

(2021) 08 UK CK 0098

In the Uttarakhand High Court

Case No : Arbitration Application No. 19 Of 2020

Virendra Singh Rawat

APPELLANT

Vs

Cantonment Board, Dehradun

RESPONDENT

Date of Decision : 06-08-2021

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 11(6), 11(8), 12(5)

Citation : (2021) 08 UK CK 0098

Hon'ble Judges : Raghvendra Singh Chauhan, CJ

Bench : Single Bench

Advocate : Mahanand Joshi, Kanti Ram, B.S. Adhikari

Final Decision : Disposed Of

Judgement

S. No., Work Order, "Amount/Value

(in INR)", "Amount of Bill

(in INR)", "Date of

Bill

1., "Repairs of cement

concrete road leading

from back side Janta

Hotel to Veterinary

Dr. Residence (20th

June, 2017)", "56,70,300/-", "58,96,982.28/-", -

2., "Repairs of cement

concrete road near

Jubli Qtrs. To Kailana","8,78,6008/-","9,52,523.86/-",25.10.2018

3.,"Repairs of Jeep Road

Dehradun Road to

House No.80, Cantt.

PGL (5th March,

2018)","19,98,500/-","21,56,875.88/-",28.06.2018

4.,"Repairs of Road

providing interlocking

leading from Jubli

Quarters to 5- Vikas

R.P. Post Kailana

(20th January, 2019)","12,03,000/-","13,49,326.51/-",27.10.2018

5.,"Estimate for providing

chequered tile at Jadu

Ghar (05.03.2018)","4,50,500/-","3,19,450.08/-",25.06.2018

Total Amounts of Works,,,"1,02,00,900/-","1,06,75,158.61/-",

14. On the other hand, Mr. Mahanand Joshi, the learned counsel for the applicant, submits that, in the letter dated 17.06.2020, the period for",,,,

appointment â??the Garrison Engineerâ?? as the sole Arbitration was clearly stated â??within thirty daysâ??. Therefore, if there is any waiver of",,,,

the bar contained in Section 12(5) of the Act, the waiver extends only for a period of thirty days and not beyond. Secondly, despite the option of the",,,,

waiver made by the applicant for a period of thirty days, the respondent did not accept the request, in fact, made mentioned hereinabove. Even in its",,,,

reply dated 14.08.2020, there was not a single word about the appointment of an Arbitrator. Thus, there silence is a clear indication that it has rejected",,,,

the request of the applicant for appointing â??the Garrison Engineerâ?? as the sole Arbitrator. Thirdly, since the respondent maintained a study",,,,

silence and did not appoint the Arbitrator, as requested within a period of thirty days, the applicant had no option but to approach this Court under",,,,

Section 11(6) of the Act for appointment of the sole Arbitrator. Therefore, according to the learned counsel for the applicant, once this Court is seized",,,,

of the matter under Section 11(6) of the Act, it is only this Court which has the power to appoint the sole Arbitrator. Hence, according to the learned",,,,

counsel for the applicant, the contentions raised by Mr. B.S. Adhikari, the learned counsel for the respondent is highly misplaced." ,,,,

15. Heard the learned counsel for the parties and perused the record.,,,,

16. Section 12(5) of the Act is as under:- ,,,,

â??12(5). Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-" ,,,,

matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:" ,,,,

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express" ,,,,

agreement in writingâ??. ,,,,

17. A bare perusal of the proviso clear reveals that it creates a bar with regard to the appointment of an Arbitrator who is in relationship with the ,,,,

parties or with the counsel or with the subject matter of the dispute. However, the proviso contained an exception. The exception is that, after disputes" ,,,,

have arisen between the parties, both the parties agreed by â??an express agreement in writingâ??. ,,,, only then can the bar contained in Section" ,,,,

12(5) of the Act be said to be the waiver by the parties. ,,,,

18. Admittedly, in the letter dated 17.06.2020, the applicant had requested for appointing â??the Garrison Engineerâ?? as the sole Arbitrator." ,,,,

However, the request had to be acted upon within a period of thirty days. Undoubtedly, the respondent did not act on the said request within a period" ,,,,

of thirty days. Moreover, in the present case, there has been no â??express agreement in writingâ??. ,,,, with regard to the waiver of the bar contained" ,,,,

in Section 12(5) of the Act. Therefore, the learned counsel for the respondent is not justified in claiming that, by letter dated 17.06.2020, the applicant" ,,,,

had waived the bar imposed by Section 12(5) of the Act. Moreover, admittedly, the applicant had filed the present application on 24.09.2020 before this" ,,,,

Court. Even after the filing of the present application, the respondent sat quietly over the request of the applicant for appointing â??the Garrison" ,,,,

Engineerâ?? as the sole Arbitrator till 15.10.2020. Therefore, the learned counsel for the respondent is not justified in claiming that the respondent is" ,,,,

legally justified in appointing â??the Garrison Engineerâ?? as the sole Arbitrator

in accordance with the arbitral clause. Hence, the contention raised" ,,,,
by the learned counsel for the respondent is clearly unacceptable. ,,,,

19. Admittedly, the disputes continue to exist between the parties. Obviously, the dispute needs to be resolved through the arbitral proceedings." ,,,,

Therefore, this Court appoints Mr. B.C. Kandpal, Retd. Judge, High Court of Uttarakhand, R/o 117 Rajeshwar Nagar, Phase-I, Sahastradhara Road," ,,,,

Dehradun, as the sole 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." ,,,,

20. On giving consent to arbitrate the disputes between the parties, Mr. B.C. Kandpal, Retd. Judge, High Court of Uttarakhand, R/o 117 Rajeshwar" ,,,,

Nagar, Phase-I, Sahastradhara 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. ,,,,

21. The arbitration application is disposed of accordingly. ,,,,