connection with the construction and execution of the said project.
- 4.** The agreement had a specific clause of settlement of dispute and it was agreed between the parties and in the event of any dispute the matter would be resolved invoking the proceedings under arbitration clause.
- 5.** It is the contention of the petitioner that in the course of providing of service by the applicant to the respondents some dispute arose in respect of non clearance of the bills and for which the applicant have been approaching the respondents time and again for settlement of the dues and also for resolving the dispute, however, inspite of repeated request the respondents have not acceded to the request of either accepting the claim of the applicant or by resorting to the procedure agreed upon for settlement of dispute. Finally the applicant issued them with a notice for resolving the dispute to arbitration to which also there was no response and appropriate action on the part of the respondents. This has led to the filing of the present application.
- 6.** As regards entering into the contract between the parties, the agreement between the parties and in the agreement there being an arbitration clause these are not in dispute. It is also not in dispute that the nature of work

assigned to the applicant by the respondent was exclusively that of consultancy.

7. Learned Dy. Advocate General however referring to the reply and to the stand taken by the respondent, submits that whatever work was assigned to the applicant herein was in respect of architectural drawing and structural drawing. Therefore, the nature of contract entered into between the parties is one which could fall within the ambit of “works-contract” defined under Section 2 (1)(i) Chhattisgarh Madhyastatha Adhikaran Adhiniyam, 1983 (hereinafter referred as “Adhiniyam, 1983”) and therefore the present application under Section 11(6) of the Act of 1996 would not be maintainable and the recourse available to applicant herein would be according to the provisions of Adhiniyam 1983, where the matter has to be raised before the Tribunal established under the said Act of 1983.
8. Learned Dy. Advocate General referred to Section 2 (1)(i) defining “Works-Contract” and tried to emphasize the fact that since the nature of work assigned to the applicant was relating to the construction of pathway, it would come within the definition of a Work Contract. Learned State counsel also referred to a full Bench judgment of the Madhya Pradesh High Court in AIR 2017 MP 103 in support of his contention.
9. Learned counsel appearing for applicant, on the contrary, submits that the applicant herein has got nothing to do with the execution of work architectural drawing and structural drawing. The said execution of work was to be carried out by a different agency altogether by a separate contract and agreement being executed for the same. So far as the applicant company is concerned, the applicant was only to provide consultancy services and also the feasibility report which includes architectural drawing and structural drawing and apart from the

consultancy, the applicant company was not in any manner associated with the execution of work. Thus, the said contract and agreement entered into between the parties would be get excluded from the ambit of Works Contract and the only remedy and recourse available would be in terms of the agreement i.e. resorting to the provisions of the Act of 1996. Learned counsel for applicant referred to a recent decision of this High Court in the case of SMEC International Private Ltd. Vs. State of Chhattisgarh, ARBR No.23/2018 decided on 13.05.2019 and the order of this Court has subsequently been affirmed by the Supreme Court in Special Leave to Appeal (C) No. 21120/2019 decided on 11.09.2019.

10. For proper understanding of the dispute it would also be relevant at this juncture to appreciate the fact that by the term “Consultancy” normally is understood as “giving an expert advice in respect of a particular subject matter or a work”. “Consultancy” does not mean undertaking a work or a job for execution or completion of a project. The basic nature of a consultant is to provide expert opinion in the form of reports, presentations etc. which may be acceptable to the party who has sought consultancy or may not be acceptable. If it is acceptable to the party who has obtained consultancy they may get the work done by way of a fresh contract and agreement.

11. At the same time, as regards “works contract”, it is a contract entered into between the parties for execution of a particular work. In the instant case what needs consideration is the definition of “Works Contract” as provided under the aforementioned Adhiniyam, 1983 which for ready reference is reproduced hereinunder:

“works-contract” means an agreement in writing for the execution of any work relating to construction, repair or maintenance of any building or superstructure, dam, weir,

canal, reservoir, tank, lake, road, well, bridge, culvert, factory, work-shop, powerhouse, transformers or such other works of the State Government or Public Undertaking as the State Government may, by notification, specify in this behalf at any of its stages, entered into by the State Government or by an official of the State Government or Public Undertaking or its official for and on behalf of such Public Undertaking and includes an agreement for the supply of goods or material and all other matters relating to the execution of any of the said works.”

- 12.** A plain perusal of the definition of “Works Contract” would clearly give an indication that within the provisions of the Adhiniyam, 1983, the Works Contract would be a contract entered into between the parties for execution of a work relating to firstly construction, secondly repairing and thirdly maintenance of any of the items and nature of work specifically mentioned in the aforesaid definition. While the term “execution” means to carry out a work order for the course of action, the nature of work assigned to the applicant herein was not for carrying out a plan rather it is providing of a plan.
- 13.** Keeping in view the aforesaid facts and circumstances and the definition under the Adhiniyam, 1983 it would be apt at this juncture to refer to the order passed by this Court in ARBR No.23/2018 where in paragraphs 13 it has been held as under:

“After due consideration on over all facts and circumstances of case and documents present on record, I am of this view that nature of the contract between the applicant and the respondent is not a contract as defined under Section 2 (I) of Adhiniyam, 1983 and as such, it is not a work contract rather it is a service contract. Hence, on the basis of this finding, it is held that this dispute shall not be governed by the provisions of Adhiniyam, 1983, hence, the application brought before this Court has merits and, further, this Court

has jurisdiction and power to invoke section 11(6) of Arbitration and Conciliation Act, 1996.”

- 14.** The aforesaid view of the Court has also received a stamp of approval from the Hon'ble Supreme Court in Special Leave to Appeal (C) No. 21120/2019 decided on 11.09.2019.
- 15.** In view of the aforesaid legal position, the objection raised by the State as regards the application being not maintainable is not acceptable and the same deserves to be and is accordingly negated.
- 16.** Given the aforesaid legal position as it stands, this court is of the opinion that considering the nature of dispute and the stand of the respondent and also considering the arbitration clause, this Court is of the opinion that it is a fit case where the dispute needs to be referred to an Arbitrator.
- 17.** Learned counsel appearing on either side proposed the name of Justice Shri V.K. Shrivastava, Retired Judge from the High Court of Chhattisgarh as an Arbitrator.
- 18.** In view of the joint proposal made by the parties, in exercise of the powers conferred under Section 11(6) of the Act, 1996 under the authorities given by Hon'ble the Chief Justice, I hereby appoint Hon'ble Justice Shri V.K. Shrivastava, retired Judge from the High Court of Chhattisgarh to act as an Arbitrator and arbitrate the dispute between the parties in accordance with the provisions of the Act of 1996.
- 19.** The Registry is directed to communicate this order to Hon'ble Justice Shri V.K. Shrivastava to enter upon reference after complying with the provisions contained under Section 12(2) of the Act, 1996 and to adjudicate upon the dispute as expeditiously as possible in accordance with the Act of 1996.

20. The remuneration of the Arbitrator shall be settled with the mutual consent of the parties.

21. The ARBR accordingly stands allowed to the extent indicated here in above. No order as to costs.

Sd/-
P. Sam Koshy)
Judge

inder