

Electro Fine, vs State of Kerala

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Court : Kerala

Decided On : Aug-24-2023

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : AR/93/2023

Appellant : Electro Fine,

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN THURSDAY, THE 24TH DAY OF AUGUST 2023 / 2ND BHADRA, 1945 PETITIONER: ELECTRO FINE, ELECTRICAL ENGINEERS AND CONTRACTORS, AKG ROAD, EDAPALLY TOLL, KOCHI- 682024 REPRESENTED BY ITS, MANAGING PARTNER, JAYAPRAKASH T G BY ADVS.K.S.BABU N.SUDHA BABU SHANKAR PARVATHY GIRISH MENINO FUTO VIDHYA T.U. SREELAKSHMI B.T. RESPONDENTS:

1 STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVT., IRRIGATION DEPARTMENT, SECRETARIAT, GOVT. OF

KERALA, THIRUVANANTHAPURAM - 695 001. 2 CHIEF ENGINEER, IRRIGATION DESIGN AND RESEARCH BOARD, VIKAS BHAVAN, THIRUVANANTHAPURAM - 695 033. 3 THE SUPERINTENDING ENGINEER, OFFICE OF THE SUPERINTENDING ENGINEER, IRRIGATION DEPARTMENT, PROJECT CIRCLE, CIVIL STATION BUILDING, KANNUR - 670 002. 4 THE EXECUTIVE ENGINEER, PWD (ELECTRICAL DIVISION), CIVIL STATION BUILDING, KOZHIKODE - 673009. BY ADV.SRI.T.V.MANOJ KUMAR, SR.GP

THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION ON 24.08.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -2-

ORDER

This Arbitration Request has been preferred by the petitioner - which is stated to be a registered partnership Firm - asserting that they had entered into Annexure A2 Agreement with the respondents in respect of completion of Electrical works for the Kuttyadi Irrigation Project; but that various disputes have arisen between the parties subsequent thereto.

2. The petitioner says that, as per Clause 4 of Annexure A2, read along with the provisions of

the General Conditions of Contract -

adjudicated and resolved through the mechanism of Arbitration, as per the Arbitration and Conciliation Act, 1996 (Act, for short). They say that, therefore, they have been constrained to approach this Court because, even though they requested the respondents through Annexure A15 to accede to the -3- appointment of a sole Arbitrator, they have neither accepted the same, nor responded to it.

3. In response to the afore submissions of the petitioner, as made by their learned counsel -

Smt.N.Sudha, learned Senior Government Pleader - Sri.K.V.Manoj Kumar, appearing for the respondents, submitted that, though his clients do not stand in the way of a sole Arbitrator being appointed, they have serious disputes with respect to the claim, including its arbitrability and maintain that it is

hit by the rigour of limitation. He

Arbitrator.

4. I have examined Annexure A2, and as correctly argued by Smt.N.Sudha, Clause 4 thereof mandates that the parties resolve their disputes only under the aegis of a sole Arbitrator, to be appointed under the provisions of the Act.

5. Since this is expressly admitted by both sides, I see no impediment to this Arbitration -4- Request being allowed. I, therefore, allow this Arbitration Request in the following manner:

(a) I nominate Sri.P.Sankaranunni, Nandanam, Karollil Lane, Anjumuri, Thammanam P.O., Cochin-682 032, Tel.No.0484 2535567, Mobile No. 99950 71657, e-

mail id: psunninandanam@gmail.com as the sole Arbitrator, to adjudicate and resolve the disputes and differences between the parties to this

CASE ARISING FROM

and relating to Annexure A2 Agreement.

(b) The Registry is directed to communicate a copy of this order to the learned Arbitrator within a period of two weeks from today and to obtain Statement of Disclosure from him under Section 11(8) read with Section 12(1) of the Act.

