

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.14 of 2023

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M/s Coramandel Infrastructure Pvt. Ltd Reg. Office Plot No. 319, 320, East Avenue, 2nd Floor, Ayyappa Society, Near YSR Statue, Madhapur, Hyderabad - 500081.

... .. Petitioner/s

Versus

The Managing Director, Bihar State Hydroelectric Power Corporation Ltd. Sone Bhawan, 2nd Floor, Birchand Patel Marg, Patna, Bihar - 800001.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Abhishek Kumar, Advocate Mr.Pushkar Narain Shahi, Sr. Advocate
For the Respondent/s	:	Mr.Mritunjay Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 04-10-2024

Heard learned counsel for the parties.

2. This application has been moved seeking appointment of an Arbitrator invoking the powers of this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996.

3. Petitioner and the respondent entered into an agreement dated 08.11.2010 (Annexure P-2). The said agreement contains in Section II of the General Conditions of Contract arbitration clause as Clause 3.54.4. The petitioner invoked the said arbitration clause vide letter dated 24.08.2022 and vide notice dated 30.09.2022, but to no avail.

4. It is pleaded that the respondents have not settled the dispute till date and the dispute is of civil in nature.

5. Today, there is no dispute about-(a) the legality,



validity and binding effect of the written agreement entered into between the parties to the lis; (b) the existence of arbitration clause contained therein; (c) the existence of dispute(s) arising there from; (d) the dispute arisen out of the agreement being civil in nature; (e) no legal impediment in the adjudication of the dispute by the learned Arbitrator; (f) Petitioner having exhausted the channel available for resolution of the dispute; (g) the respondent having failed to appoint an Arbitrator pursuant to the invocation of the arbitration clause by the petitioner.

6. The request for arbitration is objected on the ground of delay and on the petitioner having not taken up the proceedings as per the agreement for appointment of a panel of arbitrators.

7. The learned Counsel appearing for the Bihar State Hydroelectric Power Corporation Ltd. (for brevity 'Corporation') specifically refers to Paragraph 3.54 with a nominal heading 'Settlement of Dispute'. Therein, every unsettled dispute or difference arising out of or in connection with the contract, in the first instance has to be decided by the Engineer-in-Charge whose decision is deemed to be final and binding on the parties. It is also specified in Clause 3.54.3 that if the decision of the Engineer-in-Charge goes against the contractor either of the parties may require that the matter be referred to arbitration as



provided in Clause 3.54.4. As far as the appointment of arbitrators is concerned, on a request received from the contractor, the Corporation is obliged to send a list of three persons who are independent and impartial as described in the Arbitration and Conciliation Act, 1996. On such list being received, the contractor has to select the name of one person who shall be appointed as a sole Arbitrator. If the contractor fails to communicate his selection of the name, then the Corporation would be entitled to select one person from the list and appoint him as a sole Arbitrator. It is also provided that if the Corporation fails to send such a list within 30 days, the contractor shall then send a similar list of three independent and impartial persons from whom one shall be selected by the Corporation and in the event of failure to so select a person the contractor himself can select a person to act as a sole Arbitrator.

8. To adjudicate on both the objections raised, I have to necessarily deal with the facts. The agreement which led to the contract was executed on 08.11.2010 and the contract itself was foreclosed on 13.02.2018. On 04.12.2018 by Annexure-P-31, the Corporation directed the contractor to appear for final measurement and settlement of disputes. The contractor appeared for final measurement and as per the measurement when payments were not made, CWJC No. 7215 of 2018 was filed by



the contractor seeking payment of admitted dues. The contractor being dissatisfied with the payments made, filed yet another writ petition as CWJC No. 4003 of 2021 disputing the amounts admitted by the Corporation. In accordance with the directions of the Division Bench, an In-House Five Men Enquiry Committee was constituted which rejected the claims made by the contractor by a report on 10.02.2023. In such circumstances, the writ petition was withdrawn. The petitioner had already made Annexure-P-36 communication for arbitration to the Corporation which was dated 30.09.2022, even before the Five Men Enquiry Committee was appointed.

9. The learned Counsel for the respondent pointed out that the petitioner did not follow the procedure as per the arbitration clause in the agreement and appointed one person by himself. However, it is to be noticed that even the Corporation did not respond to Annexure-P-36 with a list of three arbitrators in which event, the petitioner could have proffered a list of three arbitrators. In the meanwhile, the report of the In-House Enquiry Committee appointed came and CWJC was withdrawn and the present arbitration request was filed.

10. Considering the fact, the request-petitioner had been agitating his cause continuously before various forums, I do not think there is any delay in approaching this Court for



arbitration. It is also to be seen that the procedure as stipulated in the agreement; of approaching the Engineer-in-Charge is no more relevant since an In-House Enquiry Committee appointed has already rejected the prayers of the petitioner.

11. Considering the circumstances in the above case, this Court is of the opinion that this is a fit case where an independent arbitrator can be appointed by this Court rather than directing a panel to be sent by either the Corporation or the Contractor.

12. As such, with the consent of the parties, Hon'ble Justice Smt. Mridula Mishra, former Judge of the Patna High Court, is appointed as learned Arbitrator to adjudicate all disputes arising out of agreement entered into between the parties to the *lis*.

13. All pleas and issues raised, on merits, are left open to be considered and decided by the learned Arbitrator.

14. Learned Arbitrator shall be entitled to fee as per the schedule of the Act.

15. Since the dispute arises out of an agreement of the year 2010, the hearing be expedited.

16. Parties undertake to fully cooperate and not take any unnecessary adjournment.

17. The issue of limitation, if any, is left open to be



raised before the learned Arbitrator.

18. Joint Registrar (List) is directed to communicate the order to the learned Arbitrator.

19. Learned counsel for the parties also undertake to communicate the order to the learned Arbitrator.

20. Parties shall file their statement of claims before the learned Arbitrator on such date of hearing which he may fix, as per mutual convenience.

21. The Request Petition stands disposed of in the above terms.

22. Interlocutory Application(s), if any, shall stand disposed of.

(K. Vinod Chandran, CJ)

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AFR/NAFR	
CAV DATE	
Uploading Date	05.10.2024
Transmission Date	

