



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ARBR No. 28 of 2020**

M/s Devanshi Construction A-5 Class Contractor, Through Partner
Subhash Roy Chatterjee, Roy Colony, Sattipara, Ambikapur, District
Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Applicant**Versus**

1. Central Public Works Department Through The Chief Engineer,
Western Zone- V, 8th Floor, Section C, O/o. The Accountant
General, In Front Of Vidhansabha Building, Zero Point, Raipur
(Chhattisgarh), District : Raipur, Chhattisgarh
2. Superintendent Engineer, Central Public Works Department, Type VI/
11, CRPF Camps, Bharni, Kota Road, Bilaspur Chhattisgarh,
District : Bilaspur, Chhattisgarh
3. Addl. Director General, Central Public Works Department, Region
Bhopal, 52- A, Arera Hills, Nrman Sadan, Cpwd, Bhopal (Madhya
Pradesh), District : Bhopal, Madhya Pradesh

---- Respondents

(Cause Title taken from Case Information System)

For Applicant	: Mr. Raj Shengale, Advocate.
For Respondents	: Mr. Ramakant Mishra, Assistant Solicitor General

Hon'ble Shri Arup Kumar Goswami, Chief Justice**Order on Board****14/01/2022**

Heard Mr. Raj Shengale, learned counsel for the applicant as
well as Mr. Ramakant Mishra, learned Assistant Solicitor General of
India for the respondents.



2. The applicant has filed this application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, Act of 1996) for appointment of Arbitrator.

3. Pursuant to a notice inviting e-tender for civil construction works, namely, "Construction of Boundary Wall for the land of CRPF Battalion Camp at Mendrakalan, Ambikapur, District Surguja, Chhattisgarh", the applicant was awarded with a work order dated 27.12.2012. A formal agreement was also executed but the same has not been annexed and the date of agreement has also not been indicated. The applicant, however, states that there is a clause of arbitration in the General Conditions of Contract (GCC).

4. The applicant has prayed for setting aside the order dated 16.03.2020 passed by the respondent No. 3 whereby the application preferred by the applicant seeking appointment of an Arbitrator was rejected and has also prayed for a direction to appoint Sole Arbitrator in terms of clause 25 of the GCC.

5. On perusal of memo of submission dated 13.12.2021, it appears that the applicant had submitted a statement of claim dated 28.02.2020.

6. In the letter dated 16.03.2020, there is a reference to the aforesaid letter dated 28.02.2020. Perusal of the letter dated 16.03.2020 would go to show that as per the agreement, there is a provision of Dispute Resolution Committee (DRC) for resolution of the disputes under



clause 25 of the GCC of the agreement, and therefore, the applicant was requested to approach to DRC first. Composition of DRC was also enclosed and it was also indicated that if the dispute is not resolved by the DRC, request for appointment of the Arbitrator may be made thereafter.

7. A reply-affidavit is filed raising preliminary objection in the light of the order dated 16.03.2020.

8. Mr. Shengale submits that a perusal of clause 25 would go to show that for the dispute raised by the applicant, which is non-payment of various amounts on account of various works done and non-refund of performance guarantee amount, there is no requirement for approaching the DRC and straightaway request for arbitration can be made to the Chief Engineer, which the applicant has done in the instant case. Mr. Shengale further submits that only the disputes relating to meaning of the specifications, designs, drawings and instructions are required to be pursued in the manner provided under clause 25(i).

9. The aforesaid submission is controverted by Mr. Mishra. He submits that in all cases, the mechanism provided under clause 25(i) has to be completed before a request for arbitration can be invoked and as the applicant has not exhausted the various steps provided for as stated in Clause 25(i) before making a request for arbitration, this application is mis-conceived.



10. I have considered the submissions made by learned counsel appearing for the parties and have perused the materials on record, including clause 25 of the GCC, which is available at page 89 of the arbitration petition.

11. From the pleadings of the parties, it is evident that there is a clause for arbitration in the agreement and that there is a dispute between the parties. It will be appropriate to take note of clause 25 of the GCC, which reads as follows:

“Settlement of Disputes & Arbitration

CLAUSE 25

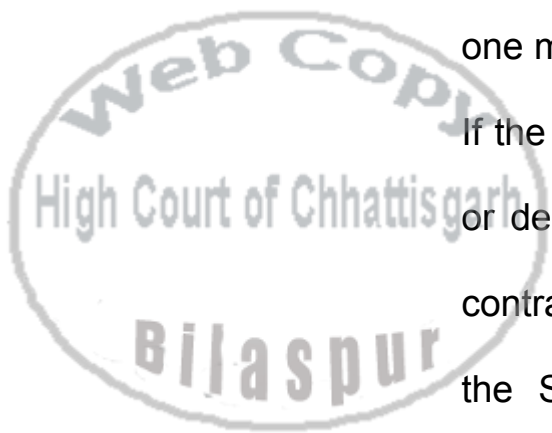
Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:





(i) If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings, record or decision given in writing by the Engineer-in-Charge on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the Superintending Engineer in writing or written instruction or decision. Thereupon, the Superintending Engineer shall give his written instructions or decision within a period of one month from the receipt of the contractor's letter.

