

Serial No.01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Arb.P.No.2/2021

Date of Order: 02.05.2022

M/s Maya Construction Vs. Union of India & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice

Appearance:

For the Petitioner : Mr. ES Saikia, Adv with
Mr. U Das, Adv

For the Respondents : Dr. N Mozika, ASG
Ms. S. Rumthao, Adv

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT: (Oral)

The petition is said to be under Section 11(5) of the Arbitration and Conciliation Act, 1996.

2. The prayer in the petition is for setting up an arbitral tribunal to adjudicate the disputes that have arisen between the parties in terms of the arbitration agreement contained in clause 70 of the general conditions of contracts pertaining to Air Force. There is no dispute as to the existence of the arbitration agreement between the parties. The principal claim indicated in the petition also appears to be capable of adjudication in an arbitral reference.

3. A serious objection is taken on behalf of respondent Air Force authorities to the effect that the claim is ex facie barred by limitation. It is submitted that by the time the demand for setting up an arbitral tribunal was made, the claim was no longer live in the sense that a period of three years had elapsed since the completion of work, receipt of payment and severance of relationship between the parties.

4. It is, however, submitted on behalf of the petitioning contractor that the work order in this case was issued on July 10, 2008 and despite submission of a final bill for an amount excess of Rs.1.04 crore against the value of the work originally pegged at slightly over Rs.1 crore for the construction of married accommodation for MES civilian officers at Elephant Falls Camp, Shillong, an illegal deduction of Rs.7.5 lakh was made without assigning any or proper reason therefor. The petitioner asserts that the general conditions governing the contract require an attempt at reconciliation between the parties before arbitration may be resorted to and, accordingly, the petitioner sought a consideration of the matters in issue by representatives of the parties sitting across the table. Such request was made by the petitioner by a letter of October 29, 2018. This offer was spurned by the respondents by a letter of December 15, 2018.

5. The petitioner claims that the demand for setting up an arbitral tribunal in accordance with clause 70 of the general conditions was made on December 28, 2020, just over two years after the refusal by the respondents to mediation or conciliation. The respondents claim that such request was received on January 7, 2021.

6. The authority of the Court or the extent of judicial intervention in matters pertaining to arbitration has been much reduced by the Act of

1996. The mantra under the previous regime of the 1940 statute was that the Court had all the authority except as granted to the arbitral tribunal by the statute. By virtue of Section 5 of the Act of 1996, the arbitral tribunal now has all the authority and the Court has limited scope for intervention. The same ethos is reflected in Section 16 of the present statute where an objection even as to the authority of the arbitral tribunal can be adjudicated upon by the tribunal itself and even when the objection is overruled, such decision may not be immediately challenged and the objector has to wait for the conclusion of the arbitral reference on merits before the challenge founded on the jurisdictional objection may be renewed if the award is otherwise assailed under Section 34 of the Act of 1996.

7. There is no doubt that upon a request being received under Section 11 of the Act of 1996, the Chief Justice or his designate has to assess whether there is a live claim to be carried to an arbitral reference. There are two aspects to limitation in arbitration matters: the first is whether the cause can be pursued; and, the other is whether the arbitration may be sought.

8. In open and shut cases where it is apparent that the claim can no longer be pursued or the request for setting up an arbitral tribunal is hopelessly barred by limitation, the Chief Justice or his designate may conclusively deal with the matter and dismiss the petition. However, when an arguable case is made out and the issue as to whether the claim is barred by limitation or not calls for an inquiry, in view of the primacy given to the arbitral tribunal, the Chief Justice or his designate should yield to such authority and allow the objection to be decided in accordance with law by the arbitral tribunal.

9. There is no doubt in this case that a request for setting up an arbitral tribunal was made beyond the period of three years from when the last payment was made. However, the request for reconciliation was made within three years of the receipt of the last payment on December 12, 2017. Since an arguable case has been made out that the request for the constitution of the arbitral tribunal was made at a time when the claim was alive and the clock of limitation in terms of Section 21 of the Act was stopped at such stage, it is best that the objection is left for the arbitral tribunal to decide.

10. Arb.P.No.2 of 2021 is disposed of by appointing Mr. Kishore Ch. Gautam, Advocate as the sole arbitrator. Neither party has expressed any reservation at this stage on the appointment. The arbitrator will take up the reference with utmost expedition and decide the disputes covered by the arbitration agreement in accordance with law. The arbitrator will fix his remuneration upon consulting the parties and ensure that the reference is concluded as expeditiously as possible.

11. It is made clear that all questions and objections can be canvassed before the arbitrator and the arbitrator should proceed to deal with the same in accordance with law uninfluenced by any observation in this order.

12. There will be no order as to costs.

(Sanjib Banerjee)
Chief Justice

Meghalaya
02.05.2022
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