

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

Arb. Case No. 10 of 2018

Date of decision: 28.9.2018

Shri Rakesh Vij.

...Petitioner

Versus

State of Himachal Pradesh & Another.

..Respondents

Coram

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting?¹

For the Petitioner: *Mr. Sumeet Raj Sharma, Advocate.*

For the Respondents: *Ms.Rameeta Kumari, Additional
Advocate General, with Mr.Raju Ram
Rahi, Deputy Advocate General.*

Vivek Singh Thakur Judge (oral)

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (herein after referred to as the Act in short) for appointment of arbitrator for adjudicating the dispute arising out of the agreement with respect of work of annual repair and maintenance of Sewerage Scheme to Jogindernagar of Sewerage Treatment Plant No. 1 awarded by letter No. EE-IPH-PDR-TENDER/2010/16181-90 dated 19.10.2010.

2. Petitioner is claiming that amount is due from respondents on account of escalation as provided under clause 10 CC of the agreement and also for payment of final bill and security, whereas as per reply of respondent, petitioner is not

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

entitled for any amount under clause 10 CC as for the terms and conditions imposed at the time of extension of time for completion of work petitioner is not entitled for escalation for any period and further that the petitioner has not raised any demand for referring the matter for arbitration as required under clause 25 of the agreement within 90 days for adjudication of his claims and thus present petition is not maintainable.

3. Arbitration agreement contained clause 25, wherein it is provided that dispute arising of the agreement is to be referred to the sole arbitrator appointed by the Engineer-in-Charge/Chief Engineer, Himachal Pradesh Public Works Department and if the contractor does not made any demand for arbitration with reference to any claim in writing within 90 days of receiving information from the Government that bill are ready for payment, this claim of contractor will be deemed to have been waive and absolutely debarred. As per petitioner, he has issued notice to Chief Engineer, I & PH Department (MZ) Mandi, H.P. for appointment of Arbitrator on 19.7.2017 to adjudicate his claims mentioned in the notice in accordance with law. According to respondent, this notice was time barred.

4. From the averments made in the petition as well as reply thereto, it is evident that there is a dispute arising out of contract including the dispute with respect to maintainability and entitlement of claims as well as issue of limitation related thereto based on terms of arbitration agreement. All these claims are to be adjudicated upon by the Arbitrator. Therefore, it is a fit case for

referring to Arbitrator. At this stage, Mr.Sumeet Raj Sharma, Advocate counsel for the petitioner and Mr.Raju Ram Rahi, Deputy Advocate General jointly submitted that the parties are in agreement to refer the dispute to Mr. B.P. Sharma, Senior Advocate H.P. High Court Shimla. Accordingly, Mr. B.P. Sharma, Senior Advocate is appointed as Arbitrator with a direction to him to enter into reference within a period of two weeks from receipt of this order and adjudicate the dispute(s) and make a reasoned speaking award in terms of arbitration agreement, in accordance with law, on the basis of material placed before him during proceedings. Fee of learned Arbitrator shall be as per his entitlement as admissible in accordance with law.

5. Registry is directed to immediately supply copy of this order to Mr.B.P. Sharma, Senior Advocate.

6. Petition is allowed in the aforesaid terms.

28th September, 2018
(KRS)

(Vivek Singh Thakur),
Judge.