

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

Date of Reserve: 25.5.2009
Date of Order: July 02, 2009

OMP No. 231/2005

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02.07.2009

Mahanagar Telephone Nigam Ltd. ... Petitioner
Through: Mr. Ravi Sikri & Mr. Saket Sikri, Advs.

Versus

**International Engineers and Projects
Consultants Limited (IEPCL) ... Respondent**
Through: Ms. Rachna Gupta, Advocate

and

OMP No. 594/2006

**International Engineers and Projects
Consultants Limited (IEPCL) ... Petitioner**
Through: Ms. Rachna Gupta, Advocate

Versus

Mahanagar Telephone Nigam Ltd. & Ors. ... Respondents

Through: Mr. Ravi Sikri & Mr. Saket Sikri, Advs.

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

By this order I shall dispose of two petitions viz. OMP No. 231/2005
& OMP No. 594/2006. OMP No. 231/05 is filed by Mahangar Telephone Nigam

Limited (MTNL) under Section 28 of the Arbitration Act, 1940 with a prayer that the time for filing the award by the learned Arbitrator should be extended to enable the Arbitrator to conduct proceedings and to pass an award. While OMP No. 594/06 under Sections 11, 12 & 33 of the Arbitration Act, 1940 is filed by International Engineers & Project Consultants Limited (in short "IEPCL") with prayers that the Court, should remove respondent no.2 viz. Mr. A.K.Srivastava from acting as an Arbitrator and order that the Arbitration Agreement shall cease to have effect with respect to difference referred to for arbitration by CMD, MTNL to respondent no.2 and quash the demand notice dated 27.9.2006 raised by MTNL on Shri V.Srivastava and Shri G.P.Srivastava and to hold that the franchise agreement of which Arbitration Agreement was a part had come to an end on 30.9.1991 and along with this arbitration agreement cease to exit.

2. Brief facts relevant for the purpose of deciding these petitions are that MTNL entered into an agreement dated 4.1.1991 with IEPCL for operating a franchise of pay phones in Delhi. The agreement contained following arbitration clause:

"2. ARBITRATION: In the event of dispute or differences arising as to the construction or execution of the contract or the respective rights and liabilities of the parties concerned or the interpretation by any clause hereof or other special conditions of the Agreement (except as to any matters, the decision of which, is specially provided for by these or the special conditions) the same shall be referred to the sole Arbitration of CMD MTNL or his nominee. The award of the arbitrator shall be final and binding on the parties to this agreement."

2.1 It is further a term of this agreement that no person other than the person appointed by MD MTNL as aforesaid should act as arbitrator and that, if for any reason that is not possible the matter is not to be referred to arbitration at all.

2.2 The arbitrator may from time to time with the consent of both the parties to this contract enlarge the time for making the award.

2.3 Upon any such reference, the assessment of the costs incidental to the reference and award respectively shall be at the discretion of the Arbitrator.

2.4 Subject as aforesaid, the Arbitration Act, 1940 and the rules there under any statutory modification thereof for the time being in force shall be deemed to apply to the arbitration under this clause.

2.5 The venue of the arbitration shall be the place from which the acceptance note is issued or such other places as the CMD MTNL at this discretion may determine.

2.6 In this clause the expression "CMD MTNL" includes any other officer who is for the time being the Administrative head of the organization whether in addition to other functions or otherwise."

3. A dispute arose between the parties and IEPCL filed a writ petition being WP No. 1778/1992 before this Court making several prayers. During the pendency of above writ petition, MTNL appointed Arbitrator in terms of arbitration agreement. The Arbitrator was a nominated Arbitrator in terms of the agreement and he started the process of arbitration. However, the said nominee could not continue the arbitration proceedings and in his place another nominee was appointed by the CMD, MTNL viz. Mrs. Santosh Duggal, a retired Judge of this Court, as sole Arbitrator. When Mrs. Santosh Duggal proceeded with the

