

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

AP/7/2023

PRANAB KUMAR RAY
VS
PUBLIC WORKS DEPARTMENT, GOVERNMENT OF WEST BENGAL

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 11th April, 2023.

Appearance :

Mr. Krishna Raj Thaker, Adv.
Mr. Chayan Gupta, Adv.
Mr. Kausik De, Adv.
Mr. Saptarshi Mal, Adv.
Ms. T. Sharma, Adv.
Mr. Roshan Pathak, Adv.
Ms. M. Mazumdar, Adv.
..for the petitioner

Mr. Arindam Mandal, Adv.
Mr. Anirban Ray, Adv.
Mr. Paritosh Sinha, Adv.
Mr. S. Banerjee, Adv.
..for the respondent/State

The Court : At the outset, the respondents raise the basic issue as regards the maintainability of the application under Section 11 of the Arbitration and Conciliation Act, 1996. Learned counsel for the respondents place reliance on Clause 28 of the Notice Inviting Tender (NIT) which specifically stipulates that there shall be no provision of arbitration. Thereafter, it was specifically stipulated further that, hence, Clause 25 of the West Bengal Form No.2911(ii) shall not be allowed vide Memo No.558/SPW dated 13.12.2011 of PWD Establishment Branch.

It is further pointed out that Clause 30 of the NIT itself clearly stipulates that if any discrepancy arises between two similar clauses in different notifications, the clause as stated in the latter notification will supersede the former one in the sequence which followed.

In the said sequence, Form No. 2911 (ii) comes prior to “NIT”.

It is argued that although the general conditions of contract annexed to the work order issued to the petitioner did contain Clause 25, in terms of Clause 30 of the NIT, the provisions of the NIT shall prevail on such clause, which is a part and parcel of Form No. 2911 (ii) and, as such, Clause 28 of the NIT supersedes the said Clause 25, although the latter was erroneously printed in the General Conditions of Contract issued with the work order.

Learned counsel further submits that there is an alternative provision as contemplated in Clause 5 of the NIT, which envisages a request to the Chairman of the Dispute Redressal Committee in writing in case of any dispute. Hence, it is submitted that there is no scope of arbitrability beyond the NIT in the present matter.

Learned counsel appearing for the petitioner, while controverting the objection as to the maintainability, also places reliance on the same Clause. It is submitted that since Clause 30 of the NIT refers to two “similar” clauses in different notifications and there is no clause similar to Clause 28 of the NIT in the work order/contract entered into between the parties, Clause 30 of the NIT is not attracted at all.

That apart, it is argued that the work order /contract between the parties is a still-subsequent document which was entered into after all the items

mentioned in the sequence in Clause 30 of the NIT were concluded and, as such, ought to be deemed to supersede all the items mentioned in Clause 30 of the NIT.

Heard learned counsel for the parties.

It is clear that Clause 28 of the NIT specifically stipulates that there would be no provision of arbitration. Not stopping there, it was further provided therein that Clause 25 of the West Bengal Form No. 2911(ii) shall not be allowed, referring to the particular memo number on that score.

As such, Clause 30 of the NIT comes into play, since the same specifically refers to Form No.2911 (ii) in the context of the NIT itself, the latter of which would prevail as per the said clause.

It is noteworthy that the General Conditions of Contract contained in the form under reference, was annexed in toto with the work order/ contract between the parties, maintaining its independent identity, although the same was deemed to be a part of the contract between the parties. Hence, Form 2911(ii) retained its identity and, as such, Clause 25 thereof, which was deleted specifically by the Clause 28 of the NIT, remained so deleted, although the General Conditions were annexed in their entirety with the work order.

Hence, Clauses 28 and 30 of the NIT, read in conjunction with the Notification bearing Memo No.558/SPW dated December 13, 2011 of the PWD Establishment Branch, unerringly indicate that the arbitration clause relied upon by the petitioner in the present matter stood deleted as on the date of the contract between the parties. Hence, no dispute with regard to the contract can be referred to arbitration.

In view of such inherent absence of arbitrability in the present matter, in view of the same being specifically excluded by agreement between the parties, read with the NIT and relevant Notifications, there is no scope of reference within the contemplation of Section 11 of the 1996 Act.

Accordingly, AP No.7 of 2023 is dismissed on the ground of being not maintainable.

Urgent certified photostat copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)