

2024:PHHC:053587-DB
CWP-8994-2024 (O&M)
Date of Decision: 22.04.2024.

M/s Mohinder Singh Govt. Contractor

...Petitioner

Vs.

Union of India and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present Mr. Sandeep Singh, Advocate for the petitioner.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. Clause 25 of the general conditions of the contract provides for disputes resolution mechanism and the same reads as under:-

- i) If any dispute or differences of any kind what-so-ever arise between the Authority, its authorized representatives and the contractor in connection with or arising out of this contract or the execution of work, these shall be resolved as under.
- ii) Whether before its commencement or during the progress of Project/Work or after the termination, abandonment or breach of the contract, the dispute shall, in the first instance, be referred for settlement to the Engineer of the work and he shall, within a period of sixty days after being requested in writing by the contractor to do so, convey his decision to the contractor. Such decision in respect of every matter so referred shall, subject to

arbitration as hereinafter provided, be final and binding upon the Contractor. In case the work is already in process, the contractor shall proceed with the execution of the work on receipt of the decision of the Engineer as aforesaid with all due diligence, whether any of the parties requires arbitration as hereinafter provided or not.

- iii) If the Engineer has conveyed his decision to the contractor and no claim for arbitration has been filed by the contractor within a period of sixty days from the receipt of the latter communicating the decision, the said decision shall be final and binding upon the contractor and will not be a subject matter of arbitration at all.
- iv) If the Engineer fails to convey his decision within a period of sixty days from the date on which the said request was made by the contractor, he may refer the dispute for arbitration as hereinafter provided.
- v) All disputes or differences in respect of which the decision is not final and conclusive shall, at the request of either party made in communication sent through registered A.D. post, be referred to the sole arbitration of a Superintending Engineer of Greater Ludhiana Area Development Authority acting as such at the time of reference unless debarred from acting as an Arbitrator by an order of the Authority, in which event, the Employer shall appoint any other technical officer of the department to act as an arbitrator on receipt of a request from either party.

- vi) The Employer shall have the authority to change the arbitrator on an application by either the contractor or the Engineer requesting change of arbitrator giving reasons thereof, either before the start of the arbitration proceedings or during the course of such proceedings. The arbitration proceedings would stand suspended as soon as an application for change of Arbitrator is filed before the Employer and a notice thereof is given by the applicant to the Arbitrator. The Employer after hearing both the parties may pass a speaking order rejecting the application or accepting to change the arbitrator or simultaneously, appointing a technical officer as Arbitrator under the contract. The new arbitrator so appointed may enter upon the reference afresh or he may continue the hearings from the point these were suspended before the previous arbitrator.
- vii) The reference to the arbitrator shall be made by the claimant party within one hundred twenty days from the date of dispute of claim arises during the execution of work. If the claim pertains to rates or recoveries introduced in the final bill, the reference to the arbitrator shall be made within six calendar months from the date of payment of the final bill to the contractor or from the date a registered notice is sent to the contractor to the effect that his final bill is ready by the Engineer (whose decision in this respect shall be final and binding) whichever is earlier.

- viii) It shall be an essential term of this contract that in order to avoid frivolous claims, the party invoking arbitration shall specify the disputes based upon facts and calculations stating the amount claimed under each claim and shall furnish a "deposit-at-call" for ten percent of the amount claimed, on a scheduled bank in the name of the Arbitrator, by his official designation who shall keep the amount in deposit till the announcement of the award. In the event of an award in favour of the claimant, the deposit shall be refunded to him in proportion to the amount awarded with respect to the amount claimed and the balance, if any, shall be forfeited and paid to the other party.
- ix) The provisions of the Arbitration and Reconciliation Act, 1996 or any other statutory there under or modification thereof and for the time being in force shall apply to the arbitration proceedings under this clause.
- x) The arbitrator shall award separately giving his ward against each time claim and dispute and counter claim raised by either party giving reasons for his award. Any lump sum award shall not be legally enforceable.
- xi) The independent claims of the party other than one seeking arbitration as also the counter claims of any party shall be entertained by the arbitrator.
- xii) The venue of arbitration shall be such place or places in Punjab or Chandigarh as may be fixed by the arbitrator in

his sole discretion. The work under the contract shall continue during the arbitration proceedings.

- xiii) The stamp fee due on the award shall be payable by the party as desired by the Arbitrator and in the event of such party's default, the stamp fee shall be recoverable from another sum due to such party under this or any other contract.
- xiv) Neither party shall be entitled to bring a claim for arbitration, if it is not filed as per the time period already specified or within six months of the following:-
- a) Of the date of completion of the work as certified by the Engineer or
 - b) Of the date of abandonment of the work or breach of contract under any of its clauses, or
 - c) Of its non-commencement or non resumption of work within 10 days of written notice for commencement or resumption as applicable or
 - d) Of the cancellation, termination or withdrawal of the work from the contractor in whole or in part and / or revision for closure of the contract, or
 - e) Of receiving an intimation from the Engineer that the final payment due or recover from the contractor had been determined, for the purpose of payment/adjustment whichever is the latest. If the matter is not referred to arbitration within the period prescribed above, all the rights and claims of either party under the contract shall

be deemed to have been fortified and absolutely barred by the time for arbitration and even for civil litigation.

- xv) No question relating to this contract shall be brought before any civil court without first invoking and completing the arbitration proceedings, if the issue is covered by the scope of arbitration under the contract. The pending arbitration proceedings shall not disentitle the Engineer to terminate the contract and to make alternate arrangement for completion of the works.
- xvi) The arbitrator shall be deemed to have entered on the reference on the day, he issues notices to the parties fixing the first date of hearing. The arbitrator may, from time to time, with the consent of the parties enlarge the initial time for making and publishing the award.
- xvii) The expiry to the contractual time limit, whether originally fixed or extended, shall not invalidate the provisions of this clause.
- xviii) The jurisdiction of Civil Court for matter under dispute shall be on the basis of the location of the office of the Engineer.

2. Keeping in view the aforesaid, it is apparent that the provisions of Arbitration and Conciliation Act, 1996, will have an application, if there is a dispute arising between the parties on any issue in relation to the terms and conditions of the contract.

3. Learned counsel has invited attention to Clause 42 relating to the change/variation in taxes and its implication and submits that in accordance

with the change in the rates of taxes from 12% to 18%, Direction Committee of the Chief Engineer, held a meeting on 28.02.2023 and agreed to release the additional amount by applying the differential component of 5.35%. However, in spite of the decision taken, the same has not been implemented in respect of the petitioner and accordingly he has approached this Court seeking mandamus.

4. We find that the contract entered into between the parties is a non-statutory contract and a writ petition for implementation of conditions of the contract would not lie and would not be maintainable, in view of the judgment passed by the Hon’ble Supreme Court in the case of M.P. Power Management Company Ltd. vs. M/s Sky Powre Southeast Solar India Pvt. Ltd. and others 2023 (2) SCC 7.

5. We also find that as there is a arbitration clause, the dispute can very well be taken up by the petitioner before the appropriate forum. In these circumstances, no interference is made out.

6. In view of the above, the writ petition is dismissed while granting liberty to the petitioner as above.

7. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

22.04.2024.
rajesh

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| 1. Whether speaking/reasoned? | : | Yes/No |
| 2. Whether reportable? | : | Yes/No |