arbitration proceedings, IEPCL filed Writ Petitions before this Court making allegation of bias against Mrs. Santosh Duggal and made a prayer for terminating the proceedings before Mrs. Santosh Duggal and terminating her mandate. The proceedings before Mrs. Santosh Duggal were challenged by IEPCL in WP No. 1728/98 and 1729/98 wherein she was arrayed as a party for mis-conducting the proceedings. Notice of Writ Petitions was issued to her. It seems considering the allegations of bias made against her, she resigned as Arbitrator on 2.9.1998. Thereafter, CMD MTNL vide letter dated 21.6.1999 appointed Mr. Altaf Ahmed, the then Additional Solicitor General to enter upon and adjudicate the dispute. Shri Altaf Ahmed held some hearings and thereafter declined to act as an Arbitrator due to paucity of time and once again the matter went back to CMD, MTNL for appointment of fresh Arbitrator. The CMD MTNL vide letter dated 24.7.2004 appointed Shri A.K.Srivastava as Sole Arbitrator. After Shri A.K.Srivastava entered upon the reference and started arbitration proceedings, IEPCL raised preliminary objection of limitation and stated that since the period of four months had already expired, the Arbitrator had become functus Officio and could not continue the arbitration proceedings. The other preliminary objection raised by IEPCL was that the first invocation took place in 1995 hence, the arbitration proceedings could not be held under Arbitration and Conciliation Act, 1996 and the arbitration could not be conducted under the aegis of International Centre for Alternative Dispute Resolution (ICADR) and be governed by ICADR rules without the consent of respondent (IEPCL).

4. As far as application of Arbitration & Conciliation Act, 1996 Act was concerned, MTNL agreed to this objection and stated that the proceedings had to be under the Arbitration Act, 1940. But to that IEPCL took a stand that MTNL could not be allowed to take a stand contrary to its earlier stand that the proceedings should be continued under the Arbitration & Conciliation Act, 1996. The learned Arbitrator observed that there could be no estoppels against law. Since as per law, proceedings could continue only under 1940 Act the IEPCL's plea that MTNL could not be allowed to take the stand about 1940 Act was untenable. The Tribunal held that it had no jurisdiction to decide the question about the constitution of Tribunal since the Tribunal had been appointed as Sole Arbitrator by CMD MTNL in terms of the agreement therefore, the Tribunal could not rule against its own validity. Regarding taking services of ICADR, the learned Arbitrator observed that in view of clear provisions of rule 1 that the rules shall be applicable only with consent of parties, it was held that ICADR rules shall not be applicable in this case. ICADR was allowed to claim amount from MTNL for services rendered so far. The Arbitrator also enquired from IEPCL as if IEPCL was ready to give extension of time but IEPCL stated that they were not prepared to give extension of time. It was also argued that the Tribunal should not continue to proceed on the presumption that the Court would extend time limit. The Tribunal however, observed that the Arbitration can continue even though the period of four months had expired and fixed next date of hearing for fixing

modalities for further proceedings and the proceedings were continued by the Tribunal. It is after this order while MTNL filed a petition for extension of time under Section 28, IEPCL filed petition seeking above stated reliefs.

5. As far as extension of time is concerned Section 28 sub Section 1 of the Arbitration Act, 1940 confers wide discretion on the Court to enlarge time for making award. There is no doubt that discretion under Section 28(1) has to be exercised judiciously keeping in view all the facts and circumstances of the matter and also keeping in view the conduct of the parties. In the present case, the circumstances are such that it cannot be stated that MTNL deliberately delayed the appointment of Arbitrator or was responsible for the Arbitrator's not acting. Initially, CMD MTNL appointed its officer to enter upon reference however, the officer could not enter upon reference with the result that CMD MTNL thought it proper to nominate a retired judge of this Court. When retired Judge of this Court proceeded to conduct the arbitration proceedings, IEPCL immediately raised objection against the proceedings being conducted by the retired Judge and also made allegations of bias against her and moved a writ petition in this Court. When a notice of the writ petition was served upon the retired judge, the retired judge thought it proper not to continue with arbitration proceedings, considering that one of the parties had no faith in her. She resigned as the Arbitrator. CMD MTNL had no option but to nominate another Arbitrator and then CMD MTNL thought of nominating a personality on which no

