

## M/S S. Narinder Singh And Company Vs South Eastern Coalfields Ltd

**Court:** Chhattisgarh High Court

**Date of Decision:** Sept. 2, 2022

**Acts Referred:** Arbitration And Conciliation Act, 1996 â€” Section 11(6)

**Hon'ble Judges:** Arup Kumar Goswami, CJ

**Bench:** Single Bench

**Advocate:** Bidya Nand Mishra, Astha Shukla

**Final Decision:** Dismissed

### Judgement

”

1. Heard Mr. Bidya Nand Mishra, learned counsel for the applicant. Also heard Ms. Astha Shukla, learned counsel, appearing for the respondents.”,,

2. This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996, for short, Āçâ,~ËœA&C ActĀçâ,~â„ç for appointment of an”,,

Arbitrator.,,

3. The respondents had floated an e-tender notice dated 22.05.2017 for Āçâ,~Ā“Covering of space between Receipt section 1 and 2, side of Receipt”,,

section 1 and side covering of verandah of shed No.1, 2, 3, 4 and 5 with GI sheets at Regional store of Kusmunda AreaĀçâ,~ vide NIT No.:”,,

SECL/GM/KSM/CIVIL/e-Tender/17-18/044. The applicant, being the successful tenderer, was awarded the work valued at Rs.24,60,916.00.”,,

4. It is pleaded in the application that as per the work order, scheduled date of commencement and completion of the work was 15.01.2018 and”,,

14.03.2018, respectively. It is also stated that the respondents created obstacles by placing heavy machinery and equipments at the site of work,”,,

resulting in difficulties for the applicant to start the work at the earliest. Therefore, request was made by letters dated 12.02.2018, 16.10.2018,”,,

06.12.2018 to clear the site. By another letter dated 06.12.2018, the applicant had prayed for extension of time. Subsequent thereto, by a letter dated”,,

08.12.2018, the applicant requested for removal of drums from the work site. Despite the situation created, the applicant completed the work on”,,

31.07.2019 and accordingly, had prayed for releasing the final bill vide his letter dated 26.02.2020. However, a letter dated 16.03.2020 was issued by”,,

the respondents extending the time up to 25.09.2020 increasing penalty amount from Rs.1,38,795.66 to Rs.1,88,013.98. Though a copy of the revised",,,

estimate shows that actual date of completion of work was 31.07.2019, the revised estimate brought down the value of work order from",,,

Rs.24,60,916.00 to Rs.24,19,793.63. Despite repeated requests, as grievance of the applicant was not redressed, the applicant sent a legal notice on",,,

16.08.2021, demanding the respondents a sum of Rs.24,97,761.00 towards final settlement and also requesting to refer the matter to Arbitrator as per",,,

the General Terms and Conditions of the Contract entered into between the parties. As no steps were taken by the respondents on the said letter",,,

recourse was taken by way of filing of this application for appointment of an Arbitrator",,,

5. A reply-affidavit was filed on behalf of the respondents stating that the applicant had not exhausted the remedy of dispute resolution and settlement",,,

under Clause 16 of the General Terms and Conditions of the contract and that no arbitral dispute exists as all payments had been released by the",,,

respondents to the applicant by way of payment of fifth and final bill on 06.10.2020. The applicant had also certified that he had no claim outstanding",,,

against the department for the work in question and that the claim preferred through the bill was in full and final settlement. It is also pleaded that the",,,

dispute raised is an afterthought. The respondents denied that there was any hindrance in execution of the work of the applicant and as the applicant",,,

failed to complete the work within scheduled time, extensions had to be granted with penalty.",,,

6. A rejoinder-affidavit was filed by the applicant, primarily, reiterating the averments made in the application.",,,

7. Mr. Mishra submits that the applicant had raised dispute with regard to the grievances and as no steps were taken by the respondents in terms of",,,

Clause 16 of the General Terms and Conditions of the Contract, the applicant had no option but to approach this Court for appointment of an",,,

