

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO.79 OF 2021

Ravindra Prasad S.A. ... Petitioner
Vs.
National Highways Authority and others ... Respondents

Mr. Girish R. Agrawal for Petitioner.
Mr. Karl Tamboly a/w. Mr. Rishir Daulat and Mr. Siddharth Nunes i/b.
TRD Associates for Respondent Nos.2A, 2B and 3.
Mr. P. G. Lad a/w. Ms. Shreya Shah for Respondent No.4.

CORAM : MANISH PITALE, J.
DATE : OCTOBER 12, 2022

P.C. :

By this petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, the petitioner is seeking appointment of an independent Arbitral Tribunal to adjudicate the disputes between the parties.

2. Respondent No.1 - National Highway Authority of India had entered into a Concession Agreement with respondent No.2B - IRB Westcoast Tollway Private Limited in the context of construction of a highway. Respondent No.3 issued a work order to respondent No.4 - M/s. Pranav Construction which in turn, issued a work order to the petitioner.

3. The original concession agreement contains an arbitration clause at clause No.44.3.1, which was executed admittedly only between respondent No.1 - National Highway Authority of India on one hand and respondent No.2B - IRB Westcoast Tollway Private Limited on the other.

4. Mr. Girish Agrawal, learned counsel appearing for the petitioner submitted that since the contract was assigned eventually to the

petitioner, the arbitration clause at clause No.44.3.1 in the concession agreement was clearly applicable for resolution of disputes that had arisen between the petitioner and respondent No.4 - M/s. Pranav Construction. He further submitted that in the work order issued by respondent No.4 to the petitioner, it was stipulated that all disputes would be subject matter of Thane jurisdiction only, and therefore, the petitioner was constrained to move the present petition under Section 11 of the said Act before this Court.

5. On the other hand, Mr. Karl Tamboly, learned counsel appearing for respondent Nos.2A, 2B and 3 as also Mr. Lad, learned counsel appearing for respondent No.4 opposed the prayer made in the present petition, principally on the ground that there was no arbitration clause in the work order issued by respondent No.4 to the petitioner and that the arbitration clause in the concession agreement could not be stretched to apply to the disputes between the petitioner on one hand and respondent No.4 on the other. It was submitted that in the present case, work orders were issued by respondent No.2B to respondent No.3, who in turn issued the work order to respondent No.4 and eventually, respondent No.4 issued the work order to the petitioner. In none of these work orders was there any reference to the concession agreement or incorporation of the arbitration clause from the concession agreement. It was further submitted that even if it was a case of the assignment of a contract, as per the law laid down by the Supreme Court in this context by referring to Section 7(5) of the aforesaid Act, a strict test would have to be passed by the document available on record to qualify as assignment justifying the applicability of the arbitration clause in the original concession agreement. Reliance was placed by Mr. Tamboly, learned counsel for respondent Nos.2A, 2B and 3, on the judgment of the Delhi High Court in the case of *Laxmi Civil Engineering Services Limited Vs. Gail (India) Limited*, **2021 SCC OnLine Del 2867** and the judgment of the Hon'ble

Supreme Court in the case of *M. R. Engineers and Contractors Pvt. Ltd. Vs. Som Datt Builders Limited*, (2009) 7 SCC 696.

6. Having heard learned counsel for the rival parties and upon perusal of the material on record, the first and foremost aspect of the matter would be as to whether there is at all an arbitration agreement in the present case justifying appointment of an arbitrator in terms of such a clause. This aspect goes to the very root of the present petition filed under Section 11 of the aforesaid Act.

7. The material on record shows that in so far as the concession agreement executed between respondent No.1 - National Highway Authority of India and respondent No.2B - IRB Westcoast Tollway Private Limited is concerned, there is indeed an arbitration clause at clause No.44.3.1 of the said agreement. The crucial question is whether the said arbitration clause would cover the disputes between the petitioner and respondent No.4 - M/s. Pranav Construction. In the present case, the documents on record clearly show that there has been issuance of work orders by the respondents, which ultimately has led to issuance of the work order by respondent No.4 in favour of the petitioner. None of these work orders show any assignment of the concession agreement as contemplated under clause 40.1 of the concession agreement. Such issue would necessarily require consent of National Highway Authority of India. Merely a work order has been issued by respondent No.2B in favour of respondent No.3 and ultimately by respondent No.4 in favour of the petitioner. There is nothing to show assignment of the contract or the concession agreement in favour of the petitioner. Applying the law laid down by the Supreme Court in the case of **M. R. Engineers and Contractors Pvt. Ltd. Vs. Som Datt Builders Limited** (*supra*), it becomes clear that in the facts of the present case, it cannot be said that there is even a reference to the arbitration clause in

the work order issued by respondent No.4 in favour of the petitioner, leave alone the reference being such as to make the arbitration clause a part of the work order.

8. Reliance placed on the judgment of the Delhi High Court in the case of **Laxmi Civil Engineering Services Limited Vs. Gail (India) Limited** (*supra*) is also justified because in the said case it was observed that even the sub-contractors could not claim that they would be covered by an arbitration clause, which was part of the original contract between the parties, so long as there was no assignment of such contract.

9. The admitted facts that emerge from the documents on record clearly indicate that respondent No.4 had issued only a work order to the petitioner. There was no assignment in the present case and even otherwise in the work order issued by respondent No.4 in favour of the petitioner, admittedly, there was no arbitration clause. This Court finds that for exercising jurisdiction under Section 11 of the said Act, the fundamental requirement i.e., existence of an arbitration agreement is absent, and that therefore, the present petition cannot be entertained for the prayers made therein.

10. In view of the above, the petition is dismissed. No costs.

(MANISH PITALE, J.)

Minal Parab