

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 20th May, 2008

+ **ARB.P. 236/2006**

U.P.STATE BRIDGE CORP ..... Petitioner  
Through Mr.Sunil Malhotra, Advocate.  
versus

UOI ..... Respondent  
Through Ms. Zubeda Begum, Advocate.

**CORAM:**

**MR. JUSTICE S. RAVINDRA BHAT**

- |    |                                                                              |            |
|----|------------------------------------------------------------------------------|------------|
| 1. | <b>Whether reporters of local papers may be allowed to see the judgment?</b> | <b>YES</b> |
| 2. | <b>To be referred to the Reporter or not?</b>                                | <b>YES</b> |
| 3. | <b>Whether the judgment should be reported in the Digest?</b>                | <b>YES</b> |

**% 20.5.2008**

**Mr. Justice S. Ravindra Bhat (Open Court)**

1. The controversy in this petition under Section 14 of the Arbitration and Conciliation Act concerns the order of respondent appointing Shri Chander Pal instead of Shri A.K.Singhal as Arbitrator.

2. The parties had entered into a contract whereby the petitioner was to execute the works of the respondent. The contract contained an arbitration clause, in standard terms, i.e. clause 25. The relevant part of that clause reads as follows:-

*“Except where the decision has become final,  
binding and conclusive in terms of Sub Para (i)*

*above disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Chief Engineer, CPWD, in charge of the work or if there be no Chief Engineer, the administrative head of the said CPWD. **If the arbitrator so appointed is unable or unwilling to Act or resigns his appointment or vacates his office due to any reason whatsoever another sole arbitrator shall be appointed in the matter** aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by predecessor."*

3. The petitioner raised disputes and demanded appointment of an Arbitrator. In exercise of its powers, the respondent appointed Mr.A.K.Singhal, as the sole Arbitrator by order dated 15.10.2003. The petitioner is aggrieved by the order dated 15.2.2006 whereby the previous order was recalled and Shri Chander Pal has been now appointed as Arbitrator to continue with the proceedings from the stage at which the previous Arbitrator had left it.

4. The petitioner contends and his counsel, Shri Sunil Malhotra, submits that the order substituting or replacing the Arbitrator as it were, is unsupportable in law. He adverts to Sections 14 and 15 of the Act and says that none of the pre-conditions for their application exist in the present case and that mere existence of the power under clause 25(2) itself does not imply that the respondents are free to use it at any stage.

5. Ms.Zubeda Begum, learned counsel for the respondent

relied upon the impugned order dated 15.2.2006 and contended that the same was issued as a consequence to this Court's direction in OMP 545/2005. It is contended that the respondents did not invoke their powers arbitrarily or with malice but purely as a bona fide measure, to give effect to directions of the Court. Learned counsel relied upon Section 15(1)(a) and contended that the Arbitrator can always be replaced by recourse to the appointment mechanism agreed to by the parties.

6. For a proper appreciation of this case, it would be necessary to extract, at this stage, Sections 14 and 15:-

***“14. Failure or impossibility to act.- (1)The mandate of an arbitrator shall terminate if -  
(a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and  
(b) he withdraws from his office or the parties agree to the termination of his mandate.  
(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section(1), a party may, unless otherwise agreed by the parties, apply to the court to decide on the termination of the mandate.  
(3) If, under this section or sub-section(3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12.***

***15. Termination of mandate and substitution of arbitrator.-(1)In addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall***

*terminate-*

*(a) where he withdraws from office for any reason; or*

*(b) by or pursuant to agreement of the parties.*

*(2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.*

*(3) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section(2), any hearings previously held may be repeated at the discretion of the arbitral tribunal.*

*(4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal."*

7. The respondents contend that the impugned order which replaced Arbitrator is justified since he was over-burdened with work. Counsel relied upon the Court's order dated 30.11.2005 in OMP 545/2005. The said order reads as follows:-

*"OMP 545/2005*

*An affidavit of Executive Engineer has been filed giving the details of appointment of new arbitrators as well as distribution of cases. Learned counsel appearing for the department further submits that they would further implement the intent of the court's direction by distributing the cases to the different arbitrators appointed vide order dated 18.11.2005. Let the needful be done*

*and affidavit to that effect be filed within two weeks from today. In the event no such affidavit is filed, the Registry shall list the case for directions before the court. In the event, such an affidavit is filed indicating that the cases have been distributed amongst the newly appointed arbitrators, this petition would not be listed before the court.*

*With the above directions, this petition is disposed of.*

*The file be consigned to record room.*

*Copy of the order be given dasti.*

*SWATANTER KUMAR, J.*

*November 30, 2005  
NG"*

8. The necessary pre-conditions for terminating the mandate of an Arbitrator under Section 14 are if he becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay or if he withdraws from his office or the parties agree to the termination of his mandate. Section 15 outlines additional circumstances for termination of the mandate of an Arbitrator:-

- (1) an Arbitrator withdraws from his office for any reason; or
- (2) by or pursuant to agreement of the parties.

9. Facially, the powers under Section 15(b) appears to be of wide import. However, the Court is unpersuaded with the

submissions of the respondent that mere mention of the appointment mechanism is sufficient to clothe it with the power to replace an Arbitrator as and when necessary. The power under Section 15(b) has to be understood in the overall context of the Act which confers autonomy on the Arbitrator as the chosen adjudicator of the parties. The statutory conditions essentially for his replacement are the same whether they are outlined in Sections 14 and 15. If the contentions advanced, i.e. the existence of the power to appoint an Arbitrator and also to replace him as and when necessitated are admitted in the manner contended by the respondents, it would lead to a startling result, which the law makers surely never intended. Therefore, this Court is of the opinion that the wide interpretation placed on Section 15(b) cannot be accepted.

10. As far as the justification, by the recourse to the order of this Court dated 30.11.2005 is concerned, it is to be noticed that in those proceedings, the present petitioner was not a party. Undoubtedly, the Court expressed its concern about the Arbitrator appointed by the respondent being unable to proceed with the matter due to pressure of work. Therefore, the Court directed distribution of the work. However, such a direction has to be construed in the context and certainly, reasonably, not in such a manner as to upset existing arbitrations and proceedings. It would otherwise inevitably

led to further litigation as the present case has sadly demonstrated. The said direction though wide, had to be applied in circumspect and reasonable manner. The respondent, acting as a public authority should have used its powers with due application of mind and while appointing new Arbitrators assigned the duties (after that date) to other Arbitrators. Any other interpretation would have resulted in chaos and avoidable complications.

11. In view of the above reasons, this Court is of the opinion that this petition has to succeed. Accordingly, the order dated 15.2.2006, appointing Chander Pal as the Arbitrator is hereby set aside. The arbitration shall be completed by Shri A.K.Singhal, the previously appointed Arbitrator.

ARB.P. 236/2006 is allowed in the above terms.

Order dasti.

**MAY 20, 2008**  
**'sn'**

**S. RAVINDRA BHAT,J**