fingers could be raised and thus he nominated the then Additional Solicitor General of India, Mr. Altaf Ahmed as the Arbitrator. However, unfortunately Mr. Altaf Ahmed could not spare time for the arbitration and could not continue with the proceedings. CMD MTNL had again to appoint an Arbitrator and this time he appointed Mr. A.K.Srivastava, a retired official as the Arbitrator. When Mr. A.K.Srivastava started conducting proceedings IPECL raised preliminary objections. Although the two preliminary objections raised by IEPCL were considered and agreed to by the Arbitrator but IEPCL did not want to extend the time for arbitration proceedings. This only shows that the only interest of IEPCL was to see that the arbitration did not proceed. When the two arbitrators one Mrs. Santosh Duggal, J. and Mr. A.K.Srivastava, a retired bureaucrat showed inclination to continue with the arbitration proceedings, IEPCL did not allow them to proceed with the arbitration for one or the other reason. Other Arbitrators appointed by CMD MTNL unfortunately either had no time or could not enter upon reference for some reason. Thus, it is not a case where MTNL had been dragging its feet to delay the arbitration proceedings but it is a case where circumstances show that IEPCL had been trying to see that the proceedings did not start. I consider under the circumstances, it is a fit case where Court should extend time and allow the application/petition. I, therefore allow petition no. OMP-231/2005 for extension of time.

6. In OMP No. 594/2006, IEPCL has stated that successive references made by CMD MTNL to his own General Managers lastly to Shri R.C.Agarwal on 20.10.1995, disclosed chaotic state of affairs in the office of CMD MTNL. The Arbitrator was supposed to publish the award within four months from the date of entering reference however, the appointment of five officers of MTNL as Arbitrators was made without any mention in the ongoing Civil Writ Petition. IEPCL had indicated their claim against MTNL to the tune of Rs.240 lac. By suppressing the facts, the Counsel for MTNL informed the Court on 26.5.1997 that insofar as the petitioner's dispute with MTNL was concerned, an Arbitrator had been appointed. However, a copy of reference of disputes for arbitration by Mrs. Santosh Duggal, a retired Judge was withheld by MTNL with a malafide intent. MTNL termed itself as claimant before the Arbitrator, but failed to appear before the Arbitrator on 6.6.1997 and even the Arbitrator did not reach the venue of arbitration. IEPCL referred to a office memo of MTNL and pleaded that a plain reading of the office memo manifested scant regard to the process of law and the arbitral procedure. It is submitted that IEPCL participated in the proceedings under protest and without prejudice to its rights and lodged objections about the validity and maintainability of the reference by the MTNL vide letter dated 12.3.1997. It is further submitted that for reasons best known to her, Mrs. Santosh Duggal was showing undue indulgence towards MTNL. The reference was barred by limitation and the reference was invalid as much as MTNL was yet to collect data from the Area Offices to formulate its claim in terms

of interoffice note. About Mr. Altaf Ahmed it is stated in the petition that after about 4 ½ months of asking him to act as an Arbitrator Mr. Altaf Ahmed entered upon reference on 6.11.1999. IEPCL filed objections before Mr. Altaf Ahmed on two grounds viz. applicability of Arbitration & Conciliation Act, 1996 and the proceedings being governed by rules of ICADR. Mr. Altaf Ahmed was also informed that he had become functus officio in terms of Schedule I Rule 3 under Section 3 of Arbitration Act, 1940. Thereafter, the matter was listed for arguments. It is stated that on 12.2.2000 Mr. Altaf Ahmed did not turn up at the venue of the arbitration, neither representative of MTNL came and it was presumed by IEPCL that Mr. Altaf Ahmed, being a member of the Governing Counsel of ICADR, since had become functuous officio because of expiry of four months, he did not come to the venue of the arbitration. However, Mr. Altaf Ahmed withdrew from the arbitration on 29.3.2004 and thereafter dispute was referred to Shri A.K.Srivastava. Again same objections were raised before Mr. A.K.Srivastava. It is alleged that respondent no.3 ICADR became collusive with MTNL at the back of IEPCL and by a letter dated 3.12.2004, ICADR raised a bill upon IEPCL requiring IEPCL to make a payment of Rs.56,000/- on ad hoc basis as share of the fees, which was computed at Rs.61,449/- + Rs.15,000/- as overhead costs. It is further stated that the ICADR surreptitiously got the number of the Arbitration case changed from 1103/2001 – ICADR to Arbitration Case No. 1004/97-ICADR, it was repeatedly clarified by IEPCL that the proceedings under the aegis of respondent no.3 ICADR were without jurisdiction and non-est.

