
(2019) 11 MP CK 0222
In the Madhya Pradesh High Court
Case No : Arbitration Case No. 3 Of 2019

Gpt Mbpl (Jv)

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 27-11-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 11(6), 11(8)

Citation : (2019) 11 MP CK 0222

Hon'ble Judges : Subobh Abhyankar, J

Bench : Single Bench

Advocate : Shashank Verma, Atul Choudhary

Final Decision : Allowed

Judgement

1. This application has been filed by the applicant under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short "AC Act, 1996") seeking appointment of an arbitrator to settle the dispute between the parties.

2. Shri Atul Choudhary, learned counsel for the respondent at the outset has submitted that in the case of M/s Mehrotra Buildcon (P) Ltd. Vs. Union of India & others, this Court, in AC No.131/2018, in an identical contract between the other party and the present respondents, has already allowed the application for appointment of arbitrator and in that case Shri A.K. Selot, Retd. Judicial Officer, Bhopal has been appointed as an Arbitrator, which has subsequently been replaced by Shri A.K.Saxena, retired Judge, High Court of M.P.

3. Shri Shashank Verma, learned counsel for the applicant has admitted that said fact, however, it is submitted that in the present case the place of arbitration shall be at Jabalpur and not at Bhopal, which is the mandate of the present agreement. Learned counsel for the applicant has drawn the attention of this Court to Clause 64(1)(iii) of the agreement, which reads as under:-

"64(1)(iii) (a)....."

(b).....

(c).....

(d) Place of Arbitration: The place of arbitration would be within the geographical limits of the Division of the Railway where the cause of action arose or the Headquarters of the concerned Railway or any other place with the written consent of both the parties."

4. Learned counsel for the applicant has submitted that the notice to appoint an Arbitrator was issued by the applicant to the respondent on 15.10.2018 and earlier also various letters have been issued to the Chief Engineer, West Central Railway, Jabalpur and as such the place of arbitration shall be at Jabalpur only.

5. On the other hand learned counsel for the respondents has submitted that the Deputy Chief Engineer (Construction), West Central Railway, Bhopal sits at Bhopal only and all the modalities were completed through the Bhopal office only, and hence it would be necessary to have seat of the arbitration at Bhopal only.

6. On due consideration of the submissions made by the learned counsel for the parties as also on perusal of record, although it is found that the acceptance letter has been issued by the respondents to the applicant company under the signature of Chief Engineer (Construction-II), West Central Railway, Jabalpur, but the tender form has been issued from the office of Deputy Chief Engineer (Construction), Habibganj Station (East), West Central Railway, Bhopal under the signature of Chief Engineer-II (Construction) WCR/JBP/Dy. Chief Engineer-II (Construction)/Executive Engineer (Construction)/WCR/ Bhopal. Thus, considering the fact that the modalities in respect of the contract were carried out through the office of the Deputy Chief Engineer (Construction), West Central Railway, Bhopal and the reply in the present case has also been filed by the Deputy Chief Engineer (Construction), West Central Railway, Bhopal, under these circumstances, this Court is of the considered opinion that the part cause of action has arisen at Bhopal also and taking note of the order dated 16.4.2019 passed by the Coordinate Bench of this Court in AC No.131/2018 (supra), this Court is inclined to accept the submission as advanced by the learned counsel for the respondents that the present case can also be decided by the same Arbitrator as has been appointed by this Court in AC No.131/2018 (supra).

7. As a result, the present application stands allowed and Shri A.K.Saxena, retired High Court Judge, 315, Ruchi Lifescapes, Jatkhedi behind Bhabha College, Bhopal is appointed as provisional arbitrator to resolve the dispute between the parties. The Registry of this Court shall seek consent/declaration from the learned provisional arbitrator as per sub Section (8) of Section 11 of the Arbitration and Conciliation Act, 1996 and place the matter before this Court on next date of hearing.

9. List the case on 9.12.2019.