

(2025) 02 J&K CK 0826
In the Jammu And Kashmir High Court
Case No : Arb P No. 71 Of 2024

Harish Gupta

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-02-2025

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9, 11

Citation : (2025) 02 J&K CK 0826

Hon'ble Judges : Tashi Rabstan, CJ

Bench : Single Bench

Advocate : Sumit Moza, Gourav Sadotra, Vishal Sharma

Final Decision : Disposed Of

Judgement

Tashi Rabstan, CJ

1. Heard Mr. Sumit Moza, learned counsel for the petitioner and Mr. Vishal Sharma, learned DSGI for the respondents at length and perused the record.
2. The present petition has been filed by the petitioner seeking appointment of an independent Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 read with clause 23 of Special Conditions of Contract and clause 37 of General Conditions of Contract (IAFW-1815Z) in pursuance to tender no. CDR 35 TF/04/2021-22 to settle the disputes that has arisen between the parties.
3. Brief facts, which lead to the filing of the present petition, are that the petitioner is the Proprietor of M/S Harish Gupta firm and vide Notice Inviting Tender (NIT) bearing CA No. CDR-35 BRTF/ /2021-22 bearing Tender No. CDR-35 TF/04/2021-2022 dated 08.02.2022, the Commander 35 Border Roads Task Force invited online bids on single stage two bid system for Supply and Stacking of Stone Aggregate 13.20 MM, 11.20 MM, 6.70 MM and COARSE Sand at HMP Site KM 24.800 on Ramban-Gul Road for re-surfacing works on Ramban-Gul Road and Nashri Bye-Pass Road in 52 RCC Sector under 35 BRTF project Beacon and the cost of estimated works was fixed at Rs. 84.14 lacs; that as per Clause 7

of NIT it was provided that the work was required to be completed within 180 days from the date of handing over the site.

4. It is averred that the petitioner's bid was lowest and as a result was declared as L1 and the letter of acceptance regarding the said work was issued by Commander 35 BRTF in favour of the petitioner vide letter dated 09.04.2022. It is further averred that in terms of the communication dated 17.05.2022, the petitioner was directed to supply and stack the stone aggregate 13.20 MM, 11.20 MM, 6.70 MM and Coarse Sand at HMP Site as provided in the contract and the petitioner made available the same, however, despite repeated requests the site was not handed over to the petitioner for almost three months; that the respondents verbally directed the petitioner to make the supplies vehicle-wise in piece-meals as the respondents did not have a proper dumping yard and as per the consumption of the material in the plant, the petitioner could not dump material in a single go and the material was dumped every alternate day as per the requirement; that the respondents have issued the impugned cancellation letter dated 02.02.2023 for cancellation of contract and the ground taken in the said letter was that the material was not supplied by the petitioner since 24.12.2022, due to which the progress of the project had been stalled.

5. It is further contended that aggrieved of the cancellation letter dated 02.02.2023 issued by the respondent No. 3, the petitioner invoked the jurisdiction of this Court under Section 9 of the Arbitration and Conciliation Act for seeking interim relief by way of filing Arb P No. 05/2023 and this Court vide order dated 27.02.2023 passed the interim direction, whereby the respondents have been restrained from invoking the risk and cost retendering option with respect to the contract work against the petitioner. It is further contended that vide letter dated 12.07.2023, the petitioner requested the respondents to refer all the claims to the Arbitrator at an earliest, however, the respondents are acting as mute spectator and have not referred the claims before the Arbitrator till date

6. In the above backdrop, the petitioner approached this Court by preferring the present petition seeking appointment of an independent arbitrator under Section 11 of Arbitration and Conciliation Act, 1996 read with clause 23 of Special Conditions of Contract and clause 37 of General Conditions of Contract (IAFW-1815Z) in pursuance to tender no. CDR 35 TF/04/2021-22 to settle the disputes arising between the parties.

7. Mr. Vishal Sharma, learned DSGI has resisted this petition by way of filing detailed objections and perusal of the same would show that a dispute exists between the parties.

8. The fact that the petitioner has raised certain claims which, according to the petitioner, have not been addressed by the respondents, this Court is of the view that a dispute exists between the parties, which would require resolution in accordance with the aforementioned Clause 23 of Special Conditions of Contract and Clause 37 of General Conditions of Contract and this court is of the view that

the dispute has to be ultimately decided by an Arbitrator.

9. Accordingly, the present petition is disposed of by appointing Maj. General K. Gajria (Retd.), 11-K/51, Lajpat Nagar-2, New Delhi-110 024 to act as the sole Arbitrator, who shall proceed in the matter to decide the dispute between the parties and make an award in accordance with law after hearing the parties and charging the prescribed fee along with incidental expenses, as per applicable guidelines and rules, to be shared by the parties.

10. Parties may raise their claims and counter claims before the Arbitrator.

11. Registry to inform the learned Arbitrator accordingly.

12. With the above observation and direction, the petition stands disposed of.