7. It is not disputed that the learned Arbitrator upheld the two preliminary objections raised by the petitioner about non-applicability of Arbitration & Conciliation Act, 1996 and non-applicability of ICADR rules and observed that the reference would be governed by the Arbitration Act, 1940, however, the contention of IEPCL is that the Arbitrator consciously became collusive with MTNL and ICADR and misconducted himself by clinging to an invalid reference by holding that even though he had become functus officio as per Schedule I Rule 3 of the Arbitration Act, 1940 but he could conduct the arbitration proceedings further in anticipation of extension of time by this Court under Section 28 of the Arbitration Act, 1940. The Arbitrator was acting under an invalid reference. His changing case number of arbitration case, on the face of it, showed that the learned Arbitrator misconducted himself in the proceedings and his misconduct verges on fabrication of record with a malafide intention. It is further stated that the learned Arbitrator on 9.3.2005 fixed his fees as Rs.10,000/- per hearing to be shared equally by the parties and wanted both the parties to deposit 50% share of five hearings held by him till then, after deduction of tax at source as per law. In this order the Arbitrator recorded that he had received Rs.10,000/- from ICADR out of the money paid by MTNL, therefore, MTNL should send cheque of balance amount of Rs.15,000/-. This shows that there was collusion of Arbitrator with MTNL not only in the matter of fees but in the subject matter of the reference. It is pleaded that the appointments of Mrs. Santosh Duggal, Mr. Altaf Ahmed and Shri A.K.Srivastava were made in terms of

ICADR Rules and Arbitration & Conciliation Act, 1996. The authority of Mr. A.K.Srivastava had become non-est and deserved to be revoked under Section 5 of the Arbitration Act, 1940. It is also argued that CMD, MTNL being a party raising disputes about MTNL could not have appointed Arbitrators. CMD MTNL had been acting arbitrarily in appointing different Arbitrators without any authority. It is submitted that the arbitration agreement was silent in respect of supplying the vacancy when first appointed Arbitrator did not proceed with the reference. Thereafter, CMD MTNL had no right to appoint another Arbitrator in terms of the Arbitration Agreement. Even otherwise the reference made by CMD, MTNL was invalid since it was a reference under 1996 Act and under ICADR Rules which were not envisaged under the agreement.

8. The petitioner has relied upon State of West Bengal v. National Builders 1994(1) U.J. (S.C.) 81 and argued that this petition should be allowed.

9. In the above cited case, the arbitration clause provided that in case of dispute, the same shall be referred to the sole arbitration of the Chief Engineer of the Department and should the Chief Engineer for any reason unwilling or unable to act, the dispute shall be referred to an Arbitrator to be appointed by the Chief Engineer. The Arbitrator so appointed in above case was a Superintending Engineer who held 59 sittings. The proceedings however, could not come to an end and respondent sought his resignation for legal misconduct. An application for his resignation was made before the Arbitrator itself and the Arbitrator

observed that there had been no misconduct on any of the grounds yet he considered that “justice delayed was justice denied” and in the matter before him the justice had been delayed and the manner in which advocates of both the parties conducted themselves, the delay was inevitable. If the claimant had suffered loss of confidence and apprehended miscarriage of justice from him then he did not intend to interfere in his way of pursuit of justice. He therefore, refused to continue the proceedings and allowed the extended time to expire. He also did not resign and left it to both the parties to take course of law. Under these circumstances, a petition under Section 8(1) was made for appointment of an Arbitrator on the ground that power to appoint next Arbitrator vested in the Court. The Assistant District Judge allowed the application of revoking authority of the Arbitrator and appointed a new Arbitrator. The appointment of this Arbitrator was challenged by way of a petition under Article 227 of the Constitution of India and High Court dismissed the petition under Article 227. Against the order of dismissal, an appeal was preferred before the Supreme Court and the Supreme Court observed that once the nominee refused to act, it shall be deemed that the Arbitrator mentioned in the arbitration clause had refused to act and therefore clause would cease to operate in the same manner as the Chief Engineer himself had refused to act and the appointment of next Arbitrator could only be in accordance with Section 8(1)b) of the Act. The relevant paras of judgment (State of West Bengal v. National Builders) are as under:

5. More important issue than this that was urged was that since Clause 25 of the agreement empowered the Chief Engineer to nominate any other person to act as arbitrator the intention was to fill the vacancy in the same manner as provided in the agreement. This raises an important issue as to whether the power of the Chief Engineer to arbitrate himself or to nominate any other person as arbitrator is exhausted or revived after the earlier arbitrator nominated by him refused to act. In other words does the power to appoint a sole arbitrator under the agreement come to an end with such appointment or every time an arbitrator refuses to act the parties are to take recourse to appoint another arbitrator as provided in the agreement itself. Settlement of dispute between the parties through medium of an independent person in whom both parties repose confidence is the basic foundation on which the entire law of arbitration is founded. When the agreement provides that dispute between parties shall be referred to the person named in an agreement it is an appointment by consent. But where the arbitrator so appointed refuses to act the next appointment could again be made either as agreed between the parties and provided for in the arbitration clause or by consensus. But where either is absent no party to the arbitration agreement can be forced to undergo same procedure, for the simple reason that the arbitrator having refused to act he cannot be asked to arbitrate again. In law the result of such refusal is that the agreement clause cannot operate. It, therefore, follows that in a case where the arbitration clause provides for appointment of a sole arbitrator and he had refused to act then the agreement clause stands exhausted. And it is for the court to intervene and appoint another arbitrator under Section 8(1)(b), 'if arbitration agreement does not show that it was intended that the vacancy should not be supplied'. That is, the agreement should not debar any further arbitration. If it is provided in the agreement that if the arbitrator appointed in accordance with the agreement refuses to act then the dispute shall be resolved by another arbitrator, there is an end of the matter. But if the agreement does not show this then the next arbitrator can be appointed by the court only. The expression used in the subsection is clear indication that the court is precluded from exercising its power only if the parties intended that the vacancy should not be filled. In other words the court shall exercise jurisdiction to appoint another arbitrator except where it is specifically debarred from doing so. The word 'show' used in the clause appears to be significant. It in fact furnishes the key to the construction of the expression. Mere neglect or refusal to act

alone is not sufficient to empower the court to intervene. The agreement must not further show that the parties intended that the vacancy shall not be supplied. To put it affirmatively in absence of clear words or explicit language to the contrary the court may appoint another arbitrator. The true effect of the word is that it extends jurisdiction of the court to exercise power, if the agreement does not specifically debar it from doing so. To put it simply the court's power to interfere and appoint an arbitrator comes into operation if the arbitrator 242 refuses to act and the agreement does not show that the parties did not intend that the vacancy shall not be supplied. In *Prabhat General Agencies v. Union of India* (1971) 1 SCC 79 it was held by this Court: (SCC p. 82, para 4) "... that the language of the provision is not 'that the parties intended to supply the vacancy' but on the other hand it is that 'the party did not intend to supply the vacancy'. In other words if the agreement is silent as regards supplying the vacancy the law presumes that the parties intended to supply the vacancy. To take the case out of Section 8(1)(b) what is required is not the intention of the parties to supply the vacancy but their intention not to supply the vacancy." In *Chander Bhan Harbhajan Lal v. State of Punjab* (1977) 2 SCC 715 it was held that where a committee of arbitrators nominated by the Government becomes incapable of acting as such "it was within the competency of the Court to proceed to appoint a new committee". In *Union of India v. R.B. Ch. Raghunath Singh & Co.* (1979) 4 SCC 21 the arbitration clause provided for settlement of disputes and differences by the Chief Commissioner/Director of Storage, Ministry of Food, Government of India and his decision was to be final and binding. The post of Director of Storage was abolished and the Chief Commissioner refused to act. The question arose whether the Court could appoint an arbitrator in exercise of power under Section 8(1)(b). It was claimed on behalf of the Union of India that where there was a named arbitrator even though he was named by office, it was not open to the Court to supply the vacancy in his place under Section 8(1)(b) of the Act. The contention was repelled and it was held that the argument was without any substance as: "the Court had no power to supply the vacancy under Section 8(1)(b) only if the arbitration agreement did show that the parties did not intend to supply the vacancy. If no such intention could be culled from the arbitration clause, the court could supply the vacancy." (SCC p. 22, para 4) It is thus settled that even where an authority is named by office to be the sole arbitrator but he refuses to act then the jurisdiction to appoint another arbitrator vests in the court. Since

Clause 25 of the agreement extracted earlier does not indicate that the parties did not intend to supply the vacancy the court in our opinion rightly assumed jurisdiction under Section 8(1)(b) to appoint another arbitrator.

