

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Arbitration Application No. 66/2020

Surya Wires Private Limited, Registered Office At Ashoka Crown Building, Block No. 2, Near Dev Kripa Hospital, Katchana Road, Shankar Nagar, Raipur, Chhattisgarh, Through Chairman Shri S.K. Jain.

----Applicant

Versus

Rajasthan Skills And Livelihoods Development Corporation, Office At EMI Campus, J-8-A, Jhalana Institutional Area, Jaipur-302004, Rajasthan, Through Managing Director.

----Respondent

For Applicant(s) : Mr. Udit Purohit

For Respondent(s) : Mr. Rohit Kumar Garg

HON'BLE MR. JUSTICE PANKAJ BHANDARI

Order

RESERVED ON :: **08/09/2022**

PRONOUNCED ON :: **15/09/2022**

1. The applicant has filed this Arbitration Application under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act of 1996") seeking appointment of an Arbitrator.

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2. It is pleaded in the Arbitration Application that the respondent-non-applicant approved the application of the applicant under Deen Dayal Upadhyaya Grameen Kaushalya Yojana (hereinafter referred to as "the Scheme") to act as Project Implementation Agency (hereinafter referred to as "the PIA") for training a target of 2300 rural poor youth. On 21.03.2018 a sanction letter was issued by the respondent sanctioning the Skilled Development Project for a duration of 36 months for a total

approved cost of Rs.25,44,35,140/-. A Memorandum of Understanding (MoU) was executed between the applicant and the respondent on 15.06.2018. It is also pleaded in the Arbitration Application that the respondent has issued a show cause notice dated 29.04.2019 to the applicant. A reply to which was filed by the applicant on 02.05.2019 and the respondent without issuing a 30 days notice as contemplated in the Agreement, terminated the Project vide its letter dated 01.10.2019.

3. The applicant filed an appeal to the General Manager, Chief Executive Officer and the Chairman of the respondent, which was dismissed on 12.12.2019. The applicant, thereafter, moved an application under Section 9 of the Act of 1996 before the Commercial Court on 14.05.2020, which was ultimately dismissed by the Commercial Court. The applicant thereafter vide letters dated 20.12.2019 and 20.06.2020 issued notice invoking the arbitration clause.

4. It is contended by the counsel for the applicant that there is a clause in the Agreement, the heading of which was 'Arbitration and Applicable Laws', as per which, all claims and disputes arising in connection with this MoU were to be resolved amicably and thereafter, were to be referred to the Board of Directors and later to the Empowered Committee of Ministry of Rural Development, Government of India, whose decision shall be final and binding on all parties. It is also contended that there is an arbitration clause and this clause is hit by the judgment of *Perkins Eastman Architects DPC & Anr. Versus HSCC (India) Ltd.*: **AIR 2020 SC 59.**

Counsel for the applicant has placed reliance on Surya Wires Private Limited Versus Gujarat Livelihood Promotion Company

Limited: R/Petn. under Arbitration Act No.107 of 2021 decided by the Gujarat High Court on 18.02.2022.

5. It is contended that in a similar type of dispute, High Court of Gujarat has appointed an Arbitrator. It is also contended that terminology used in Clause 9 i.e. any controversy, claim or dispute arising in connection with this MoU, and which cannot be resolved amicably shall be referred to the Board of Directors, would imply that it is an Arbitration Clause. In this regard, counsel for the applicant has placed reliance on *Punjab State & Ors. Versus Dina Nath & Ors.*: **AIR 2007 SC 2157.**

6. Reply to the Arbitration Application has been filed on behalf of the respondent wherein it is mentioned that the applicant had after taking money from the respondent, not started the Training Programme and after giving him notice and imposing penalty, his Contract was terminated and since he had not complied with the terms and conditions of the Contract, his performance guarantee was also forfeited. It is also stated in the reply that the Commercial Court has dismissed the application filed under Section 9 of the Act of 1996 as the applicant could not establish *prima facie* case, irreparable loss and balance of convenience in his favour. Counsel for the respondent has placed reliance on *HRD Corporation (Marcus Oil And Chemical Division) Versus Gail (India) Limited (Formerly Gas Authority of India Ltd.)*: **Civil Appeal No.11126 of 2017** decided by the Apex Court on 31.08.2017.

7. I have considered the contentions and have carefully perused the record.

8. From the pleadings and documents annexed, it is evident that after taking the Contract of training of 2300 rural poor youth

belonging to Rural Background and Poor Community, the applicant did not train the youth and the Institute was found to be locked and there were no trainees in the Institute for which notice was given for complying or starting the Training Programme. In reply to the said notice, the applicant has stated that they would be starting the Training Programme, but when they did not start the Training Programme, the respondent terminated the Agreement and later on has forfeited the bank guarantee. It is also pertinent to note that more than Rs.6 Crores was given by the respondent for the purpose of training of 2300 youth.

9. Clause 9 of the Agreement is relevant and the same is reproduced hereunder:

"9. Arbitration and Applicable Laws:

9.1 The parties hereby agree that any controversy, claim or dispute arising in connection with this MoU, and which cannot be resolved amicably shall be referred to the Board of Directors of Rajasthan Skill and Livelihoods Development Corporation in the State and later to the Empowered Committee of Ministry of Rural Development, Government of India, whose decision shall be final and binding on all parties.

