
(2019) 11 MAN CK 0018
In the Manipur High Court
Case No : Arb. P. (J2) No. 1, 2, 3 Of 2019

M/S. Simplex Projects Ltd

APPELLANT

Vs

State Of Manipur & Ors

RESPONDENT

Date of Decision : 13-11-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 2(1)(e), 9, 11(10), 17, 36

Citation : (2019) 11 MAN CK 0018

Hon'ble Judges : Ramalingam Sudhakar, CJ

Bench : Single Bench

Advocate : S.D. Singh, R.K. Umakanta, N. Kumarjit

Judgement

Ramalingam Sudhakar, CJ

[1] Mr. S.D. Singh, learned counsel appears for the petitioner. Mr. R.K. Umakanta, learned Government Advocate states that he will appear on behalf of the State in all the cases and assist Mr. N. Kumarjit, learned Advocate General in all these matters.

[2] There is preliminary objection raised by the State referring to Section 9 read with Section 2(1)(e) of the Arbitration and Conciliation Act, 1996. It is pleaded that the High court of Manipur does not have original jurisdiction. Therefore, the arbitration petitions are not maintainable.

[A] Section 9 of the Arbitration and Conciliation Act, 1996 reads as follows:-

"9. Interim measures, etc., by Court.-(1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court:-

(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following

matters, namely:-

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds the circumstances exist which may not render the remedy provided under section 17 efficacious]

[B] Section 2(1) (e) of the Arbitration and Conciliation Act, 1996 reads as follows :

(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such Principal Civil Court, or any Court of Small Causes;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of Courts subordinate to that High Court.

[3] Learned counsel for the State refers to APPENDIX - 15 of the High Court of Manipur Rules, 2019, which provides only for appointment of Arbitrator by the Chief Justice of the High Court of Manipur, and not for entertaining an application under Section 9 of the Arbitration and Conciliation act, 1996. He pleaded that

this High Court has no jurisdiction to entertain the petition as it is not a Court within the meaning of Section 2(1)(e) of the Arbitration and Conciliation Act, 1996.

In this regard, it will be useful to refer to Appendix-15 of the High Court of Manipur Rules, 2019 which is as follows:-

APPENDIX - 15

APPOINTMENT OF ARBITRATOR BY THE CHIEF JUSTICE OF THE HIGH COURT OF MANIPUR SCHEME, 2019

THE HIGH COURT OF MANIPUR AT IMPHAL

In exercise of the powers conferred on the Chief Justice of the High Court of Manipur under sub-Section (10) of Section 11 of the Arbitration and Conciliation Act, 1996, I hereby make the following scheme :

1. Short title: This scheme may be called the Appointment of Arbitrators by the Chief Justice of the High Court of Manipur Scheme, 2019."

[4] Mr. S.D. Singh, learned counsel appearing for the petitioner seeks some time to argue on the objection on the maintainability of the petition. Pleading that the petitioner is facing extreme hardship consequent to the enforcement of the Bank Guarantee, he stated that to prove the petitioner bonafide, a letter of Bank of Baroda addressed to Axis Bank dated 15.06.2019 for extending the Bank Guarantee in favour of the respondents upto 31.12.2019 in all the three cases totaling to a sum of Rs. 6,30,15,836/-is available. The learned counsel undertakes to produce the extended Bank guarantee issued by Axis Bank on or before 20.11.2019. He, therefore, pleaded that respondents should refrain from enforcing the Bank guarantee till then or until orders of this Court.

[5] On the preliminary issue, both sides will be heard on the next hearing date or thereafter. In so far as enforcement of the Bank guarantee is concerned, respondents are agreeable to keep the issue in abeyance subject to the plea of non-maintainability of the petition as a preliminary issue, and that too only till the next date of effective hearing.

[6] In view of the above, list the matter on 20.11.2019 so as to enable the petitioner in all the three cases to produce the extended bank guarantee valid upto 31.12.2019 or later as per Bank of Baroda's letter dated 15.06.2019 and its Annexure issued in favour of the respondents.

[7] The respondents undertaking, not to enforce bank the guarantee till 20.11.2019 is recorded, subject to the petitioner furnishing the extended Bank guarantee.

[8] At the request, list the matter on 20.11.2019.