If the Superintending Engineer fails to give his instructions or decision in writing within the aforesaid period or if the contractor is dissatisfied with the instructions or decision of the Superintending Engineer's decision, appeal to the Chief Engineer who shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Chief Engineer shall give his decision within 30 days of receipt of contractor's appeal. If the contractor is dissatisfied with the decision of the Chief Engineer, the contractor may within 30 days from the receipt of the Chief Engineer decision, appeal before the Dispute Redressal Committee (DRC) along with a list of disputes with amounts claimed in respect of each such dispute and giving reference to the





rejection of his disputes by the Chief Engineer. The Dispute Redressal Committee (DRC) shall give his decision within a period of 90 days from the receipt of Contractor's appeal. The constitution of Dispute Redressal Committee (DRC) shall be as indicated in Schedule 'F'. If the Dispute Redressal Committee (DRC) fails to give his decision within the aforesaid period or any party is dissatisfied with the decision of Dispute Redressal Committee (DRC), then either party may within a period of 30 days from the receipt of the decision of Dispute Redressal Committee (DRC), give notice to the Chief Engineer for appointment of arbitrator on prescribed proforma as per Appendix XV, failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.

It is a term of contract that each party invoking arbitration must exhaust the aforesaid mechanism of settlement of claims/disputes prior to invoking arbitration.

(ii) Except where the decision has become final, binding and conclusive in terms of Sub Para (i) above, disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Chief Engineer, CPWD, in charge of the work of if there be no Chief Engineer, the Additional Director General of the



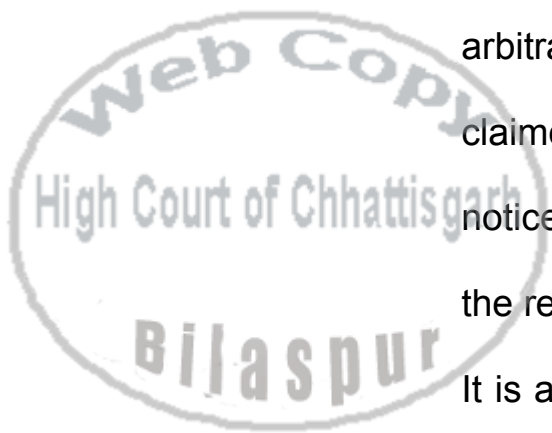


concerned region of CPWD or if there be no Additional Director General, the Director General, CPWD. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the Chief Engineer of the appeal.

It is also a term of this contract that no person, other than a person appointed by such Chief Engineer CPWD or Additional Director General or Director General, CPWD, as aforesaid, should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all.

It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer-in-charge that the final bill is ready for payment, the claim of





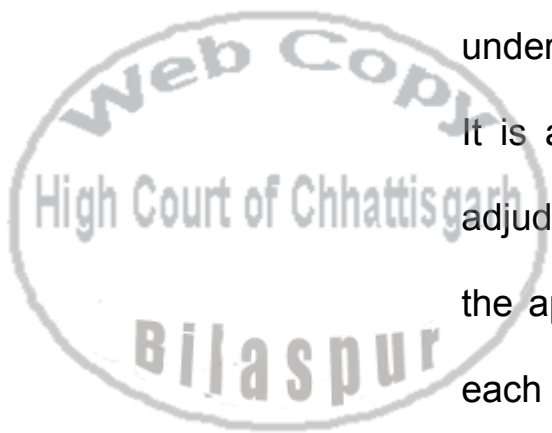
the contractor shall be deemed to have been waived and absolutely barred and the Government shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause.

It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid equally by both the parties.

It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims.





The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid.”

12. A perusal of clause 25 would go to show that it is all embracing and takes within its fold and scope any claim arising out of or relating to the contract. Admittedly, the applicant had raised a claim in relation to a contract. If there is any dispute with regard to the claim, how the same is to be proceeded with is enumerated in clause 25(i).

13. It is seen that if the DRC fails to give decision within a period of 90 days or if any party is dissatisfied with the decision of the DRC, then the either party may, within a period of 30 days from the date of receipt of the decision of the DRC, give notice to the Chief Engineer for appointment of Arbitrator in the prescribed proforma as per Appendix 15, failing which the decision shall be final, binding and conclusive and not referable to adjudication by the Arbitrator. It is also provided that each party invoking arbitration must exhaust the mechanism of settlement of



claims/disputes as indicated in clause 25(i) prior to invoking arbitration.

14. Clause 25(ii) of the GCC delineates on the aspects of all the disputes or the differences which had not become final, binding and conclusive in terms of clause 25(i). Clause 25(ii), thus, come into play only after the steps as indicated in clause 25(i) are exhausted and, therefore, there is no merit in the contention advanced by the learned counsel for the applicant that it was not necessary for the applicant to have taken the requisite steps in terms of clause 25(i) of the GCC.

15. As the applicant had not taken such steps as are required under clause 25(i) of the GCC, this application for appointment of Arbitrator is mis-conceived and accordingly, the same is dismissed.

Sd/-
(Arup Kumar Goswami)
CHIEF JUSTICE

Amit