6. Basis for assuming such jurisdiction, as stated earlier, is that the clause is rendered inoperative. Where the agreement provides for appointment of a specific person either by name or by designation and that person refuses to act then the question of appointing him again cannot arise. Refusal by such a person results in the agreement clause ceasing to operate. When two parties agree for appointment of A or B by name or designation and the person so named refuses to act then the agreement shall be deemed to have exhausted itself. The person so named having refused to act, he cannot be asked again to arbitrate. That would be contrary to the very basis of arbitration that no one can be forced to act against his free will. It would also be contrary to the agreement and if there is no agreement to appoint another person, the only remedy is to approach the court to exercise its statutory power and appoint another arbitrator. Same result follows where the arbitration clause empowers the sole arbitrator either to arbitrate himself or to nominate anyone else. It was urged that the principle of agreement clause coming to an end cannot apply where the sole arbitrator has been given power to nominate another person. According to the learned counsel once the nominee refused to act the Chief Engineer was again empowered to nominate another person in his place. In our opinion the submission is not well founded in law. A person nominated by the sole arbitrator stands substituted in his place. He does not have any independent personality. The power and authority exercised by him is the same as the authority which nominated him. Therefore, once the nominee refuses to act it shall be deemed that the arbitrator mentioned in the arbitration clause has refused to act and therefore, the clause would cease to operate in the same manner as the Chief Engineer himself has refused to act. The appointment of next arbitrator could, only be in accordance with Section 8(1)(b) of the Act.

10. It is settled law that no judgment is to be read as a statute and every judgment adjudicates and decides the dispute involved in it. The circumstances of the case referred to above were altogether different from the

circumstances in the present case. The arbitration clause is also altogether different. In the present case, the arbitration clause provides that either CMD MTNL or his nominee shall act as sole arbitrator. I consider if a reference is made by CMD to his nominees and the nominee shows his inability to enter upon reference, CMD MTNL has a right to appoint another nominee. There may be several reasons for a nominee's inability to act - he being a Government official gets retired and moves away from the place and may not like to act as an Arbitrator putting a burden on him to come for arbitration to a far off place. There may be many other reasons where a nominee does not enter upon reference and gives this information to CMD MTNL. Under such circumstances CMD MTNL or such other person would have every right to appoint another nominee in his place. In the present case, initially the nominees appointed by the CMD MTNL expressed their inability to enter upon the reference with the result that CMD MTNL appointed a retired Judge of High Court as Arbitrator. Unfounded, allegations of bias were made against the retired Judge by IEPCL so, retired Judge thought it proper to resign. The CMD had no option but to nominate another person. The other nominee being Additional Solicitor General was too pre-occupied with his work and could not conduct the proceedings as expeditiously as expected and showed his inability. Then, CMD MTNL had to nominate another person who is the present Arbitrator. I consider that the right of CMD MTNL to nominate a person to conduct arbitration proceedings does not become extinguished when any of his nominees shows inability to act or is forced

to resign by the conduct of the party, of making unfounded allegations etc. The situation in West Bengal Case (supra) was that the Arbitrator had refused to resign and had also refused to act. Thus, no person could be nominated in his place since he continued to be an arbitrator and no option was left with the party but to approach the Court and that is how the Supreme Court upheld the appointment of Arbitrator by the Court. The situation in the present case is not so.

11. Not informing the High Court of the appointment of Arbitrator by MTNL during the pendency of the Writ Petition is no ground to hold that the Arbitrator had become functus officio or had no authority to act. There is no requirement either under the 1940 Act or under the Arbitration Clause that when an Arbitrator is appointed, the High Court has to be informed. The appointment of Arbitrator is to be notified to the opposite party and it is not the case that the appointment was not notified to the IEPCL. There is no requirement of High Court Rules or any other law that if a Writ Petition is pending and an Arbitrator is appointed during the pendency of the Writ Petition, an intimation must be given to the High Court as to who is the Arbitrator, when he was appointed and why he was appointed. I also do not consider that merely because the reference mentions of Arbitration & Conciliation Act of 1996, it became invalid. It is settled law that there are no estoppels against the Statute. If the Act of 1940 Act was applicable, the Arbitrator was bound to conduct proceedings under the provisions

of 1940 Act even if his appointment letter/reference letter mentions of 1996 Act. Mentioning of a wrong Act or wrong provision of Act does not make the reference invalid so long as the reference is in accordance with the arbitration contract. I find no force in this petition. The petition is liable to be dismissed and is hereby dismissed.

12. I allow OMP No. 231/2005. The time of the Arbitrator is liable to be extended. Looking in the manner in which, the parties are proceedings, I consider that the Arbitrator should be given sufficient time to conclude the proceedings. The Arbitrator is directed to conclude the proceedings within eight months from the date of serving copy of this order and pass an award within 15 days after hearing of final arguments.

With these, both the petitions stand disposed of.

July 02, 2009
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SHIV NARAYAN DHINGRA, J.