



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

MISC. CIVIL APPLICATION (ARBITRATION) NO.676/2023

M/s Seth Construction Company, Nagpur – 13 through its Authorised Partners
Mr. Manu Ajit Seth and another

...Versus...

Union of India Through its Chief Engineer (FY), Military Engineers Service
(MES), Hyderabad, Secunderabad and another

WITH

MISC. CIVIL APPLICATION (ARBITRATION) NO.437/2023

M/s Seth Construction Company, Nagpur-13 through its Authorised Partners
Mr. Manu Ajit Seth and another

...Versus...

Union of India Through its Chief Engineer (FY), Military Engineers Service
(MES), Hyderabad, Secunderabad and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. C.B. Dharmadhikari & Ms M.J. Kulkarni, Advocates for applicant
Mrs. M.R. Chandurkar & Ms Harpreet Kaur, Advocates for respondents

CORAM : BHARAT P DESHPANDE, J.

DATE : 15/03/2024

1. Heard learned counsel for the parties.
2. The present applications have been filed for appointment of Arbitrator under Section 11 (6) of the Arbitration and Conciliation Act, 1996.
3. The applicant claimed that the dispute arose between the applicant and the respondents in connection with

the contract and accordingly, notice was issued to the respondents to appoint Arbitrator, however, since there was no response, the applicant was forced to approach this Court.

4. Reply-affidavit filed on behalf of the respondents would go to show that though they received the notice dated 06/03/2023, since their office was being shifted from Hyderabad and files were in transit, they were unable to process such notice. It is their contention now that there is a panel of Arbitrators, duly approved by the Department and accordingly, the respondents be permitted to appoint any one out of them, who are independent Arbitrators though working in different Departments of the Union of India. Thus, from the reply filed on record it is not in dispute about the reference of the matter to the Arbitrator. The question is whether an Arbitrator from the panel of Arbitrators, as provided by the respondents, is required to be appointed or any other independent Arbitrator needs to be appointed.

5. Learned counsel for the respondents would submit that since there is a panel of Arbitrators constituted by the Ministry of Defence to resolve the disputes, such Arbitrators are from different Departments and therefore, they are independent as well as having technical knowledge and therefore, any one of them could be appointed to resolve the dispute.

6. It is no doubt true that this Court is entitled to appoint an Arbitrator once the respondents failed to appoint the Arbitrator as per clause. However, in this matter there was genuine reason disclosed in the affidavit filed by the respondents and thus, the Arbitrator from the panel of Arbitrators, constituted by the Ministry of Defence could be appointed.

7. Accordingly, Mr. Anil Kumar Agrawal, Additional Member of Railway Board could be appointed as Arbitrator since the present dispute is with regard to applicant, who is a contractor and respondent no.2 – Garrison Engineer (I) Ordnance Factory Estate, Ambazari, Nagpur

8. Accordingly, Mr. Anil Kumar Agrawal, Additional Member of Railway Board, Railways is appointed as Arbitrator in this matter.

9. Learned counsel for the applicant shall communicate copy of this order to the learned Sole Arbitrator within a period of two weeks from today.

10. The learned Sole Arbitrator is requested to forward his Statement of Disclosure under Section 11 (8) read with Section 12 (1) of the Arbitration and Conciliation Act, 1996 to the learned counsel for applicant so as to enable him to file the same in the Registry of this Court. The Registry of this Court shall retain the said statement on the file of these applications and copy of the same shall be furnished to the

learned counsel for the applicant and learned counsel for the respondents.

11. The parties shall appear before the learned Sole Arbitrator on such date and at such place as he nominates to obtain appropriate directions with regard to fixing a schedule for completing pleadings etc. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

12. Contact and communication particulars shall be provided by both sides to the learned Sole Arbitrator within a period of two weeks from today. This information shall include a valid and functional email address as well as mobile numbers of the respective Advocates.

13. The parties have agreed that the Sole Arbitrator shall charge his fees as per the 4th Schedule of the Arbitration and Conciliation Act, 1996 read with the Bombay High Court (Fee payable to Arbitrators) Rules, 2018. The parties have further agreed that all the arbitral costs and the fees of the Arbitrator will be borne by the applicant and the respondents equally and will be subject to the final Award that may be passed by the Tribunal.

14. The parties immediately shall consent to a further extension of six months to complete the arbitration, if the learned Sole Arbitrator finds it necessary.

15. The parties have agreed that the seat of the arbitration will be at Nagpur. However, the venue of the arbitration shall be decided by the Sole Arbitrator taking into consideration convenience of the parties as well as his convenience.

16. In view of above, the Misc. Civil Applications are allowed and disposed of accordingly.

17. Parties to act upon authenticated copy of this order.

(BHARAT P. DESHPANDE, J.)

Wadkar