

AP/772/2022

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTIONDHANSAR ENGINEERING COMPANY PRIVATE LIMITED
VERSUS
EASTERN COALFIELDS LIMITEDBEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
DATE : 1ST DECEMBER, 2022.

APPEARANCE:

Mr. Dwaipanyan Basu Mullick, Advocate
Mr. Rahul Kr. Singh, Advocate
*.....for the applicant.**Mr. Manik Das, Advocate*
..for respondent

The Court: Affidavit of service filed by the applicant is taken on record.

This application under Section 11 of the Arbitration and Conciliation Act, 1996 has been filed for appointment of the arbitrator to resolve the disputes between the parties.

Learned counsel for the applicant has pointed out that the agreement dated 30th August, 2017 was executed between the parties. He has fairly admitted that the said agreement does not contain any arbitration clause but reliance has been placed by counsel for the applicant upon the circular dated 7th April, 2017 issued by the respondent which contains the following clause:

"Post/existing work order/contract:

5. *With regards to dispute/differences cropping up in existing work order shall adopt procedure for settlement of the same through arbitration are aware that neither the CIL Manuals nor contract document at present contracts any arbitration, therefore, dispute/differences cannot be referred to arbitration straight before referring the matter to arbitration, consent of the other party (contractor) for redressal of dispute/differences through arbitration. Once the contractor agrees to dispute/differences arising out of contracts through arbitration and agreement is executed between employer and contractor to referring the dispute Arbitration or a*

person appointed by competent authority of CIL/CMD of Subsidiaries (as the case may be) the rest of the procedure shall be as per IN ARBITRATION AND CONCILIATION ACT 1996 as amended by AMENDMENT ACT and also as per instruction incorporated in close of deputed through Arbitration.”

Referring to the same, he has submitted that arbitration agreement exists between the parties, therefore, applicant had served the notice dated 8th August, 2022 invoking the arbitration clause.

Learned counsel for the respondent has opposed the application by submitting that no arbitration agreement exists between the parties in terms of Section 7 of the Act. He has also placed reliance upon the judgment of the Hon’ble Supreme Court dated 25th July, 2022 passed in Civil Appeal No. 4914 of 2022 in the of Mahanadi Coalfields Ltd. & Anr. Vs. M/s. IVRCL AMR Joint Venture.

Having heard the learned counsel for the parties and on perusal of the records, it is noticed that the Hon’ble Supreme Court in the case of Mahanadi Coalfields (supra) has considered the very clause of the Circular dated 7th April, 2017 which the applicant is placing reliance upon and has reached to the conclusion that on the basis of the said clause it cannot be held that the arbitration agreement exists between the parties.

Hon’ble Supreme Court in the case of Mahanadi Coalfields (supra) in this regard has held as under:

“ 14. *However, it has been urged on behalf of the respondent by Mr S Niranjana Reddy that the first appellant is a subsidiary of CIL. It has been submitted that on 7 April 2017, CIL issued a policy document to its General Managers for the settlement of disputes or differences arising out of works and services contracts through arbitration. Clause 5 of the above communication provides as follows:*

“Past/existing work order/contract:

5. *With regards to dispute/differences cropping up in existing work order/contract, employer (department) shall adopt procedure for settlement of the same, through arbitration process. As you are aware that neither the CIL Manuals nor contract document at present contains any clause regarding arbitration, therefore, dispute/differences cannot be referred to arbitration straight away. Hence, before referring the matter to arbitration, consent of the other party (contractor) is necessary for redressal of dispute/differences through arbitration. Once, the contractor agrees for settlement of dispute/differences arising out of contracts through arbitration, an agreement may be signed between employer and contractor for referring the dispute/differences to Sole Arbitration by a*

person appointed by Competent Authority of CIL/CMD of Subsidiaries (as the case may be). The rest of the procedure shall be as per the Arbitration and Conciliation Act, 1996 as amended by Amendment Act of 2015 and also as per instruction incorporated in clause "Settlement of Disputes through Arbitration".

15. *Hence, it is urged that the first appellant being a subsidiary of CIL and being a public sector undertaking may well consider as to whether the disputes which have arisen between the appellants and the respondent should be referred to arbitration. In this context, the appellants and the respondent placed reliance on an order dated 20 July 2018 of the Chief Justice of the High Court of Orissa in Arbitration Petition No 59 of 2016.*
16. *We are unable to subscribe to the submission which has been urged on behalf of the respondent based on the policy letter dated 7 April 2017. The communication which has been issued by CIL refers to the possibility of a consensual resolution of disputes or differences through arbitration as neither the CIL manuals nor the contract document, at the time, contained a clause regarding arbitration. However, it has been submitted that once the contractor has agreed to settle a dispute through arbitration, the agreement may be signed between the employer and the contractor for reference to arbitration, by a person to be appointed by the competent authority of CIL or, as the case may be, the Chairman and Managing Director of the subsidiaries.*
17. *The communication dated 7 April 2017 merely indicates a desire on behalf of CIL to have disputes related to work contracts settled by arbitration. It requires both the parties to arrive at a further agreement to proceed to arbitration when the dispute arises. Therefore, in view of the principles laid down in Jagdish Chander (supra), following a line of precedent, clause 5 in the aforesaid communication cannot be construed as an arbitration agreement between the appellants and the respondent in terms of section 7 of the 1996 Act so as to compel the appellants to appoint an arbitrator."*

Now, the law has been settled by the Hon'ble Supreme Court taking into account the very clause on which the applicant is placing reliance upon that on the basis of the said clause, it cannot be held that the arbitration agreement exists between the parties.

Hence, the issue has been concluded by the aforesaid judgement, therefore, I am of the opinion that since there is no arbitration agreement between the parties, the question of appointment of arbitrator under Section 11 of the Act does not arise. Hence, AP is dismissed.

(PRAKASH SHRIVASTAVA, C.J.)