

(2005) 03 JH CK 0012
Jharkhand High Court
Case No: AA No. 42 of 2004

Rungta Projects Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: March 2, 2005

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 11(6)

Citation: (2005) 2 JCR 617

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: Pandey Neeraj Rai, for the Appellant; A.K. Sinha, A.G., for the Respondent

Final Decision: Dismissed

Judgement

M.Y. Eqbal, J.

In the instant application u/s 11(6)(c) of the Arbitration and Conciliation Act, 1996, the petitioner has prayed for appointment of an arbitrator in relation to disputes and differences which are arisen between the petitioner and the respondents in connection with the contract for a work of construction of roads and bridges in Kisko Block in the district of Lohardaga.

2. In pursuance of the Contract (Package No. 51) petitioner was allotted work by the Rural Engineering Organisation of the State Government for the construction of roads and bridges in Kisko and other places falling under Lohardaga and Gumla Districts.

3. Petitioner's case is that the work was carried out but due to various adverse circumstances petitioner was constrained to stop the work. Such adverse circumstances had arisen due to terrorist/militant activities and problems created by local villagers etc. Petitioner thereafter approached the respondents for estimating the losses incurred and for compensating the same. Ultimately, detailed claim was submitted by the petitioner stating the grounds for payment of losses and

compensation. When no payment was made, the petitioner invoked the arbitration clause by giving notice calling upon the Engineer to finally decide the petitioner's claim and pay the dues. It is contended by the petitioner that neither the claim was settled by the Engineer nor any reply was given to the petitioner's letter; hence, this petition.

4. Respondents' case in the counter-affidavit is that the petitioner is in habit of doing work according to his own convenience and as a matter of fact work was not stopped because of any adverse circumstances. It is stated that if there was any dispute, the petitioner should have written to the adjudicator within time stipulated under Clause 24.1 of the condition of Contract but till date no petition was filed by the petitioner before the adjudicator. According to respondents, the petitioner should have approached the adjudicator within 14 days after notification of Engineer's decision.

5. In the general terms and conditions, Clause 24 relates to the disputes and Clause 25 relates to procedure for resolving the disputes. Clause 24 and 25 reads as under :

"24. Disputes

24.1 If the Contractor believes that a decision taken by the Engineer was either outside the authority given to the Engineer by the contractor or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Engineer's decision.

25. Procedure for disputes

25.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.

25.2 The Adjudicator shall be paid daily at the rate specified in the Contract Data together with reimbursable expenses of the types specified in the Contract Data and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days, the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

25.3. The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place shown in the Contract Data"

6. From plain reading of the aforesaid Clause 24 of the contract it provides that when the contractor has reason to believe that decision taken by the Engineer was either outside the authority given to the Engineer by the contractor or that the decision was wrongly taken then such decision shall be referred to the adjudicator within 14 days of the notification of the Engineer's decision. Clause 25 provides that

if the decision is referred to the adjudicator by the Engineer then adjudicator shall give a decision within 28 days of receipt of a notification of a dispute. It further provides that if the decision is reached by the adjudicator either party may refer the decision of the adjudicator to an arbitrator within 28 days. It further provides that if either party fails to refer the dispute to arbitration within 28 days the decision of the adjudicator shall be final and binding.

7. In paragraph 11 of the counter affidavit it has been categorically stated that the Engineer's representative vide his letter dated 17.2.2000 recommended for closure of passage and finally the work was closed in June 2000. Petitioner thereafter never approached the adjudicator requesting him to give his decision as contemplated under Clause 24.1 of the Contract, Petitioner also not exhausted the procedure provided under Clause 25 of the Contract and merely after giving notice to the Engineer for his decision the petitioner has filed the instant petition invoking Section 11(6) of the Act, for appointment of independent Arbitrator. In my opinion, therefore, the instant request petition is wholly misconceived and premature. It is obligatory for the petitioner to comply the procedure provided under Clause 24 and 25 of the Contract before approaching this Court for appointment of independent Arbitrator.

8. For the aforesaid reasons, this request petition is dismissed as premature.