

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 30TH DAY OF NOVEMBER, 2020

BEFORE

THE HON'BLE MR.JUSTICE S.R.KRISHNA KUMAR

CIVIL MISCELLANEOUS PETITION No.455 OF 2019

BETWEEN:

HANUMADAS BHAGWANDAS AND COMPANY,
A PROPRIETORSHIP CONCERN
REPRESENTED BY ITS PROPRIETOR,
MR. DAMODAR GILDA
HAVING ITS OFFICE AT NO.8-1311,
BEHIND GRAMEEN POLICE STATION,
NEHRU GUNJ, GULBARGA-585104.

...PETITIONER

(BY SMT. ASHVINI PATIL, ADVOCATE FOR
SRI. AJAY J. NANDALIKE, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
FOOD AND CIVILSUPPLIES
AND CONSUMER AFFAIRS DEPARTMENT,
NO.8 CUNNINGHAM ROAD, SAHAKARA BHAVAN,
BANGALORE-560052.
ALSO AT
NO.16/1, MILLERS TANK BED AREA,
VASANTHNAGAR, BANGALORE-560052.

2. TALUKA AGRICULTURE PRIMARY
COOPERATIVE MARKETING
SOCIETIES LIMITED, APMC ROAD,
CHITRADURGA-577 501.
REPRESENTED BY ITS SECRETARY.

...RESPONDENTS

(BY SMT. ROOPA K.R., HCGP FOR R1)
(BY SRI.K.S. KALLESHPA, ADV., FOR R2)

THIS C.M.P. IS FILED UNDER SECTION 11(5) OF THE
ARBITRATION AND CONCILIATION ACT 1996, PRAYING TO THAT
THE HON'BLE CHIEF JUSTICE OF THIS HON'BLE COURT BE
PLEASED TO APPOINT AN ARBITRATOR IN ACCORDANCE WITH

CLAUSE 12 OF THE AGREEMENT DATED 01/06/2017 PRODUCED HERewith AS ANNEXURE – B TO ADJUDICATE UPON THE DISPUTES AND DIFFERENCES BETWEEN THE PETITIONER AND THE RESPONDENTS HEREIN; AND ETC.,

THIS C.M.P. COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The present petition under Section 11 of the Arbitration and Conciliation Act, 1996, has been filed by the petitioner-Hanumandas Bhagwandas & Company against the respondents-State of Karnataka and another seeking an appointment of an Arbitrator in pursuance of Clause-14 of Request for Proposal vide Annexure-A and Clause-12 of the Agreement vide Annexure-B dated 01.06.2017.

2. The arbitration clauses contained in Annexure-A and Annexure-B are identical and they read as under:-

"Annexure-A

14. ARBITRATION:

In case of any disputes relating to supplies including the interpretation of any of the Clause /Clauses of the agreement, the matter shall be referred to a sole arbitrator not less than the rank of Secretary to Government of Karnataka, appointed by the Government. The remuneration for the arbitrator shall be fixed by the Government. The arbitration shall be held in Bangalore and the decision of the

arbitrator shall be final and binding on both parties to the arbitration. The arbitration will be conducted in accordance with arbitration and conciliation Act, 1996. Court situated in Bangalore to the exclusion of all other courts in India, only shall have the jurisdiction in the matter".

Annexure-B

12. ARBITRATION:

In case of any disputes relating to supplies including the interpretation of any of the Clause/Clauses of the agreement, the matter shall be referred to a sole arbitrator not less than the rank of Secretary to Government of Karnataka, appointed by the Government. The remuneration for the arbitrator shall be fixed by the Government. The arbitration shall be held in Bangalore and the decision of the arbitrator shall be final and binding on both parties to the arbitration. The arbitration will be conducted in accordance with arbitration and conciliation Act, 1996. Court situated in Bangalore to the exclusion of all other courts in India, only shall have the jurisdiction in the matter".

3. It is submitted that the requisite notice of request for reference to arbitration was given by the petitioner to the respondents vide Annexure-C dated 05.04.2019. No reply has been sent by the respondents to the said notice.

Hence, the petitioner is before this Court by way of this petition to appoint the Sole Arbitrator to resolve their disputes.

4. In view of the aforesaid facts and circumstances coupled with the submissions made by the learned counsel from both sides, since the Arbitration clause exists in the aforesaid Agreement entered into between the parties and an arbitrable dispute also exists, this Court is of the opinion that the present petition deserves to be allowed under Section 11 of the Act and an independent Arbitrator deserves to be appointed.

5. Both the learned counsel have fairly agreed to the appointment of Sri.T.K.Anil Kumar (IAS), Secretary, Department of Tourism, Vikasa Soudha, Vidhana Veedhi, Bengaluru-1, to act as the Sole Arbitrator to resolve the dispute between the parties under the provisions of the Arbitration and Conciliation Act, 1996.

6. Accordingly, this petition under Section 11 of the Act, 1996 is disposed of by appointing Sri.T.K.Anil Kumar

(IAS), Secretary, Department of Tourism to enter into the said reference of Arbitration and act as the Sole Arbitrator in the present case at the address mentioned above.

(i) All claims and contentions of any of the parties including jurisdiction, limitation, etc., are left/kept open to be decided by the Arbitral Tribunal.

(ii) A copy of this order be sent forthwith to the aforesaid Sole Arbitrator, Sri.T.K.Anil Kumar (IAS), Secretary, Department of Tourism, for proceeding further in the matter.

(iii) Registry is directed to return all original documents produced by any of the parties after obtaining Photostat copies of the same.

**Sd/-
JUDGE**

Bmc/-