



HIGH COURT OF SIKKIM , GANGTOK

HON'BLE SHRI SUNIL KUMAR SINHA, CHIEF JUSTICE

Arb. P. No. 01 of 2015

PETITIONER

Ms. Lazzu Lepcha,  
Class 1 A, Government Contractor,  
R/o M.P. Golai, Tadong,  
Gangtok, East Sikkim.

**Versus**

RESPONDENTS

1. State of Sikkim,  
Through Chief Secretary,  
Government of Sikkim,  
Gangtok, East Sikkim.
2. The Secretary,  
Irrigation & Flood Control Department,  
Government of Sikkim,  
Gangtok, East Sikkim.
3. The Chief Engineer,  
Irrigation & Flood Control Department,  
Government of Sikkim,  
Gangtok, East Sikkim.
4. The Superintending Engineer,  
Irrigation & Flood Control Department,  
Government of Sikkim,  
Gangtok, East Sikkim.
5. The Divisional Engineer,  
Irrigation & Flood Control Department,  
Government of Sikkim,  
Gangtok, East Sikkim.

Petition under Sections 8 and 11 of Arbitration and Conciliation Act, 1996.

Appearance :

Mr. R.P. Sharma and Mr. Bhola N. Sharma, Advocates for the Petitioner.

Mr. Karma Thinlay, Sr. Govt. Advocate with Mr. S.K. Chettri and Ms. Pollin Rai, Asstt. Govt. Advocates for Respondents 1 to 5.



**ORDER (Oral)**  
(16.06.2015)

**SUNIL KUMAR SINHA, CJ.**

1. Heard.

2. The Petitioner has filed this Petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act, 1996') for appointment of an Arbitrator for adjudication of the claim raised in the Petition.

3. A perusal of the agreement would show that it has an arbitration clause vide clause 25, which reads as under: -

“Clause 25 - Except where otherwise provided in the contract all questions, and disputes relating to the meaning of the specification, designs, drawings and instructions herein before mentioned and as to the quality of workmanship or materials used on the work, as to any other questions, claim, right matters or things whatsoever, in any way arising out of, relating to the contract, designs, drawing, specifications, estimates instructions, orders, or these conditions, or otherwise concerning the works, or the execution or failure to the execute the same, whether arising during the progress of the work or after completion or abandonment thereof shall be referred of the sole arbitration of the Chief Engineer/Additional Chief Engineer, Tourism Department and if the Chief Engineer/Additional Chief Engineer is unable or unwilling to act to the sole arbitration of some other person appointed by the Chief Engineer/Additional Chief Engineer willing to act as such arbitration. It will be no objection to any such appointment that the arbitrator so appointed is Government servant, that he had or deal with the matters to which the Agreement relates and that in course of his duties as such Government servant he had expressed views in all or any of the matters in dispute or difference. The award of the arbitrator so appointed shall be final conclusive and binding on all parties to this contract.”

4. Mr. R. P. Sharma, learned counsel for the Petitioner, submits that as soon as the cause of action arose in favour of the Petitioner, a legal notice was sent to the Respondents on 17.01.2015 for appointment of the Arbitrator, as per clause 25 of the agreement, but they did not respond to the said notice and the named Arbitrator, as per clause 25, was not appointed by them. Thereafter, the Petitioner filed this Petition on 21.04.2015 and when the notices were received on 24.04.2015, the Respondents



appointed one Mr. Praveen Kumar Pradhan, Additional Chief Engineer as the Sole Arbitrator on 19.05.2015. He further submits that after the Court jurisdiction was invoked by the Petitioner, the said appointment was not permissible, therefore, now this Court may appoint an Arbitrator to finally adjudicate the claim raised by the Petitioner.

5. Mr. Karma Thinlay, learned Senior Government Counsel appearing on behalf of the Respondents, opposes these arguments. However, he submits that if the Court comes to the conclusion that an Arbitrator is required to be appointed by the Court, among the 3 names suggested by the Petitioner in his legal notice dated 17.01.2015, Mr. Kiran Pasaily, retired Secretary, Housing Board, Church Road, Gangtok, may be appointed as Sole Arbitrator in the matter.

6. The point raised is no longer *res-integra*. In ***Datar Switchgears Ltd. vs. Tata Finance Ltd. & Another : (2000) 8 SCC 151***, it has been held that if a party having responsibility of appointing an Arbitrator does not do so within 30 days of demand being made by the other party, the right to make the appointment is not automatically forfeited. The appointment can still be made, but before the other party moves the Court under Section 11 of the Act, 1996. Once the other party moves the Court, the right to make the appointment ceases to exist.

7. The same view was taken by the Supreme Court in ***Punj Lloyd Ltd. vs. Petronet MHB Ltd. : (2006) 2 SCC 638*** by affirming the judgment of ***Datar Switchgears Ltd.*** (supra).

8. Further, referring to these two judgments, it was held by the Supreme Court in ***BSNL & Another vs. Motorola India Pvt. Ltd. : (2009) 2 SCC 337*** that when a



party having right to appoint Arbitrator under Arbitration agreement fails to make said appointment within the time prescribed under the Act concern i.e. within 30 days from receipt of notice (requiring such appointment) served by the other party and an Application under Section 11 was filed by the other party before the High Court for appointment of an Arbitrator, the concerned party loses its right to appoint Arbitrator for settling the dispute under the agreement.

9. In the instant case, when the Petitioner served a notice upon the Respondents on 17.01.2015 requesting for making appointment of the Arbitrator in terms of the agreement, the Respondents did not do so. Thereafter, the Petitioner filed this Petition on 21.04.2015 and when the notices of the Petition were received by the Respondents on 24.04.2015, then only the Respondents had appointed Mr. Praveen Kumar Pradhan as an Arbitrator in this case on 19.05.2015. Thus the appointment made in favour of Mr. Pradhan on 19.05.2015 is of no use and the same cannot be upheld in view of the above decisions. It is, therefore, held that the Petitioner has a right to make a prayer for appointment of an Arbitrator through this Court under Section 11 of the Act, 1996.

10. Now, coming to the name of the Arbitrator, as stated above, learned counsel for both the parties have agreed for appointment of Mr. Kiran Rasaily. Therefore, on the agreement of both the parties, Mr. Kiran Rasaily, retired Secretary, Housing Board, Church Road, Gangtok, is appointed as Sole Arbitrator in this matter to adjudicate the disputes raised by the Petitioner. The matter is referred to him. He will dispose of the same in accordance with law.



11. The Registry is directed to refer the matter to him along with a set of paper-book filed by the Petitioner and copy of the order passed by this Court. Needless to say that the parties shall be free to put up their claims before the Arbitrator, in accordance with law.

12. The Arbitrator shall be at liberty to decide the venue and fee.

Sd/-  
(Sunil Kumar Sinha)  
Chief Justice  
16.06.2015

Approved for Reporting : Yes  
Internet : Yes

pm/jk