

(2000) 08 OHC CK 0042

In the Orissa High Court

Case No : M.J.C. No's. 437 of 1998, 31 and 75 of 1999

Binayak Samal (In all)

APPELLANT

Vs

Orissa Industrial Infrastructure Development Corporation and
Others

RESPONDENT

Date of Decision : 14-08-2000

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11
Constitution of India, 1950 — Article 2, 5

Citation : (2000) 90 CLT 465

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : Jatindra Kumar Mohapatra, for the Appellant; C.A. Rao, S.K. Behera and A. Tripathy, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra

1. These three applications u/s 11 of the Arbitration & Conciliation Act, 1996, have been filed by the same Petitioner against the very same opposite parties seeking for appointment of Arbitrator for deciding the disputes arising between the very same parties relating to three different agreements. Since common question relating to existence of arbitration clause is involved, all the applications are disposed of by this common order.

2. The Petitioner states that Clause-23 of the Item Rate Agreement, which is a part of the Contract, contains the arbitration clause, whereas according to the opposite parties, the contract does not contain any arbitration clause and as such, no arbitrator should be appointed. Copy of the Agreement dated 6-4-1991 between the opposite parties and the Petitioner has been Filed. Learned Counsel for the opposite parties relies upon Article 5 of such Agreement, which is extracted hereunder:

5. Both the parties agree by mutual consent that any dispute relating to this agreement is barred from arbitration. All problems shall be mutually settled and the decision of the Managing Director, IDCO shall be final and binding on the Contractor." The learned Counsel appearing for the Petitioner, however, submits that Article 2 of the aforesaid Agreement refers to "Schedule of quantities & rates" as a part of the contract, which contains an arbitration clause. Article 2 is quoted hereunder:

2 The following documents shall be deemed to form and to be read and construed as part of this agreement, viz:

(a) Schedule of quantities & rates -Annexure- "A" (b) Condition of contract.-Annexure "B".

Clause-23 of the Item Rate Agreement is extracted hereunder:

Clause-23, Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, designs, drawings, and instructions herein before mentioned and as to the quality of workmanship, or materials used on the work, or as to any other question, claim, right matter, or thing whatsoever, in any way arising out of, or relating to the contract, designs, drawings, specifications, estimates instructions, orders, or these conditions, or otherwise concerning the work or the execution, or failure to execute the same, whether arising during the progress of the work, or after the completion or abandonment thereof shall be referred to the sole arbitration of a Chief General Manager of the Corporation unconnected with the work at any stage nominated by the Managing Director. If there be no such Chief General Manager, it should be referred to the sole arbitration of the Managing Director. It will be no objection to any such appointment that the arbitrator so appointed is a Corporation Officer. The award of the arbitrator so appointed shall be final, conclusive and binding on all parties to these contract.

3. It is thus clear that Clause-23 of the Item Rate Agreement forms a part of the contract between the parties in view of Article-2 of the Agreement dated 6-4-1991. However, even then the submission of the learned Counsel for the opposite parties to the effect that no arbitration is contemplated is to be accepted. Clause 23 starts with a restrictive clause: "Except where otherwise provided in the contract all questions and disputes relating to....." are to be referred to the Arbitrator. Article-5 of the formal contract categorically provides that any dispute relating to this agreement is barred from arbitration. Since Article-5 of the Agreement dated 6-4-1991 specifically bars any arbitration. Clause-23 of the Item Rate Agreement is to give way to the provision contained in Article-5. Thus, it must be held that the parties did not contemplate any arbitration. In above view of the matter, it is unnecessary to consider other questions raised by the opposite parties to the effect that there is no dispute and further that the claim is barred by limitation.

Since it is held that there is no provision for arbitration, it would be open to the

Petitioner to pursue his remedy, if any, available under law. It is made clear that no opinion has been expressed regarding the merits of the claim put forth by the Petitioner.

4. The petitions are accordingly dismissed. There will be no order as to costs.

Petitions dismissed.