9.2

9.3."

10. The judgment referred to by the counsel for the applicant in Surya Wires Private Limited Versus Gujarat Livelihood Promotion Company Limited (supra) was a case in which Clause 7 was written, which reads as under:

"7. Arbitration and Applicable Laws-

7.1 The Parties hereby agree that any controversy, claim or dispute arising in connection with this MoU, and which cannot be resolved amicably shall be referred to the Board of Directors, GLPC Ltd., Government of Gujarat, whose decision shall be final and binding on all parties.

7.2

7.3"

11. In the case before the Gujarat High Court, the agreement was with the GLPC Ltd. and the decision of the Board of Directors, GLPC Ltd. was said to be final and binding on all the parties. The Gujarat High Court held that GLPC Ltd. or the Board of Directors could not act as Arbitrator in lieu of judgment of *Perkins Eastman Architects DPC & Anr. Versus HSCC (India) Ltd.* (supra).

12. In view of the above, I am of the view that the Tribunal contemplated in the present Agreement is the Empowered Committee of Ministry of Rural Development, Government of India, whose decision shall be final and binding on all the parties. The Empowered Committee of Ministry of Rural Development, Government of India is neither a party in the MoU entered into between Rajasthan Skills And Livelihoods Development Corporation and Surya Wires Private Limited and cannot be said to be an interested person in terms of the judgment of the Apex Court in *Perkins Eastman Architects DPC & Anr. Versus HSCC (India) Ltd.* (supra). How the Empowered Committee of Ministry of Rural Development, Government of India is an interested party covered under Section 12(5) of the Act of 1996 has not been stated before the Court.

13. The Apex Court in *HRD Corporation (Marcus Oil And Chemical Division) Versus Gail (India) Limited (Formerly Gas Authority of India Ltd.)* (supra) has held as under:-

"13. After the 2016 **Amendment Act**, a dichotomy is made by the Act between persons who become "ineligible" to be appointed as arbitrators, and persons about whom justifiable doubts exist as to their independence or impartiality. Since ineligibility goes to the root of the appointment, **Section 12(5)** read with the Seventh Schedule makes it clear that if the arbitrator falls in any one of the categories specified in

the Seventh Schedule, he becomes "ineligible" to act as arbitrator. Once he becomes ineligible, it is clear that, under [Section 14\(1\)\(a\)](#), he then becomes de jure unable to perform his functions inasmuch as, in law, he is regarded as "ineligible". In order to determine whether an arbitrator is de jure unable to perform his functions, it is not necessary to go to the Arbitral Tribunal under [Section 13](#). Since such a person would lack inherent jurisdiction to proceed any further, an application may be filed under [Section 14\(2\)](#) to the Court to decide on the termination of his/her mandate on this ground. As opposed to this, in a challenge where grounds stated in the Fifth Schedule are disclosed, which give rise to justifiable doubts as to the arbitrator's independence or impartiality, such doubts as to independence or impartiality have to be determined as a matter of fact in the facts of the particular challenge by the Arbitral Tribunal under [Section 13](#). If a challenge is not successful, and the Arbitral Tribunal decides that there are no justifiable doubts as to the independence or impartiality of the arbitrator/arbitrators, the Tribunal must then continue the arbitral proceedings under [Section 13\(4\)](#) and make an award. It is only after such award is made, that the party challenging the arbitrator's appointment on grounds contained in the Fifth Schedule may make an application for setting aside the arbitral award in accordance with [Section 34](#) on the aforesaid grounds. It is clear, therefore, that any challenge contained in the Fifth Schedule against the appointment of Justice Doabia and Justice Lahoti cannot be gone into at this stage, but will be gone into only after the Arbitral Tribunal has given an award. Therefore, we express no opinion on items contained in the Fifth Schedule under which the appellant may challenge the appointment of either arbitrator. They will be free to do so only after an award is rendered by the Tribunal."

14. Since the parties have agreed to refer the controversy, claim or dispute to the Empowered Committee of Ministry of Rural Development, Government of India and the applicant in his notice issued to the respondent has not requested the respondent to refer the dispute to the Empowered Committee of Ministry of Rural Development, Government of India as per Clause 9.1 of the

Contract and has mentioned in his letter that the Empowered Committee of Ministry of Rural Development has lost its mandate in terms of the judgment of *Perkins Eastman Architects DPC & Anr. Versus HSCC (India) Ltd.* (supra), I am of the considered view that the judgment of *Perkins Eastman Architects DPC & Anr. Versus HSCC (India) Ltd.* (supra) would not apply to the Empowered Committee of Ministry of Rural Development, Government of India as it is not an interested party in the Agreement entered into between the applicant and the respondent. The applicant should therefore have referred the dispute to the Empowered Committee of Ministry of Rural Development, Government of India before filing this Arbitration Application under Section 11 of the Act of 1996.

15. In view of the above, I am not inclined to entertain the present Arbitration Application and the same is dismissed.

(PANKAJ BHANDARI),J

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