

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 7th OF MAY, 2022

MISC. CIVIL CASE No. 1043 of 2003

Between:-

**DHARAMDAS TIRATHDAS CONSTRUCTIONS
PVT LTD ½ GUL MOHAR COLONY SAKET
NAGAR, INDORE THROUGH DHARAMDAS
HASANNANDANI MANAGING DIRECTOR S/O
TIRATH DAS HASANNANDANI AGE 63 YEARS**

.....PETITIONER

(BY SHRI VIVEK DALAL, ADVOCATE)

AND

- 1. GOVERNMENT OF INDIA THOURGH THE
CHIEF ENGINEER CENTRAL PUBLIC WORKS
DEPARTMENT, CENTRAL ZONE, CPWD, 52A,
NIRMAN SADAN ARERA HILLS, BHOPAL**
- 2. EXECUTIVE INCHARGE, EXECUTIVE
ENGINEER, ICD-1 INDORE CENTRAL DIVISION
NO.1 CPWD, INDORE**
- 3. SUPERINTENDING ENGINEER, INDORE
CIRCLE, CPWD CGO BUILDING, INDORE.**

.....RESPONDENTS

(BY SHRI HIMANSHU JOSHI, ADVOCATE)

O R D E R

The petitioner has filed this MCC under Section 11 (6) of the Arbitration and Conciliation Act, 1996 seeking the appointment of an Arbitrator in order to resolve the dispute with the respondents.

[1] Petitioner is a company registered under the Companies Act engaged in construction work. The petitioner entered into an agreement vide work order dated 16.12.1996 with the respondent for the construction of 60 T 3 quarters for GPRA at Bilore Compound, Indore. The total period of completion of work was 18 months, which was liable to be extended by the respondents.

According to the petitioner, the work was completed on 01.04.2000 to the tune of Rs.1,97,57,325/- against which the respondents paid Rs.1,72,71,145/-. Clause 25 of the agreement provides the resolution of the dispute by way of arbitration. The petitioner sent a letter dated 18.12.2000 invoking clause 25 of the arbitration. Respondent No.1 vide letter dated 20.05.2002 demanded the documentary evidence for compliance with clause 25 of the agreement which the petitioner submitted vide letter dated 18.07.2002. Vide order dated 11.09.2002, respondent No.2 has rejected the application for appointment of arbitrator due to non-fulfilling the condition precedent seeking arbitration and delay of raising the dispute beyond the period of 120 days, hence, the present MCC before this Court.

[3] This court has issued notice to the respondent and they have filed the reply supporting the impugned order.

[4] The respondent filed a reply that the petitioner had to approach first to Superintendent Engineer within 15 days and thereafter to the Chief Engineer by way of appeal and then claim appointment of arbitrator under clause 25. Annexure P/3 cannot be termed to be a notice under Clause 25 of the contract as the petitioner neither approached the Superintending Engineer nor filed any appeal before the Chief Engineer. It is further submitted that if the contractor does not make any demand for the appointment of an arbitrator in writing within 120 days of receiving the intimation from the Engineer-in-chief that the final bill is ready for payment, the claim of the contractor shall be deemed to have been waived and treated as time-barred, therefore, the respondents have rightly rejected the claim of the petitioner and this MCC is liable to be dismissed.

[5] In this M.C.C. on most of the dates no one appeared on behalf of the petitioner, hence, this MCC was dismissed for want

of prosecution on 03.01.2012. Thereafter, an application for restoration was filed which came to be allowed on 07.11.2012. Since then this MCC is pending awaiting final disposal. On 07.09.2017, no one appeared, hence, SPC was issued. Now today Shri Vivek Dalal, learned counsel appeared and argued the matter.

[6] Shri Dalal learned counsel submits that as per clause 25, it was mandatory on part of respondents to refer the dispute for adjudication by way of arbitration. The issue of limitation is a matter of evidence and same liable to be decided by the arbitrator. The work was completed on 01.04.2000. The bill was settled by respondent no. 28.09.2000 and the petitioner submitted the claim on 18.12.2000, which cannot be said to be time-barred. Hence, the claim for the petitioner for an appointment of arbitrator has wrongly been rejected as time barred.

[7] Shri Joshi learned ASG has argued in support of impugned order and submitted that very purpose of filling of this M.C.C. has frustrated by efflux of time hence same is liable to be dismissed.

I have heard the learned counsel for the parties and perused the record.

[8] Clause 25 which provides arbitration, is reproduced below:-

CLAUSE 25

Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications design, drawings and instruction 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 of thing whatsoever in any way arising out of or relating to the contract designs drawings specifications estimates instruction orders or these conditions or otherwise concerning the work or the execution of 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.

If the contractor considers any work demanded of him to be outside the requirements of the contract or disputes any drawings record of 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 for written instruction or decision Thereupon, the Superintending

Engineer shall give his written instruction or decision within a period of one month from the receipt of the contractor letter.

If the Superintending Engineer fails to give his instruction or decision in writing within the aforesaid period of if the contractor is dissatisfied with the instruction or decision of the Superintending Engineer, the contractor may within 15 days of the receipt of Superintending Engineers 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. If the contractor is dissatisfied with the decision the contractor shall within a period of 30 days from receipt of the decision give notice to the Chief Engineer for appointment of arbitrator failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator. Except where the decision has become final binding and conclusive in terms of Sub Para (1) above disputes of difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Chief Engineer CPWD in charge of the work or if there be no Chief Engineer the administrative head of the said 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 reference from the sate at which it was left by his predecessor.

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

It is clear from the aforesaid clause that before invoking the arbitration clause, the contractor is required to submit a claim promptly within 15 days before the Superintending Engineer in writing and Superintending Engineer shall give a decision within the period of one month and if the contractor is dissatisfied, he may within 15 days from the receipt of a decision given by the Superintending Engineer appeal with the Chief Engineer. The Chief Engineer shall give a decision within 30 days and the contractor who is dissatisfied with the decision may give notice to the Chief Engineer for the appointment of an arbitrator.

[9] This arbitration petition is pending since 2003. The very purpose of referring the dispute for early disposal before the arbitrator has been frustrated. On 13.01.2010, 16.02.2010, 03.02.2011, and 27.07.2011, no one was present on behalf of the

petitioner therefore, the Court had no option but to dismiss the MCC in default.

[10] According to the petitioner, work was completed on 01.04.200, final bill of the work was settled on 28.09.2000. Petitioner vide letter dated 18.12.2000 (Annexure P/3) requested to Chief Engineer Western Zone, Central PWD, Bhopal to appoint arbitrator, thereafter vide letter dated 09.04.2002, he has withdrawn the claim of Rs. 5,64,981/-. Therefore, it is clear from the aforesaid letter that the petitioner directly invoked the arbitration clause before submitting a claim before the Superintending Engineer within 15 days from the settlement of the bill and thereafter appeal before the Chief Engineer. The Superintending Engineer vide impugned letter dated 11.09.2002 has rightly informed the petitioner that the application for appointment of the arbitrator has been rejected by the competent authority as a condition precedent seeking arbitration has not been followed. I do not find any illegality in the aforesaid dispute. Hence, MCC is hereby dismissed.

**(VIVEK RUSIA)
JUDGE**

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