

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.12470 Of 2022
(Through hybrid mode)

M/s. Gammon Engineers and Contractors Pvt. Ltd. ***Petitioner***

Mr. Sidhant Dwibedi, Advocate

-versus-

State of Odisha and others ***Opposite Parties***

Mr. S.N. Das, ASC

CORAM: JUSTICE ARINDAM SINHA

ORDER
13.07.2022

Order
No.

2.

1. Mr. Dwibedi, learned advocate appears on behalf of petitioner and submits, prayer of his client is for direction upon State, through its functionaries, to furnish authenticated copy of office letter dated 3rd November, 1978 referred under fire precaution clause-H in the tender document. The clause is reproduced below.

“H) FIRE PRECAUTION- The contractor his agents representatives workmen etc. shall strictly observe the order pertaining to fire precautions prevailing within the restricted ara.

The arbitration clause as amended in this office letter No.50174(43) dated 3.11.1978 will hold good”

He submits, the tender document became part of agreement dated 31st December, 1997, under which his client executed the work. He draws attention to letter dated 8th December, 2014 issued by office of Executive Engineer, Bhadrak rejecting his client's claim on ground, inter alia, that extension of time application was not duly filed. He submits, his client by letter dated 22nd April, 2016 replied thereto requesting settlement of final bill including ascertaining that all formalities for granting extension of time and preparation of final bill had been complied with. On no settlement, by letter dated 7th October, 2017 his client invoked the arbitration agreement. The employer has refused, failed and neglected to appoint arbitrator. In the circumstances, his client is unable to request The Hon'ble The Chief Justice for appointment of arbitrator in absence of authenticated copy of said letter being the arbitration agreement.

2. Mr. Das, learned advocate, Additional Standing Counsel appears on behalf of State and submits, his client has altered its position and his instructions are, counter is not necessary to be filed though on 17th May, 2022, direction was obtained. He refers to letter dated 12th May, 2011 of petitioner written to Executive and Chief Engineers. In paragraph-2 petitioner had referred to said letter dated 3rd November, 1978 laying down the arbitration clause, not made part of the contract nor annexed/attached to the contract. He submits,

petitioner went on to say that is sincere effort to obtain the copy also went in vain, since the addressees had denied availability of such letter in their office, in reply to petitioner's query under Right to Information Act. Mr. Das submits, that is the position. The arbitration agreement was contained in the letter, which his client does not have in its files.

3. Petitioner has sought direction for production of the letter containing the arbitration agreement, for purpose of enabling it to make request to The Hon'ble The Chief Justice for appointment of arbitrator. By reason of position taken by State on said letter dated 12th May, 2011 of petitioner, the arbitration agreement is in by writing letter dated 12th May, 2011 as contained therein providing for record of it. Petitioner's purpose for making request for appointment of arbitrator stands achieved.

4. The writ petition is disposed of.

(Arindam Sinha)
Judge

Sks