2024:CGHC:49869

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ARBR No. 32 of 2024

J B Construction Company, Through its partner Jashpal Sethi, S/o Shri Late G.S. Sethi, aged about 65 Years, Office at Hotel Jay Bee Inn, Telephone Exchange Road, Police Station Taarbahar, Tehsil and District - Bilaspur (C.G.)

... Applicant

versus

1. Union of India Ministry of Railway, Through The Principal Chief Commercial Manager All Zonal Railway, New Delhi.
2. The South Eastern Central Railway Through The General Manager, 5th Floor, C- Block Bilaspur, District – Bilaspur, C.G.
3. Senior Divisional Commercial Manager South East Central Railway, Bilaspur C.G.
4. The Dy. Chief Engineer, South Eastern Central Railway, Chindwara M.P.

... Respondent(s)

For Applicant	:	Mr. Saumitra Kesharwani, Advocate holding the brief of Ms. Soumya Sharma, Advocate.
For Respondents/UOI	:	Mr. Ramakant Mishra, Dy. Solicitor General.

Hon'ble Mr. Ramesh Sinha, Chief Justice

Order on Board

17/12/2024

1. This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.

2. The applicant has prayed for the following relief(s):

> "*It is therefore most respectfully prayed that the Hon'ble Court may be pleased to allow the instant application and appoint an independent arbitrator as sole arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996(preferably a retired judge of Hon'ble Chhattisgarh High Court, in the interest of justice."*

3. The facts, in brief, as projected by the applicant are that the applicant is a registered partnership firm under the provisions of Indian Partnership Act and is engaged in the business of construction of roads buildings and irrigation work of the respondent/State as registered contractor. The applicant was 412/Misc.Works/ CPH awarded a contract CA no. JSG/3rd Line/CEC/SECR/ 2020 dated 04.05.2020 for the work Construction of side drains/Toe Wall, provision of height gauge/structural steel works, earthworks/cess repair works & other misc. balance works in between Robertson Bhupendeopur Kirodimal Nagar and balance works of FOB Sakti station in connection with construction of 3rd line between Champa Jharsuguda. The applicant herein has participated in the above mentioned tender and got selected by the respondent Railways and a letter of acceptance was issued to the applicant herein on 29.11.2019. The applicant had duly deposited initial earnest money performance guarantee and security deposit in pursuance of agreement dated 04.05.2020. The total contract value of Rs.2,87,91,213.50/- in tender No. CEC/BSP/9-20/34 dt.19.07.2019 was opened on 13.08.2019. It is most respectfully submitted dispute arose between the parties on account of which the arbitration clause

was invoked by the applicant on 21.07.2023. The contract termination notice was given to the applicant wide letter dated 03.07.2023 in which a date for final measurement of the work done by the applicant was given on 10.07.2023 aggrieved by which the applicant had invoked the arbitration clause. The unlawful termination of the contract agreement without giving a show cause notice to the applicant is not sustainable in the eye of law and more over no heed was paid to the applicant on his oral as well as written communications. The respondents have appointed one Mr. Shri Pradeep Goswami as sole arbitrator wide letter dated 05.10.2023 who is serving officer of the railways and also a witness in another case of the applicant which is pending before the learned tribunal of sole arbitrator Justice Shri. Dhirendra Mishra (Former judge of the Hon'ble High Court of Chhattisgarh). It is pertinent to mention here that the sole arbitrator so appointed Shri. Pradeep Goswami is acting as Deputy Chief Engineer/CON, South East Central Railway, Gondiya and hence, a serving officer in the department of respondent/Railways. It is also crucial to submit that Shri Pradeep Goswami is one of the Chief Witness in an another case of arbitration between JB Construction Company and South Eastern Central Railway (SECR) and another. The said arbitration is on going before the Learned Arbitral Tribunal of Justice Shri. Dheerendra Mishra (Retired), the former Judge, High Court of Chhattisgarh.

4. Mr. Saumitra Kesharwani submits that the respondent/SECR is under obligation to act without undue delay. The respondent/SECR ought to have appointed an arbitrator in accordance with provisions of law keeping into account convenience of the applicant. The disputes and claims refer to the arbitration proceedings cannot be allowed to drag on indefinitely and the party seeking the expeditious disposal cannot be put to suffer the unwanted delay and inconvenience as the place of arbitration in a case where the

proposed person belong to different states cannot commence the arbitration proceedings without the hurdles of postponement due to their unavailability. He further submits that the applicant is legally entitled for disposal of claims and disputes within the reasonable time. The applicant is entitled for speedy proceedings for early disposal of the case and final settlement of claims and disputes. The respondents have acted with malafide intentions while appointed sole arbitrator Shri.Pradeep Goswami keeping very well in their mind that the matter would be prejudiced if a serving officer is given the charge of sole arbitrator. Both the parties have their offices are within the territorial jurisdiction of this Court and the arbitral tribunal constituted by the respondents also have the place of arbitration within the territorial jurisdiction of this Court.

5. Mr. Ramankant Mishra, learned counsel appearing for the respondent submits that the respondents would have no objection if this Court appoints any Arbitrator for resolving the dispute between the parties.

6. I have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

7. A query was put to learned counsel appearing for the parties as to whether they are agreeable for a common name who can be appointed as Arbitrator, learned counsel for the parties submitted that they would have no objection if any retired Judge of this High Court is appointed as the Sole Arbitrator. They further submit that Hon'ble Mr. Justice V.K. Shrivastava, who is a retired Judge of this High Court may be appointed as the Sole Arbitrator.

8. In view of the above consensus between the learned counsel for the parties, **Hon'ble Mr. Justice V.K.Shrivastava** a retired Judge of this High Court is appointed to act as the Sole Arbitrator to resolve the dispute involved in this arbitration request between the parties.

9. The Registry is directed to communicate this order to Hon'ble Mr. Justice V.K.Shrivastava in the proper address.

10. The remuneration of the Arbitrator shall be settled with the mutual consent of the parties.

11. The arbitration request petition, accordingly, stands **allowed**.

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

Preeti