

OMP No.145/2009

Date of decision: 16th September, 2009

Through: Ms. Amrita Sanghi with Mr.
Revendra Singh and Mr. Aditya
Sharma, Advocates

INDIAN OIL CORPORATION LTD. & ANR. ... Respondents

CORAM :-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? No.
2. To be referred to the reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

1 The petition has been filed U/s.14 of the Arbitration Act, 1996
for termination of the mandate of the arbitrator for the reason of the
arbitrator having failed to act without undue delay. The matter has
chequered history. The disputes arose between the parties as far
back as in 1992-1993. The agreement between the parties provided
for arbitration by a sole arbitrator selected by the contractor i.e. the
petitioner from a panel of three persons nominated by the General
Manager of the respondent Corporation. (Clause 9.0.1.0 of Section 9
of the Contract). One Mr. J.K. verma, who was then serving as a
General Manager Mathura Refinery of the respondent Corporation
came to be appointed as the arbitrator. It is the contention of the

petitioner that upon the petitioner objecting to the procedure adopted by the said arbitrator, the said arbitrator adjourned the proceedings sine die.

2 Suit No.1831A/1995 under Section 20 of the Arbitration Act, 1940 came to be filed by the petitioner. The same was dismissed by a Single Judge of this court. In an appeal preferred by the petitioner, one Mr. H.K. Bakshi was appointed as the arbitrator. The parties also agreed to applicability of the 1996 Act to the said arbitral proceedings. It is the contention of the petitioner that the said Mr. Bakshi entered upon reference on 11th February, 2003. The grievance of the petitioner is of the said Mr. Bakshi not acting inspite of six years having passed.

3 The counsel for the respondents has contended that the petitioner itself had made an application before Mr. Bakshi that he cannot continue as an arbitrator for the reason of his having ceased to be an employee of the respondent Corporation. It is also informed that the application of the respondent under Section 16 of the Arbitration Act, 1996, is also pending before the arbitrator.

4 A perusal of the reply filed by the respondents to the petition shows that according to the respondents also the arbitrator has not acted after 24th November, 2006. It appears that on the filing of this petition or just prior thereto a letter dated 25th February, 2009 was issued by the arbitrator fixing the hearing on 25th March, 2009. The petitioner having filed this petition the proceedings did not take place thereafter also.

5 The respondent has along with the reply placed the copies of

the entire arbitral proceedings on record. The counsel for the respondents has fairly stated that nothing happened in the arbitration between November, 2006 and till March, 2009 as aforesaid.

6 I am satisfied from the aforesaid that the arbitrator has failed to act without undue delay. In fact the entire purpose of arbitration has been scuttled by the disputes having remained pending for such a long period of time.

7 A perusal of the arbitration agreement between the parties does not disclose any agreement on qualification of the arbitrator. Though under Section 15 (2) of the Act the procedure for appointment of a substitute arbitrator is the same as the procedure for appointment of the arbitrator being substituted and which in this case would be of the General Manager of the respondent Corporation nominating three names and the petitioner selecting one out of the same but the said procedure having failed to serve any purpose for the last over 15 years and in the light of the recent dicta in ***U.O.I. Vs. Singh Builders Syndicate*** MANU/SC/0490/2009, this court is of the opinion that the agreed procedure can be varied.

8 The counsel for the petitioner has contended that a Retired Judge of this court be appointed as the arbitrator. Though the counsel for the respondent has no instructions in this regard Justice P.K. Bahari (Retd.) is appointed as the sole arbitrator to adjudicate the disputes aforesaid. His fee shall in the first instance be paid by the petitioner only subject to award as to costs. The counsel for the petitioner states that the fee shall be fixed by the counsel for the petitioner in consultation with the arbitrator.

9 The counsel for the respondent has also contended that the proceedings before the substituted arbitrator be undertaken with effect from the stage where left by the arbitrator being substituted. Mr. H.K. Bakshi being the previous arbitrator is directed to transfer the entire arbitral record in his custody to substitute arbitrator through the counsel for the petitioner. Justice Bahari shall on perusal thereof consider whether the proceedings are to be continued from the stage left by the earlier arbitrator or otherwise.

10 The petition as well as all pending applications are disposed of.

**RAJIV SAHAI ENDLAW
(JUDGE)**

16Th September, 2009
J