S. No.3
Regular List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Arb.P No.05/2025

GOLDEN ENGINEERING BORE

…..Petitioner(s)

Through: Mr.F.A.Wani, Advocate

V/s

UT OF J& K

… ..Respondent(s)

Through :None

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

20.11.2026

1. The petitioner through the medium of present petition, has sought a direction for appointment of Chief Engineer Kashmir, PHE (Jal Shakti) Department, Srinagar as an Arbitrator.

2. In the petition it has been submitted that the petitioner was allotted various works, including contract for drilling of 125MM Dia exploratory bore hole for construction of Production Tube Well part-I at Zadoora Pulwama against an amount of Rs.4,50,000/-, construction of Gravel Packed Production Tube Well of 550/500 MM Dia at Zadoora Pulwama for an amount of Rs.18,43,600/- and construction on Gravel Packed Production

Tube Well of 550/500 MM Dia part-I at Zadoora Pulwama for estimated cost of 24,25,220/-.

3. According to the petitioner, he executed the works and he was expecting the payments, but the respondents did not release the payment. It has been submitted that the petitioner ventilated his grievance through various communications but the payment continued to be withheld by the respondents. A number of representations were made by the petitioner, but the respondents have failed to release the payments. Thus, according to the petitioner the dispute between the parties is referable to arbitration of Chief Engineer PHE (Jel Shakti) Department, Srinagar.

4. The respondents have filed their objections to the petition in which it has been submitted that the petitioner has failed to demonstrate the existence of any valid and subsisting Arbitration Agreement, as envisaged under Section 7 of the Arbitration and Conciliation Act. It has been submitted that the constructed well under part-II was declared a technical failure due to poor quality and high turbidity. Thus, the same was never completed, tested and nor was it handed over as per the terms of the e-NIT and allotment order. It has further been submitted that the petitioner did not raise any bill for about four years. Thus, the claim if any, is barred by limitation.

5. The respondents have admitted that after due tendering process the petitioner was declared successful and part-I was allotted to the petitioner vide Order No.PHE/GWD/22 of 10/2019 dated 09.10.2019 and a formal agreement was executed between the parties in March, 2021. It has been submitted that the said part of the work was successfully completed and paid for after fulfilling codal formalities.

6. According to the respondents, part-II, though allotted under Allotment Order dated 22.09.2020, yet no technical sanction was accorded, and no formal agreement was executed between the parties. It has been submitted that despite petitioner being asked to mobilize machinery and manpower, it failed to execute the work as per the prescribed technical specifications. Thus, the work executed by the petitioner was found technically failed due to high turbidity and poor yield, rendering it unfit for handing over to the territorial division.

7. According to the respondents, as per Clauses 4 and 8 of the conditions of the Allotment Order, payment becomes due only upon successful completion, installation and testing, but in the instant case the work was technically a failure and it was never handed over to the petitioner. It has been further submitted that no bill was raised by the petitioner and consequently no liability accrued upon the Department. It has been submitted that

allotment order dated 22.09.2020 by itself does not constitute a valid and enforceable contract in absence of execution of a formal contract and completion of codal formalities. It has been submitted that no arbitration clause exists in the Allotment Order or any other document executed by the parties. Thus, the present petition is not maintainable.

8. On the basis of aforesaid submissions, respondents have sought dismissal of the petition.

9. I have heard learned counsel for the parties and perused record of the case.

10. The contention of the respondents is that there is no Arbitration Clause in the Allotment Order dated 22.09.2020, as such, the present petition is not maintainable. In this regard a perusal of the record would show that Clause (16) of terms and conditions annexed to Allotment Order dated 22.09.2022, regarding which the petitioner is seeking release of payment, provides for resolution of the disputes through arbitration. As per this clause, any dispute arising at any stage between the parties is referable to arbitration to Chief Engineer Kashmir PHE (Jal Shakti) Department, Srinagar.

11. It has, however, been contended by learned counsel for the respondents that the petitioner has never invoked the arbitration

clause, even if there is an arbitration clause in the Arbitration Agreement.

12. Sub Section (6) of Section 11 of the Arbitration and Conciliation Act vests power with the Chief Justice or his designate to appoint an arbitrator, where under an appointment procedure agreed upon by the parties, a party fails to act as required under that procedure or the parties fail to reach an agreement expected of them under the agreed procedure.

13. In the present case as per the arbitration clause Chief Engineer PHE (Jal Shakti) Department, Srinagar is the nominated Arbitrator. It is no-where pleaded in the petition that the petitioner had invoked the arbitration clause by addressing a communication to the designated authority. The copies of the communications placed on record by the petitioner alongwith the petition do not contain any assertion with regard to the appointment of an arbitrator. Through these communications the petitioner only seeks release and processing of his bills.

14. Learned counsel for the petitioner has submitted that the petitioner through his counsel had served a notice dated 21.09.2024 seeking appointment of the arbitrator. However, a copy of the said notice has not been placed on record nor there is any averment in the petition to the effect that the petitioner has invoked arbitration clause through the medium of said legal

notice. There is a reference to said legal notice in communication dated 28.12.2024 addressed by Assistant Executive Engineer to the Executive Engineer. It is not clear as to whom the said legal notice was addressed and as to whether by virtue of said notice the petitioner had invoked the arbitration clause. In the absence of any record or material to this effect, particularly in absence of any averment in the petition to show that the petitioner had at any stage invoked the arbitration clause, this Court would not get jurisdiction to appoint an Arbitrator for deciding the alleged disputes between the parties. The invocation of the arbitration clause by a party and failure on the part of the other party to take steps pursuant to the invocation of the arbitration clause is condition precedent for the Chief Justice or his designate to appoint an arbitrator. In the present case the said condition is not satisfied.

15. Accordingly, the petition is held to be not maintainable and is dismissed.

(SANJAY DHAR)
JUDGE

SRINAGAR
20.11.2026
Sarveeda Nissar

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

Sarveeda Nissar
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authenticity of this document
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