

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

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O.M.P. 971/2013

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Judgement Reserved on: 19.09.2014

Judgement pronounced on: 01.10.2014

M/S PANDIT MUNSHI & ASSOCIATES LTD Petitioner

Through: Mr.Sandeep Sharma, Advocate.

versus

UNION OF INDIA & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

In the beginning, it is essential to enlist the few essential facts in this case:-

1. In this case, the agreement is of the year 1995-1996. The petitioner invoked the arbitration clause on 7th August, 1998. He moved AA No. 359/1999 for appointment of an Arbitrator which was disposed of vide order dated 18th August, 2000 and Dr.Y.P.C. Dangey was appointed as the sole Arbitrator. Dr. Y.P.C. Dangey resigned from the post of an Arbitrator vide his letter dated 21st June, 2001. Thereafter, Sh.A.K. Bhatnagar was appointed as the arbitrator vide letter dated 10th September, 2001. On 12th

June, 2006, Sh.A.K. Bhatnagar also resigned as an arbitrator and thereafter Sh. Divakar Garg was appointed as an Arbitrator.

2. Since the learned arbitrator was taking undue time in giving its findings, the petitioner filed the OMP No. 419/2009 under Section 14 of the Arbitration and Conciliation Act (hereinafter referred to as 'the Act') or termination of the mandate of the arbitrator and the order was passed in favour of the petitioner wherein this court expressed the hope that the learned Arbitrator would dispose of the matter at the earliest.

3. Thereafter, the petitioner filed an OMP No. 354/2010 .Vide order dated 9th December, 2010 of this court, the mandate of the Arbitrator Mr. A.K. Bhatnagar was terminated. Thereafter, the petitioner filed another arbitration application No. 185/2011 whereby vide order dated 12th September, 2011, Sh. G.C. Gupta, Engineer-in-Chief(Retd), UPPWD was appointed as an Arbitrator. Sh.G.C. Gupta, an Arbitrator resigned and the petitioner filed another application bearing IA No. 22212/2014 and vide order dated 8th January, 2013, Sh. S.C. Vasudev, Engineer, Former Addl.DG, CPWD was appointed as an Arbitrator.

4. Sh.S.C. Vasudev, learned Arbitrator passed an order dated 18th May, 2013 under Section 32 (2)(c) of the Act and sent the copy to the Registrar

General of this court. The said matter was thereafter listed on 2nd July, 2013 before this court and this court issued notices to the parties and listed the matter for 2nd August, 2013. On 2nd August, 2013, there was no representation on behalf of the petitioner and since no further order was required to be passed, the petition was consigned to record room.

5. It is also noted in this proceeding that the counsel for the petitioner had written a letter to the Arbitrator Sh. S.C. Vasudev wherein the complaint had been made that he had been demanding very high fee which the petitioner was unable to pay. Thereafter, the petitioner had moved an IA No. 13966/2013 in those proceedings for appointment of an Arbitrator which was dismissed by this court on the ground that the application cannot be entertained in these proceedings.

6. It is this order of the Arbitrator (dated 18.05.2013) that has been challenged by present petition under Section 34 of the Act.

7. It is submitted that the said award is against the law and facts of the case and the Arbitrator has not appreciated the proceedings and the fact that only 2-3 hearings were required and that the arbitrator was more interested in his fee than adjudication of the dispute and thus the award is erroneous and also perverse and that the Arbitrator ought to have passed an award

instead of closing proceeding and has relied on the findings of this court in the case tilted as Jogdhran & Sons Vs. Union of India 1982 RLR (Note 3) (complete citation & case law not provided to this court).

8. I have heard the arguments of the learned counsel for the petitioner at this stage.

9. From the above noted facts, it is apparent that the petitioner has been moving this court for appointments/change of Arbitrators quite frequently and the arbitrators for some reason or the other were withdrawing themselves by submitting their resignations.

10. In this background, the order of the learned arbitrator dated 18th May, 2013 whereby the learned arbitrator has in paragraph 2, while terminating the arbitral proceedings, has opined that the conduct of the claimant shows that he was not interested to pursue the case at all, is to be judged.

11. It is apparent that there is no determination of the claims of the parties vide this order. It is simply the termination of the arbitral proceedings. Section 32 of the Act deals with the termination of the arbitral proceedings. It is stated that the arbitral proceedings can be terminated by arbitrator either by final award or by an order under Sub-Section 2 of Section 32 of the Act. It is apparent that there is no final award and the arbitral proceedings have

been terminated by the Arbitrator under Sub-Section 2 of Section 32.

Sub-Section 2 of Section 32 reads as under:-

“(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.”

From the bare reading of this Section clearly states that the learned Arbitrator is within its jurisdiction to terminate the proceedings before him at any time.

12. The sole question is whether this termination of the arbitral proceedings under Section 32(2)(c) is an award which can be challenged under Section 34 of the Act. Although, the expression ‘award’ is not defined anywhere in the Act, however, since the award is considered a decree in view of Section 35 of the Arbitration & Conciliation Act, it is apparent that an award is an order which determines the rights of the parties by finally determining the particular claim or issue in the arbitral proceedings.

13. Section 32 also clearly stipulates that the arbitral proceedings can be

terminated in two ways, either by passing a final award or for the reasons under Sub-Section 2 of Section 32 by the arbitrator. So, termination of the arbitral proceedings could be in two ways either by final award or under Section 32(2) of the Act. The very fact that there are two ways of the termination of the arbitral proceedings clearly stipulates that the other way of termination i.e. whereby there is no determination of issue or claim in arbitral proceedings, cannot be termed as an award.

14. The conduct of petitioner itself shows that he himself did not consider the order of Arbitrator dated 18.05.2013 as an award. Undisputed facts show that learned arbitrator had sent a copy of this order to the Registry of this court and this court had dealt with this order dated 18th May, 2013 and had issued the notice to the petitioner as well and the court accepted the termination of the proceedings by the arbitrator under Section 32 (2)(c) of the Act. It is also noteworthy that thereafter the petitioner had moved an application with IA No. 13966/13 under Section 151 CPC for the appointment of an arbitrator, on termination of the mandate by Sh. S.C. Vasudeva, Arbitrator. He, therefore, had accepted that the termination of the proceedings under Section 32(2)(c) by the arbitrator is not an award and that is why, by way of IA No. 13966/13 made a request for appointment of

another Arbitrator.

15. The order dated 18.05.2013 of Arbitrator is not an award, so it cannot be challenged by way of objections under Section 34 of the Act.

16. The petitioner has relied on the case titled ATV Projects India Ltd. vs. Indian Oil Corporation Ltd. & Anr. 2013 (5) R.A.J. 715(Del), but the same has no relevance on the facts of this case.

17. Strangely, petitioner despite being aware of this fact (he filed IA No. 13966/13 for appointment of new arbitrator), moved the court under Section 34 of the Act.

18. I, therefore, dismiss the present petition, being devoid of any merit, *in limine*, and impose a cost of Rs. 25,000/- to be deposited with Delhi High Court Staff Welfare fund within two weeks from the date of this order.

**DEEPA SHARMA
(JUDGE)**

OCTOBER 01, 2014

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