

Enarc Consultants Vs. the General Manager

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Court : Kerala

Decided On : Apr-06-2010

Judge : Antony Dominic, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Section 11(6)

Appeal No. : AR. No. 45 of 2008

Appellant : Enarc Consultants

Respondent : The General Manager

Advocate for Def. : P.C. Sasidharan, Adv.

Advocate for Pet/Ap. : Meijo Kurian Puvathingal, Adv.

Judgement :

ORDER

Antony Dominic, J.

1. By Annexure A1 order, the 1st respondent appointed the applicant herein as its consultant for the construction of the Sahakarana Sathabdi Mandiram at Kovilakathumpadam in Thrissur District.

2. Annexure A1 details the respective obligations of the parties. Clause 5 thereof provided that the applicant shall be paid a fee calculated at the rate of 3% of the

total cost of the project. Clause 8 provided for resolution of disputes, if any, between the parties by arbitration.

3. According to the applicant, in terms of Annexure A1, they discharged their obligations including the preparation of the revised project cost, which was around Rs. 9 crores. It is stated that the construction was completed and the contractor's final bills were also recommended. Their complaint is that despite having done all works and the expiry of defect liability period, their fee was not fully paid.

4. By Annexure A2 letter dated 02/07/2007 issued to the 1st respondent, the applicant claimed balance payment of Rs. 11,11,627/-. Payment was not made and finally Annexure A5 notice was issued by them to the 1st respondent, where their claim for the balance payment was reiterated. Finally, they also invoked the arbitration clause in Annexure A1 and nominated an Arbitrator. On receipt of Annexure A5, the Bank issued Annexure A6 reply disputing the claim of the applicant and also contending that there was no arbitrable disputes between the parties calling for the appointment of an arbitrator. It was thereupon that this Arbitration Request was filed under Section 11(6) of the [Arbitration and Conciliation Act, 1996](#) seeking the appointment of an arbitrator to resolve the disputes between the parties.

5. The fact that the applicant was appointed as the consultant subject to the terms and conditions of Annexure A1 is not disputed by the 1st respondent. The main contention raised by the Bank is that the revised estimate prepared by the applicant was not sanctioned by the Registrar of Co-operative Societies, and that payment, if any, due to the contractor or the applicant could be made only if sanction is accorded by the Registrar.

6. Taking note of the aforesaid contention of the Bank, this Court by order dated 30/10/2009 directed that the Government of Kerala will convene a meeting of the parties and try to resolve the controversy. It is stated by the learned Government Pleader that in pursuance to the said order, a meeting was convened by the Additional Chief Secretary to Government of Kerala on 05/03/2010. It is also stated that so far the Government has not received valuation of the work executed by the Contractor and that the Government will take further action pursuant to the

order dated 30/10/2009 on receipt of the valuation certificate, which should be prepared by the officials of the PWD and which has to be submitted by the Bank.

7. Even if it is accepted that the Bank has got the work of the auditorium executed without obtaining sanction of the Registrar of Co-operative Societies or the Government, that may be a lapse on the part of the Bank or its officials. But that will not exonerate the Bank from its liability to settle the bills of the applicant. Therefore, so long as the applicant's bills remain unpaid, and as the Bank is disputing its liability to pay the amount due to the applicant, there exists an arbitrable dispute between the parties, and for the resolution of which the applicant is entitled to seek the appointment of an Arbitrator as provided in Clause 8 of Annexure A1.

8. However, taking note of the factual situation, this Court has directed the Government to intervene in the matter and the Government convened a meeting also. Now that the matter is pending before the Government also, and as the Government is awaiting receipt of the valuation certificate from the Bank, I feel it is only appropriate that the Bank should submit valuation certificate to the Government and the Government should make another endeavour to sort out the issue to the satisfaction of all concerned.

9. Having regard to the above circumstances, I dispose of this Arbitration Request with the following directions:- That the Bank will submit the valuation certificate to the Government and on receipt thereof, the Government shall convene a meeting of the parties and try to sort out the dispute between the parties as directed by this Court in the order dated 30/10/2009. In order to enable the Bank to submit the valuation certificate and the Government to hold further meeting of the parties, a period of two months is allowed. In the event, the issue does not get sorted out as directed above, Shri. A. Haridasan, District Judge (Retd.), Thrissur, shall act as an Arbitrator to arbitrate on the disputes between the applicant and the 1st respondent.

Subject to the above, the Arbitrator shall enter upon the reference and conclude the proceedings with notice to the parties and as expeditiously as possible. The Arbitrator will be free to fix his remuneration.

This Arbitration Request is disposed of as above.

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