

Arb.P. No. 02/2022

M/S MAHABIR PRASAD AGARWAL

PETITIONER (S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT (S)

For Petitioner : Ms. Pritima Sunam and Ms. Pema Dechen Bhutia,
Advocates.

For Respondents : Ms. Sangita Pradhan, Dy. Solicitor General of
India with Ms. Natasha Pradhan, Advocate.

Date: 17/03/2023

CORAM :

HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE

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J U D G M E N T

This is an application filed under section 11 of the Arbitration and Conciliation Act, 1996 (as amended till date), for appointment of an Arbitrator. It has been filed by a partnership firm by the name of M/s Mahabir Prasad Agarwal. This partnership firm has its office situated at Namchi in the district of Namchi, Sikkim. From the pleadings it appears that the petitioner entered into a contractual agreement with the Executive Engineer of the Central Public Works Department, Gangtok Central Division, Government of India (hereinafter referred to as E.E., CPWD, GCD) for the purpose of construction of Regional Museum of Natural History at Marchak, Gangtok, Sikkim, following acceptance of tender on 28th July, 2016. The total work was estimated to the tune of Rupees twenty-five crores six lakhs seventy thousand three hundred eighty-three and paise forty-seven only. In the said letter of acceptance dated 28th July, 2016, it has also been stated that the petitioner's letter dated 10th June, 2016, shall form part of the agreement.

In paragraph 6 of the petition, it has been stated that the petitioner had completed nearly 95% of the work till date of filing of the petition. From



paragraph 11 of the counter affidavit filed on behalf of the respondents by the E.E., CPWD, GCD, it appears from a plain reading thereof that the specific assertion made by the petitioner in paragraph 6 of the petition of having completed nearly 95% of the total work till date, has not been specifically denied.

Be that as it may, it appears that the petitioner sent several letters to the E.E., CPWD, GCD, requesting for issuance of completion certificate and closure of the contract. From paragraph 14 of the counter affidavit, it appears that there have been several correspondences from the end of the concerned respondent authority also, requesting the petitioner to complete the pending work but according to the respondent, the petitioner had repeatedly neglected to complete the work.

In this factual backdrop, it appears that the petitioner invoked the arbitration clause, initially by writing to the E.E., CPWD, GCD, on 23rd November, 2021, and subsequently, on 27th November, 2021, to the Chief Engineer, Central Public Works Department, Matigara, Siliguri, being the authority to appoint an Arbitrator in terms of clause 25 of the General Clauses of Contract governing the parties.

A bare perusal of clause 25, however, reveals *inter alia* that in terms of the contract, each party invoking arbitration must exhaust the prescribed alternative mechanism of settlement of claims/disputes prior to invoking arbitration. This alternative mechanism which has been clearly specified in clause 25 is named as the Dispute Redressal Committee (DRC). Clause 25 further reveals that even before the DRC is constituted, it is the duty of the concerned Engineer to give his instructions or decision in writing within a period of one month from receipt of the contractor's letter. In so far as the instant matter is concerned, all the concerned respondent authorities have remained silent and have not taken any step for redressal of the grievances sought to be raised by the petitioner.



HIGH COURT OF SIKKIM : GANGTOK
Record of Proceedings

In such circumstances, this Court is of the view that the Chief Engineer of Central Public Works Department, Matigara, Siliguri, may be directed to consider the petitioner's letters which have been referred to in the instant arbitration petition and take a decision supported with cogent reasons, within a period of 30 days from date. In the event, the petitioner is dissatisfied with such decision, it will be at liberty to appeal against the same before the Dispute Redressal Committee (DRC), within a period of 36 days therefrom in terms of clause 25 of the contract. Such appeal shall be disposed of by the Dispute Redressal Committee (DRC), within a period of 90 days from the date of receipt of the petitioner's appeal, also in terms of the said clause 25. In the event, the petitioner is dissatisfied with the decision to be rendered by the Dispute Redressal Committee (DRC), it will be at liberty to take further steps in the matter in terms of clause 25 of the contract, which governs both the parties.

The arbitration application stands disposed of accordingly.

(Biswanath Somadder)
Chief Justice

pm/ami

