

Arb. P. No. 03/2016
M/s. Harbhajdas Agarwal vs. Union of India & Anr.

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extra Ordinary Jurisdiction)

S.B.: HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI, ACJ.

Arb. P. No. 03 of 2016

M/s. Harbhajdas Agarwal,
A Partnership Firm,
represented by Shri Mahesh Kumar Agarwal (Partner)
having its place of Business at:
Binda Jayanti Building,
31 Sevoke Road, Siliguri,
West Bengal – 734 001.

... Petitioner

versus

1. Union of India
Represented by
The Director General of Border Roads
Organization,
Seema Sadak Bhawan,
Ring Road Delhi Cantonment,
New Delhi – 110 010.
2. The Chief Engineer
Project Swastik,
C/o 99 APO, Pin – 931717.

... Respondents

**Petition u/S. 11(6) read with section 14 & 15 of the
Arbitration and Conciliation Act, 1996.**

Appearance:

Mr. A.K. Upadhyaya, Sr. Advocate with Ms. Binita Chettri and Ms. Aruna Chettri, Advocates for the Petitioner.

Mr. Karma Thinlay, Central Government Advocate for the Respondents.

ORDER
(18.08.2016)

Satish K. Agnihotri, ACJ

Invoking jurisdiction of this Court under provision (c) of sub-section (6) of Section 11 of the Arbitration and Conciliation Act, 1996 (for short, the Act of 1996), the instant petition is filed seeking appointment of an Arbitrator by the Petitioner.

2. The indisputable facts, as stated by the Petitioner, are that the Petitioner is a partnership firm engaged in building and Government contract works. Under the contract order dated 01.07.2009 duly executed by the Petitioner and the Respondent No.2, the Petitioner was awarded a contract for supply and stacking of stone metal 90-45 mm, stone metal 63-45 mm, stone metal 40 mm, stone chips 20 mm, stone screening 13.20 mm, stone chips 13.20 mm, stone screening 11.20 mm stone chips 11.20 mm and coarse sand for surfacing and permanent works between Km 22.65 and Km 52.00 on road Sevoke – Ranipul under 764 BRTF Project Swastik in the State of West Bengal for an amount of Rs.1,67,68,829/-. In the execution of contract, several communications were exchanged between the Petitioner and the Respondent No.2 for facilitating

execution of the contract by grant of extension of time and also for performing the responsibilities at their end. It appears that the difficulties, in executing the contract, could not be removed. Ultimately, the Respondent No.2, by communication bearing No.80112/105/E8 dated 14.08.2012, cancelled the contract with immediate effect.

3. The Petitioner, invoking Clause 37 of the General Conditions of Contracts for the supply of Stores and Materials to the Military Engineer Service (for short, General Conditions of Contracts), wrote a letter dated 10.07.2012 to the Respondent No.1 for appointment of Arbitrator in terms of Contract Condition 33 of the Contract Agreement read with Clause 37 of General Conditions of Contracts agreement, which provides for resolution of a dispute between parties by way of arbitration. The said communication, it appears, has not yielded any response necessitating sending of reminder on 20.08.2012. For want of response again from the Respondent No.1, the Petitioner was constrained to move to this Court under provisions of Section 11(6) of the Act of 1996 in Arb. P. No.02 of 2013. This High Court, by Order dated 11.03.2013, disposed off the petition directing as under:-

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For the reasons aforesaid, the Respondent No.1 shall appoint a Sole Arbitrator in terms of clause 37 of the General Conditions of Contract

and the Sole Arbitrator so appointed shall decide all disputes that the parties may refer to him. The jurisdiction of the arbitration proceedings shall be in terms of clause 33 of the Special Conditions of Contract which stipulates that arbitration clause 37 of the General Conditions of Contract I.A.F.W.-1815(Z), forms a part of the Special Conditions.

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4. Pursuant thereto, Col S Shekhar, SC, HQ CE(P) Setuk, was appointed as Sole Arbitrator vide letter dated 08.05.2013 of Mr. AT Parnaik, Lt Gen, Dir Gen Border Roads. The Arbitrator, so appointed, could not complete the arbitration as he resigned. Thereafter, one Mr. UK Pandey, SE (Civ), HQ CE(P) Vartak was appointed as Sole Arbitrator vide letter dated 13.09.2013.

5. Mr. A. K. Upadhyaya, learned Senior Counsel appearing for the Petitioner, submits that after being appointed as an Arbitrator, Mr. Pandey did not conduct any effective hearing and the entire disputes between the parties remained unsettled till the filing of the instant petition, seeking appointment of a named Arbitrator. It is further submitted that on account of uncertainty and despite a clear direction of this Court regarding appointment of a Sole Arbitrator, the Arbitration could not be completed expeditiously as required under the provisions of the Act of 1996. Thus, a named Arbitrator be appointed with the direction to complete the proceedings as early as possible.

6. In response, Mr. Karma Thinlay, learned Central Government Advocate appearing for the Respondents, referring to and relying on the application dated 04.08.2016 filed in the instant petition, submits that Mr. Mukul Mishra, SE (Civ) HQ CE(P) Arunak C/o 99 APO may be appointed as Sole Arbitrator having the arbitral proceedings at a place convenient to both the parties.

7. On examination, it is found that the Act of 1996 has recently undergone amendment vide the Arbitration and Conciliation (Amendment) Act, 2015, wherein it is, *inter alia*, provided under newly inserted Section 29A that the award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference. It is further provided that if the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree. Sub-section (3) of Section 29A provides for extension of the period not exceeding six months. Clause 37 of the General Conditions of Contracts, regulating the conditions for supply of stores and materials to the Military Engineer Services applicable to the present disputes, also prescribes for making the award within a period of six months from the date of Arbitrator's entering upon the

reference or within the extended time as the case may be. On conjoint reading of the statutory provisions under the Act of 1996 and Clause 37 of the General Conditions of Contracts, it is eloquent that the completion of the arbitration within a reasonable time is mandatory.

8. In the case in hand, as aforestated, the Petitioner has approached this Court earlier for appointment of an Arbitrator under provisions of Section 11(6) of the Act of 1996. This Court, considering the submissions of both the parties, directed to appoint a Sole Arbitrator under Clause 37 of the General Conditions of Contracts (supra) by order dated 11.03.2013. Notwithstanding the time limit prescribed under Clause 37 of the General Conditions of Contracts, the Arbitrator so appointed failed to adhere to the time schedule. More than three years have gone by without any meeting leading to resolution of the referred dispute between the parties. Failure on the part of the Arbitrator to complete the arbitration within a stipulated period necessitated filing of the instant application under provisions of clause (c) of sub-section (6) of Section 11 of the Act of 1996. In such view of the matter, I am constrained to appoint Mr. Mukul Mishra, SE (Civ) HQ CE(P) Arunak C/o 99 APO, as suggested by the Respondents, as Sole Arbitrator. It is further directed to complete the proceedings and give award

from the date of his entering on the reference within a period of six months as contemplated under Clause 37 of the General Conditions of Contracts. Such period is extendable for a further period of six months with consent of the parties recording proper reasons for the same.

9. It is further desirable that the officers shall take all steps not to disturb placement of the Sole Arbitrator for expeditious conduct of the arbitral proceedings till the award is made.

10. The petition is ordered accordingly.

Sd/-

Acting Chief Justice
18.08.2016

Approved for Reporting : Yes/~~No.~~
Internet : Yes/~~No.~~

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