
(2020) 11 UK CK 0029

In the Uttarakhand High Court

Case No : Arbitration Application No. 38 Of 2018

M/s Kundan Singh Prem Singh Jamnal And Another	APPELLANT
Vs	
State Of Uttarakhand And Another	RESPONDENT

Date of Decision : 05-11-2020

Acts Referred:

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

Citation : (2020) 11 UK CK 0029

Hon'ble Judges : Ravi Malimath, J

Bench : Single Bench

Advocate : Vikas Bahuguna, Pradeep Joshi

Final Decision : Disposed Of

Judgement

Ravi Malimath, J

1. Misc. application with rejoinder-affidavit (IA No.9554 of 2020) is taken on record.
2. The petitioners are before this Court, in this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short "the Act"), seeking appointment of a sole Arbitrator to resolve the disputes that have arisen between the parties.
3. Learned counsel for the petitioners contends that a contract was entered into between the petitioners and the respondents on 29.03.2016. In respect of the said Contract, certain disputes have arisen between the parties and as such the petitioners claim that the sole Arbitrator be appointed to resolve the disputes that have arisen between the parties. In that regard, Clauses 24.3 and 24.4 of the Contract dated 29.03.2016, which relate to Arbitrator, are referred to by the learned counsel for the petitioners. The said clauses provide for settlement of disputes through Arbitrator. Clauses 24.3 and 24.4 of the Contract read as under :-

24.3 The Adjudicator shall be paid the daily allowance at the rate specified in the PCC, together with reimbursable expenses of the types specified in the PCC, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. Neither party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been served in accordance with the GCC 24.2 above. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision shall be final and binding. In the event that a party fails to comply with the decision of the adjudicator which has become final and binding, then the other party may without prejudice to any other rights it may have, refer the failure itself to arbitration.

24.4 The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place specified in the PCC.

4. Shri Pradeep Joshi, learned additional chief standing counsel for the State-respondents, does not dispute the existence of an Arbitration clause in the Contract dated 29.03.2016.

5. When this Court asked learned counsels for both the parties to suggest a common name of a person who could be appointed as an Arbitrator, both Shri Vikas Bahuguna, learned counsel for the petitioners and Shri Pradeep Joshi, learned additional chief standing counsel for the State-respondents, would submit that Shri B.S. Kaira, retired Chief Engineer, Rural Engineering Services, Cross-9, Tapovan Enclave, Raipur Road, Dehradun, may be appointed as the sole Arbitrator.

6. As learned counsels on either side are in agreement, Shri B.S. Kaira, retired Chief Engineer, Rural Engineering Services, Cross-9, Tapovan Enclave, Raipur Road, Dehradun, is appointed as an Arbitrator after his disclosure in writing is obtained in terms of Section 11(8) of the Act; and only after receipt thereof shall his appointment, as an Arbitrator, come into force.

7. On his giving consent to arbitrate the disputes between the parties, Shri B.S. Kaira, retired Chief Engineer, Rural Engineering Services, Cross-9, Tapovan Enclave, Raipur Road, Dehradun, shall enter reference, and shall pass an award in accordance with law. The learned Arbitrator shall fix his fees in consultation with both the parties.

8. The arbitration application is disposed-off accordingly.