(c) Once the Disclosure Statement is obtained

from the learned Arbitrator, the Registry shall release the certified copy of this order, with a copy of the said statement appended to it, retaining the original of the same on the files of this case.

(d) The fees of the Arbitrator shall be -5- governed by the Fourth Schedule of the Act.

(e) In order to enable the Arbitrator to commence the proceedings without delay, I direct the parties to mark appearance before him at 11 a.m. on 03.10.2023.

Needless to say, all contentions of the parties are left open to be impelled by them before the Arbitrator. Sd/- DEVAN RAMACHANDRAN JUDGE akv -6- APPENDIX OF AR 93/2023 PETITIONER ANNEXURES Annexure A1 THE TRUE COPY OF THE LETTER OF ACCEPTANCE DATED 25.01.2017 ISSUED BY THE 3RD RESPONDENT TO THE APPLICANT. Annexure A2 THE TRUE COPY OF THE AGREEMENT DATED 09.03.201 Annexure A3 A TRUE COPY OF THE LETTER DATED 05.05.2017 ADDRESSED TO THE 4TH RESPONDENT Annexure A4 HE TRUE COPY OF THE LETTER DATED 22.10.2016 PRODUCED ALONG WITH THE TENDER Annexure A4(A) THE RECEIPT OF ACKNOWLEDGMENT DATED 26.10.2016 Annexure A5 THE TRUE COPY OF THE LETTER DATED 15.06.2017 SUBMITTED BY THE APPLICANT TO 4TH RESPONDENT Annexure A6 TRUE COPY OF THE LETTER DATED 01.01.2018 Annexure A7 THE TRUE COPY OF THE LETTER DATED 15.01.2018 ISSUED BY THE 3RD RESPONDENT TO THE 4TH RESPONDENT Annexure A8 THE TRUE COPY OF THE LETTER DATED 09.07.2018 ISSUED BY APPLICANT TO 3RD RESPONDENT Annexure A9 THE TRUE COPY OF THE MINUTES OF MEETING DATED 01.12.2018 Annexure A10 THE COPY OF THE LETTER DATED 28.01.2019 ISSUED BY THE APPLICANT -7- AnnexureA11 THE TRUE COPY OF THE LETTER DATED 25.02.2019 ISSUED BY 4TH RESPONDENT TO THE APPLICANT AnnexureA12 TRUE COPY OF LETTER DATED 01.10.2019 ISSUED BY THE APPLICANT TO 2ND RESPONDENT Annexure A13 THE TRUE COPY OF THE LETTER DATED 28.11.2019 ISSUED BY THE APPLICANT TO THE 2ND AnnexureA14 TRUE COPY OF SUPPLEMENTAL AGREEMENT- III DATED 20.01.2022. AnnexureA15 THE TRUE PHOTOSTAT COPY OF THE NOTICE OF CLAIMS DATED 07.12.2022 SUBMITTED BY THE APPLICANT NOMINATING ARBITRATOR AnnexureA15(A) THE RECEIPT OF ACKNOWLEDGMENT OF THE 3RD RESPONDENT DATED 09.12.2022 Annexure16 THE TRUE COPY OF THE LETTER NO.D8- 27.12.2022 ISSUED BY THE 3RD RESPONDENT TO THE

APPLICANT Annexure17 THE TRUE PHOTOSTAT COPY OF THE LETTER DATED 11.01.2023 ISSUED BY THE APPLICANT TO THE 3RD RESPONDENT Annexure17A THE RECEIPT OF ACKNOWLEDGMENT OF THE 3RD RESPONDENT DATED 16.01.2022 Annexure18 THE TRUE COPY OF THE LETTER DATED 13.01.2022 ISSUED BY 3RD RESPONDENT TO APPLICANT Annexure19 THE TRUE COPY OF THE LETTER DATED 15.01.2022 -8- Annexure19(A) THE RECEIPT OF ACKNOWLEDGMENT OF THE 3RD RESPONDENT DATED 19.01.2022

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