Arbitrator. Mr. Mishra has drawn the attention of the Court to the letters dated 12.02.2018, 18.10.2018, 6.12.2018 and 08.12.2018 to highlight that the",,,

work site was not free from encumbrances. It is submitted that under compulsion, the applicant had to acknowledge that there is no further claim",,,

against the respondents at the time of payment of fifth and final bill, as otherwise the respondents would not have released the payment, and therefore",,,

such acknowledgment was not voluntary and it cannot be said that there is no arbitral dispute of the applicant with the respondents. Mr. Mishra placed",,,

reliance on a judgment of Hon'ble Supreme Court in Civil Appeal No.6400 of 2016 decided on 14.11.2019, parties being, Union of India v.",,,

Pradeep Vinod Construction Company to contend that the issue with regard to no claim certificate should be left open to be raised before the",,,

Arbitrator",,,

8. Ms. Shukla submits that the applicant had not raised any dispute as raised in the legal notice dated 16.08.2021 in terms of Clause 16 of the General,,

Terms and Conditions of the Contract and a belated claim is made after final payment was made on 06.10.2020. It is further submitted that while,,

accepting payment of fifth and final bill, the applicant had acknowledged that there was no claim outstanding against the department for the work in",,,

question. She places reliance in the decision of the Hon'ble Supreme Court in Union of India vs. Parmar Construction Company, reported in",,,

(2019) 15 SCC 682, wherein the Hon'ble Supreme Court had observed that it is advisable for the Court to ensure that the remedy provided as",,,

agreed between the parties in terms of the agreement is first exhausted.,,

9. I have considered the submission of the learned counsel for the parties and perused the materials on record.,,

10. Clauses 16 and 16A of the General Terms and Conditions of the Contract, read as follows :",,,

“16. Settlement of Disputes.,,

It is incumbent upon the contractor to avoid litigation and disputes during the course of execution. However, if such disputes take place between the",,,

contractor and the department, effort shall be made first to settle the disputes at the company level.",,,

The contractor should make request in writing to the Engineer-in-charge for settlement of such disputes/ claims within 30 (thirty) days of arising of the,,

cause of dispute/claim failing which no disputes/claims of the contractor shall be entertained by the company.,,

Effort shall be made to resolve the dispute in two stages :,,

In first stage dispute shall be referred to Area GM or GM/HoD(C). If difference still persist the dispute shall be referred to a committee constituted,,

by the owner. The committee shall have one member of the rank of Director of the company who shall be chairman of the committee.,,

If differences still persist, the settlement of the dispute shall be resolved in the following manner :",,,

Disputes relating to the commercial contracts with Central Public Sector Enterprises/Govt. Departments (except Railways, Income Tax, Customs & ",,,

Excise) / State Public Sector Enterprises shall be referred by either party for Arbitration to the PMA (Permanent Machinery of Arbitration) in the,,

department of Public Enterprises.,,

In case of parties other than Govt. Agencies, the redressal of the dispute may be sought through Arbitration (THE ARBITRATION AND",,,

CONCILIATION ACT, 1996 as amended by AMENDMENT ACT of 2015).",,,

“16A. Settlement of Disputes through Arbitration,,

“1.,Penalty amount deducted,"1,88,013.98

2., "Amount payable at the rate of 12% interest from

the date of payment on 1,88,013.98", "50,764.00

3., "Amount payable for 02 days when vehicle was  
parked without any work", "6,000.00

4., Wages paid to workers without work, "5,000.00

5., "Unnecessary salary of Guard for 16 months from  
to at the rate of Rs.15,500 per month", "2,48,000.00

6., "Increase in the price of construction material  
during the period from the beginning to the end of  
the contract", "3,62,969.00

7., Additional fuel amount of 16 months  $3500 \times 16$ , "56,000.00

8., "Compensation for mental, economic, physical and  
commercial damage and delayed payment", "10,00,000.00

9., Other legal expenses, "2,00,000.00

10., Additional G.S.T. @ 18%, "3,81,015.00

, Total Amount :-, "Rs.24,97,761.00