



Gaikwad RD

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO.197 OF 2022

M/s. PSP Associates

...Petitioner

Versus

The Divisional Railway Manager (Works) & Ors.

...Respondents

Ms. Tejas Kapre for the Petitioner.
Mr. D. P. Singh, for the Respondents.

CORAM Dr. Neela Gokhale, J.
DATED: 3rd October 2023

PC:-

1. The Petitioner seeks appointment of an arbitrator to resolve the disputes that have arisen between the parties from the tender contract for repairs to septic tank at Dapodi, Khadki Talegaon; repairs to compound wall near quarters at Dapodi; repairs to pathway to quarters along loop line and for NRMU office near cycle stand at Dehuroad and repairs to gate at Shivajinagar DN side colony and other allied works. Arbitration clause in the 'General Conditions of Contract' to the tendered document is at Paragraph No.64(1)(i). As per the sub provisions of the arbitration clause, in the agreement namely Paragraph No.64(3)(a)(ii) provides as thus:

64(3)(a)(ii):

In cases not covered by the Clause 64(3)(a)(i), the Arbitral

Tribunal shall consist of a Panel of three Gazetted Railway Officers not below JA Grade or 2 Railway Gazetted Officers not below JA Grade and a retired Railway Officer, retired not below the rank of SAG Officer, as the arbitrators. For this purpose, the Railway will send a panel of more than names of Gazetted Railway Officers of one or more departments of the Railway which may also include the name(s) of retired Railway Officer(s) empanelled to work as Railway Arbitrator to the contractor within 60 days from the day when a written and valid demand for arbitration is received by the GM. Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. GM shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them is from the Accounts Department. An officer of Selection Grade of the Accounts Department shall be considered of equal status to the officers in SA Grade of other departments of the Railway for the purpose of appointment of arbitrator.

2. Mr. Kapre, learned Counsel appearing for the Petitioner states that the dispute arises between the parties in respect of certain amount that remains to be paid and is payable to the Petitioner from the Respondent. He contends that a number of

communications and notices were exchanged by and between the parties regarding the payment to be made. However, the dispute could not be resolved. The Petitioner invoked the arbitration clause by issuing a notice dated 30th May 2022 to the Respondent. The Petitioner also called upon the Respondent to pay outstanding amount as demanded in the notice. The Respondent did not reply the said notice. Hence the Petitioner has approached this Court seeking appointment of Arbitral Tribunal to resolve the dispute between the parties.

3. Mr. Singh, learned Counsel appearing for all the Respondents, on instructions, says that he does not wish to file any affidavit in reply and he has no objection to appoint an independent Arbitral Tribunal to adjudicate the dispute between the parties. Both the parties are agreeable for appointment of a sole arbitrator, instead of a tribunal comprising of three members in the interest of expediency.

4. In these circumstances, I pass the following order:

ORDER

1. Ms. Savita Tukaram Barne, Retired Principal District Judge is appointed as a Sole Arbitrator to enter reference and adjudicate the disputes between the parties that have arisen out of the tender contract dated 4th January 2010. The seat and venue of the arbitration shall be Pune.
2. The learned Sole Arbitrator shall forward a statement of disclosure as per the requirement of Section 12(1) of Arbitration and Conciliation Act 1996 to the Prothonotary

and Senior Master of this Court to be placed on record of this Petition with a copy forwarded to both the parties.

3. At the first instance the parties shall appear before the learned Arbitrator within a period of ten days from the date of uploading of this order or on such date that may be fixed by the Sole Arbitrator.
4. All contentions of the parties on merits of the disputes are expressly left open.
5. The fees payable to the Arbitral Tribunal shall be in accordance with the Bombay High Court (Fee payable to the Arbitrator) Rules, 2018 which shall be borne by the parties in equal proportion.
6. The Petition is disposed of in the above terms. There will be no order as to costs.
7. Office to forward a copy of this order to the learned Sole Arbitrator on the following address:

**"Ms. Savita Tukaram Barne,
(Retired Principal District Judge)
312 Shaniwar Peth,
Sidhant Housing Society, B wing,
Pune-411030
Mobile No. 83088 21698
E-Mail Address: barnesavita@gmail.com"**

(Dr. Neela Gokhale, J)