

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH
AT AURANGABAD**

ARBITRATION APPLICATION NO. 12 OF 2019

New Jyoti Roadways,
Through : Its proprietor :
Mr. Indrijit Bishambardas Nayyar,
Age: 71 years, Occu: Business,
R/o.: New Jyoti Roadways,
Yashwant Colony No.2, Ahmednagar,
District : Ahmednagar ... APPLICANT

Versus

1. The State of Maharashtra,
Food and Urban Supply Department,
Mantralaya, Mumbai - 400 020
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
3. The District Collector,
Beed, District : Beed.
4. The District Supply Officer,
District Beed. ... RESPONDENTS

Mr. G. K. Naik Thigle, Advocate for the Petitioner
Mr. S. W. Munde, AGP for Respondents

CORAM : AVINASH G. GHAROTE, J.

**JUDGMENT RESERVED ON : 16/07/2021
JUDGMENT PRONOUNCED ON : 23/07/2021**

JUDGMENT :

1. Heard Mr. Thigle, learned counsel for the applicant and Mr. Munde, learned AGP for the non-applicants.
2. It is not in dispute, that an agreement for transport of food grains and other commodities come to be executed, on 30/03/2001, between the applicant, and the Governor of Maharashtra, through the District Supply Officer, Beed, in pursuance to a notice inviting tenders, which agreement, was for a period of 01/04/2001 to 31/05/2006, at the remuneration, as contained in term no.3 of the agreement. Mr. Thigale, learned counsel for the applicant, submits, that the contract was extended by two years and was continued till 31/05/2008. The applicant claimed entitlement to difference in rates over and above 5% per year, which was claimed to have been agreed in term no.3 and raised a claim, that he should be paid the difference in rate between what was agreed in agreement and the rates paid for transportation in the other districts due to general increase, which according to the applicant was also in consonance with the GR dated 29/03/2001. As this request appears to have been turned down by the District Supply

Officer, Beed, the applicant, along with other persons, had filed WP No. 6067 of 2007 for a writ of mandamus directing the respondents therein to implement clause no.4 of the said GR dated 29/03/2001, which petition came to be withdrawn for redressing the grievances before the appropriate alternate forum, by order dated 22/10/2008.

3. The applicant and other tenderers thereafter jointly invoked the arbitration clause 27, as contained in the agreement dated 30/03/2001, by filing a joint arbitration application before the Commissioner, Aurangabad on 13/01/2009, in which by an order dated 30/06/2009, the Divisional Commissioner, nominated the Additional Collector, to be the Arbitrator.

4. The applicant, thereafter, appears to have approached to the Additional Collector, Beed, by his application dated 07/07/2009, claiming the difference in rates as indicated above, which claim came to be rejected by the Additional Collector, Beed on 22/07/2009 (Exh-R-2/page 76).

5. The applicant, being aggrieved by the order of the Additional Collector, Beed, dated 22/07/2009 approached the Divisional Commissioner (Supply), on 16/03/2018, who by his order dated 12/06/2018, held, that since the applicant had approached the Divisional Commissioner, due to a delay of 8 years 6 months 21 days, the application was rejected (Exh-R-3/page 77).

6. Thereafter, the District Supply Officer, Beed had again communicated, on 05/11/2018 that claim made by the applicant was not permissible.

7. Mr. Thigle, learned counsel for the applicant submits, that in view of arbitration clause 27, as contained in the agreement dated 30/03/2001, since the Divisional Commissioner, had in light of the communication dated 05/11/2018 (Exh-D), had recused himself, a new arbitrator was required to be appointed.

8. Learned AGP submits that the agreement in question, is dated 30/03/2001, and even presuming the contention that it was extended, even as per the applicant, the same stood

expired in the year, 2008. Thereafter, the applicant, along with other contractors, had approached the Commissioner Aurangabad on 13/01/2009, invoking the arbitration clause 27 as contained in the agreement dated 30/03/2001, in which, by an order dated 30/06/2009, the Divisional Commissioner, Aurangabad was pleased to nominate the Additional Collector, Beed, to be the arbitrator to decide the claims of the applicant, which came to be rejected on 22/07/2009, and as such, the arbitration clause stood worked out. He submits, that though the communication dated 22/07/2009, may not be in proper format, however, rejection of the claim as made by the applicant, from the same, is apparent and therefore, if any action was to be initiated, the same ought to have been done before the appropriate forum, within a reasonable time of 22/07/2009. He submits, that any application, made on 08/03/2018, to the Deputy Commissioner (Supply), Aurangabad by the applicant in reference to the agreement dated 30/03/2001 and the arbitration clause contained therein, would be of no consequence whatsoever and the communication dated 12/06/2018, by the Deputy Commissioner (Supply), Aurangabad cannot be faulted with, nor could it give a fresh cause of action,

