

(2013) 04 CAL CK 0017

Calcutta High Court

Case No: F.M.A. No. 012 of 2013 in Writ Petition No. 1214 of 2011

Shri Atul Dhanothia

APPELLANT

Vs

The Superintending Engineer
and Others

RESPONDENT

Date of Decision: April 11, 2013

Citation: (2013) 4 WBLR 909

Hon'ble Judges: Soumen Sen, J; Prasenjit Mandal, J

Bench: Division Bench

Advocate: Haradhan Banerjee and K. Vijay Kumar, for the Appellant; Tabraiz, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.

This appeal is directed against the order dated September 12, 2011 passed by a learned Single Judge of this Hon'ble Court in WP No. 1214 of 2011 thereby dismissing the said writ petition. The question involved in the matter is whether the concerned dispute between the parties should be decided by arbitration as per provisions of the Arbitration and Conciliation Act, 1996.

2. Mr. Haradhan Banerjee, learned Counsel appearing for the appellant has contended that by a communication dated November 17, 2005, the offer of the appellant was accepted for construction of rural road under the Pahalgaon Zilla Parishad and such works had been done successfully and for that reason a sum of Rs. 12,33,783/- was paid as part payment, but the balance amount had not been paid and so the writ petition was filed for giving necessary directions for payment of the bills already furnished by the petitioner with the respondent authority.

3. In course of making argument Mr. Banerjee has contended that there should be a clear indication from this court as to which forum would be appropriate to solve the dispute. Otherwise, if the petition stands dismissed as done by the learned Single

Judge, if a suit is filed by the appellant before the concerned civil Court on the self same ground, then his client may face unnecessary harassment for the self same reason. He has also contended that as per agreement between the parties, there was no clause for arbitration and as such the learned Single Judge was not justified in dismissing the application in limine. Thus, he has submitted for passing appropriate orders.

4. On the other hand, Mr. Mohd. Tabraiz, learned Counsel appearing on behalf of the respondents has supported the impugned order and he has contended that so far as the matter is concerned, the dispute between the parties shall be governed by the General Conditions of Contract For Central P.W.D. Works, 2010 and he has referred to the Clause 25 of the contract in support of his contention.

5. Having regard to the submissions of the learned Advocates of both the sides, we find from the materials on record that pursuant to the tender, the appellant accepted the terms of contract for construction in question and accordingly work order was issued to the appellant for making the construction in question. In case of dispute between the parties, the same shall be settled as per provisions of the General Conditions of Contract for Central P.W.D. Works, 2010 and as such we are of the view that the said general conditions of contract would be the guiding principle for deciding the dispute, if any, between the parties. At the time of offering the tender the appellant was supposed to know such general conditions of contract and as such it is immaterial whether the said conditions of contract are incorporated in the work order or not. According to Clause 25 of the said General Conditions of Contract For Central P.W.D. Works, 2010, the dispute between the parties shall be settled by arbitration under the provisions of the Arbitration and Conciliation Act, 1996. The manner of conducting the arbitration has been clearly indicated in the said Clause by describing that the arbitration shall be conducted in accordance with the provisions of Arbitration and Conciliation Act, 1996 and the rules made thereunder. It has also been indicated in the said clause that it is also a term of contract inter alia that the arbitrator shall adjudicate only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him.

6. There being a clear term of contract containing the arbitration clause as the General Conditions of Contract for Central P.W.D. Works, 2010, we are of the view that the learned Single Judge has rightly dismissed the writ petition. Accordingly, we are of the view that there is no scope of interference with the impugned order. The appeal is, therefore, dismissed. There will be no order as to costs.

Soumen Sen, J.

I agree.