

GAHC010123792023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Arb.P./30/2023

INDUS PROJECTS LIMITED
HAVING ITS REGISTERED OFFICE AT 504, LOHA BHAVAN, P.D. MELLO
ROAD, MUMBAI-400009. REPRESENTED BY MR. M.L.N. MURTHY, AGED
ABOUT 63 YEARS, VICE PRESIDENT OF INDUS PROJECTS LIMITED, S/O
LATE SHRI M.R.N MURTHY, R/O A-403, POLRISH, LBS, MARG MULUND
WEST, MUMBAI-400080

VERSUS

NUMALIGARH REFINERY LIMITED
HAVING ITS OFFICE AT PANKAGRANT, P.O.-NUMALIGARH, REFINERY
COMPLEX, DIST-GOLAGHAT, ASSAM, PIN-785699

Advocate for the Petitioner : MR N N UPADHYAYA
Advocate for the Respondent : MR. JYOTIRMOY ROY (R-1)

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

15.12.2023

Shri NN Upadhyaya, learned counsel for the petitioner. Also heard Shri J. Roy, learned Senior Counsel for the respondent, who has also filed an affidavit on 11.10.2023.

2. This application has been filed under Section 29A (4) and (5) of the

Arbitration and Conciliation Act, 1996 (in short, the Act) praying for extension of the mandate of the Arbitral Tribunal presided over by a Sole Arbitrator. The learned counsel by referring to the aforesaid provision of law has submitted that since the appointment was made by this Court in exercise of powers under Section 11 of the Act, such extension can be given by this Court. He has also relied upon a judgment of the Hon'ble Andhra Pradesh High Court in the case of ***M/s K.V. Ramana Reddy Vs. Rasthriya Ispat Nigam Limited and Ors.*** in ***I.A. No. 2 of 2022*** in ***Arbitration Application No. 50 of 2018***.

3. *Per contra*, Shri Roy, learned Senior Counsel for the respondent while not opposing the prayer in principle has however raised the issue of maintainability of this writ petition *vis-à-vis* the definition of "Court" has found in Section 2(e) of the Act in question.

4. Section 29A has been incorporated in the Act by an Amendment of 2016 w.e.f., 23.10.2015 as per which, a Court has been vested powers for extending the mandate as provided therein. The Court has been defined in Section 2(e), the relevant part of which reads as follows:

"2. Definition. –

.....

(e) "Court" means— (i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

...”

5. Unlike the Presidency Courts, the Gauhati High Court does not exercise original civil jurisdiction and therefore it is the District Judge of the concerned District which would be the Court within the meaning of the definition. __
6. Though the Hon’ble Andhra Pradesh High Court in the case referred above has made certain observations, such observations have to be understood within the facts of that case, wherein the requirement of substitution of the arbitrator was also one of the aspects for consideration.
7. In any case, the concern of this Court is to strictly pass orders strictly in accordance with law with the mandate of the statute.
8. This Court has also been apprised of a decision of this Court rendered in the case of ***Aplus Projects & Technology (P) Ltd. Vs. Oil India Limited [2019 (3) GLT 88]*** wherein in a similar circumstances, the parties were relegated to the Court to which jurisdiction was vested as per the Act.
9. In view of the above, without expressing any opinion on the merits, the writ petition is held to be not maintainable and the same is dismissed. However, liberty is given to the petitioner to approach the appropriate Court as defined under the Act.
10. It is however made clear that the time consumed in the present proceeding shall not cause any prejudice to the petitioner provided such application be filed within a period of 15 days from today.

JUDGE

Comparing Assistant