

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Arbitration Application No. 10/2022

M/s Dharma Ram Contractor, Sazedari Registered Firm R/o 9-A
Jawahar Nagar Jaisalmer Road Bikaner Raj.

----Petitioner

Versus

1. State Of Rajasthan, District Collector, Bikaner
2. Mukhya Abhiyanta (West), Sinchit Kshetra Vikas E.ga.n.p.
Bikaner
3. Adheeshashi Abhiyanta, O.f.d. Khand First E.ga.n.p.
Bikaner

----Respondents

For Petitioner(s) : Mr. Pradeep Choudhary

For Respondent(s) : Mr. Sudheer Tak, AAG assisted by
Mr. Navneet Singh Birkh.

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Judgment

Reserved on 21/07/2023

Pronounced on 31/07/2023

1. The instant arbitration application has been filed under Sections 10 & 11 of the Arbitration and Conciliation Act, 1996 claiming the following reliefs :-

"31 यह कि प्रार्थना पत्र प्रस्तुत कर निवेदन है कि इसमें उल्लेखित विवादों के निपटारे के लिए दि आर्बिट्रेशन एण्ड कोन्सीलियेशन एक्ट 1996 की धारा 10 व 11 के प्रावधान अनुसार एकल मध्यस्थ की नियुक्ति के आदेश जारी फरमाया जावे। प्रार्थी का यह भी निवेदन है कि इस कारण की अप्रार्थीगण ने अपने आचारण से मध्यस्थ नियुक्ति का अपना अधिकार खो दिया है।

अतः किसी सेवानिवृत्त सिविल के कार्यों में दक्षता रखने वाले स्वतंत्र एवं निष्पक्ष अधीक्षण अभियंता व इस से उच्च पदस्थ अधिकारी की एकल मध्यस्थ के रूप में नियुक्ति माननीय उच्च न्यायालय द्वारा की जावे!"

2. Learned counsel for the applicant submits that the parties are bound by Arbitration Clause i.e. Clause 23 of the Conditions of Contract (Agreement for Civil Construction Works – General Rules and Directions for the Guidance of Contractors), which is reproduced as hereunder:-

"Clause 23.- If any question, difference or objection whatsoever shall, arise in any way in connection with or arising out of this instrument or the meaning of operation of any part thereof or the rights, duties or liabilities of either party, then save in so far as the decision of any such matter as herein before provided for and has been so decided, every such matter constituting a total claim of Rs. 5000 or above whether its decision has been otherwise provided for and whether it has been finally decided accordingly, or whether the contract should be terminated or has been rightly terminated and as regards the rights or obligations of the parties as the result of such termination shall be referred for adjudication to a sole arbitrator to be appointed as here in after provided.

For the purpose of appointing the sole arbitrator referred to above, the Chief Engineer will on receipt of notice and prescribed fee from the contractors send a panel of 3 names not below the rank of Superintending Engineer of the Rajasthan Government and who shall all be presently unconnected with the contract. The contractor shall on receipt of the names as aforesaid select any one of the persons named, to be appointed as a sole arbitrator and communicate his name to the Chief Engineer. The Chief Engineer shall thereupon appoint the said person as the sole arbitrator without delay. The arbitrator shall give reasons for award.

Subject as aforesaid the provisions of the Arbitration Act, 1940, or any statutory modification or reenactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause."

3. Learned counsel for the applicant seeks appointment of an arbitrator by this Court while invoking Section 11 of the Arbitration and Conciliation Act, 1996.

4. Learned counsel for the applicant further submitted that the applicant sent a notice dated 27.12.2021 to the respondents for

appointment of arbitrator as per the Clause 23 of the Agreement, as reproduced hereinabove, but despite that, the respondents did not take any action in this regard.

5. Learned counsel for the respondents however, opposes the submissions made on behalf of the applicant on count of the fact that the matter pertains to accepted category, and as per the same, the Chief Engineer is required to send a panel containing name of three officers, not below the rank of Superintending Engineer of the Government of Rajasthan, and then the petitioner shall be required select one of them as a sole arbitrator.

6. Learned counsel for the respondents further submits that the contractual dispute, owing to the default by the contractor, is required to be resolved by the concerned authority itself.

7. Learned counsel for the respondents also opposes the appointment of the arbitrator on count of the fact that the applicant has caused deliberate delay and has not been able to resolve the dispute with the department, despite several opportunities.

8. However, after making such submissions, the parties are seeking an appointment of an independent arbitrator as the sole Arbitrator to resolve the dispute between the parties.

9. After hearing learned counsel for the parties, this Court finds that the limited issue in question falls within the ambit of Section 11 of the Arbitration and Conciliation Act, 1996.

10. This Court is conscious of the judgment rendered by the Hon'ble Apex Court in the case of **Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760.**

11. This Court is also conscious of the fact that any further issue(s) can be raised by either of the parties before the arbitrator, who in turn, shall deal with the same, strictly in accordance with law.

12. Accordingly, this Court finds that the agreement clause, relating to appointment of the Arbitrator, is required to be invoked and as such, the application, filed by the applicant, is allowed and while exercising the power conferred under Section 11 of the Act of 1996, appoints **Shri Devendra Joshi, (Retd.) District and Session Judge, R/o D-166, Shankar Nagar, Pal Road, Jodhpur (Rajasthan), Mobile No. 9414264135**, as the sole Arbitrator to adjudicate the dispute between the parties. The payment of cost of arbitration proceedings and arbitration fee shall be made as per the 4th Schedule appended to the Act of 1996.

13. The intimation of appointment, as aforesaid, may be given by the counsel for the parties as well as by the Registry to Shri Devendra Joshi. The appointment of the Arbitrator in the present case is subject to the necessary disclosure being made under Section 12 of the Act of 1996.

(DR.PUSHPENDRA SINGH BHATI), J.

SKant/-