to once again invoke the arbitration clause 27 as contained in the agreement dated 30/03/2001. He submits, that there are no arbitration proceedings pending as on the date of filing of the application under Section 11 (6) of A & C Act, 1996, which was filed on 03/04/2019 and therefore, the question of appointing a substitute arbitrator did not arise at all and thus, the application needs to be dismissed.

9. It is an admitted position, that clause 27, which was the arbitration clause in the agreement dated 30/03/2001 was invoked by the applicant, jointly with the other contractors, as is evident from the Arbitration Application No.----/2008, dated 13/01/2009 presented before the Commissioner Aurangabad. It is also an admitted position that in that proceedings the Divisional Commissioner, Aurangabad by an order dated 30/06/2009, nominated the Additional Collector, Beed, as the arbitrator to decide the claims made by the applicant. In view of the language of the arbitration clause 27, as contained in the agreement dated 30/03/2001, it was permissible for the Commissioner, to nominate / authorize any other officer in writing, to be the arbitrator in writing, which had been so done

by the order dated 30/06/2009. Thus, the authorization of the Additional Collector, Beed, by the order dated 30/06/2009, to be the arbitrator is an action, which is in consonance with what is contemplated and provided under clause 27 of the agreement dated 30/03/2001 and cannot be faulted with.

10. It is also not in dispute that the applicant pursuant thereto, had approached the Additional Collector, Beed on 07/07/2009 and had raised the claim regarding his entitlement to the difference in rates as indicated above, which claim, came to be rejected by the Additional Collector, Beed, as is reflected from the communication dated 22/07/2009 (Exh-R-2/page 76). It is thus apparent that the claim as raised by the applicant, by invoking the Arbitration Clause 27 as contained in the agreement dated 30/03/2001, came to be rejected. The applicant, has not placed on record, the copy of the award passed by the Additional Collector, Beed, however, the communication dated 22/07/2009, indicates that the claim as made by the applicant was rejected.

11. That being the situation, it was necessary for the applicant to have approached the concerned Court, by invoking the appropriate provisions, as contained in Section 34 of the A & C Act, 1996, which does not appear to have been done from 2009 till 2018, when an application was filed on 08/03/2018, before the Divisional Commissioner (Supply), Aurangabad, purporting to once again invoke the arbitration clause 27 as contained in the agreement dated 30/03/2001, which was in the context, of the communication dated 22/07/2009, issued by the Collector, Beed, intimating that the claim of the applicant was rejected. This application dated 08/03/2018 came to be rejected by the communication dated 12/06/2018 on the ground that the grievance as sought to be raised by the applicant, in respect of the decision of rejection of his claim by the Additional Collector, Beed, as reflected from the communication dated 22/07/2009, was delayed by a period of 8 years 6 months and 21 days, which cannot be faulted with.

12. The contention of Mr. Thigle, learned counsel for the applicant that arbitration proceedings were pending and the Divisional Commissioner had refused to act, or recused himself,

is absolutely without any merit whatsoever, for the reason that the Divisional Commissioner, as long back as 30/06/2009, had nominated the Additional Collector, Beed, to be the arbitrator, in pursuance to invocation of clause 27 as contained in the agreement dated 30/03/2001 by the applicant and the claim made by the applicant before the Additional Collector, Beed, stood rejected as indicated by the communication dated 22/07/2009, which being the case, the arbitration clause 27, already stood worked out by appointment of the Additional Collector, Beed as an arbitrator on 30/06/2009, and the rejection of the claim of the applicant by him, as reflected from the communication dated 22/07/2009. This being the case, the invocation of Section 11(6), of the A & C Act, 1996, on the basis of clause 27 as contained the agreement dated 30/03/2001, once again is clearly not permissible. The application, is therefore, not only misconceived but is also not maintainable in law and is thus rejected.

(AVINASH G. GHAROTE, J.)

VSM/