

GAHC040017342024



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

Case No. : CRP/57/2024

The Union of India and 10 Ors
represented by the Secretary, Defence, Ministry of Defence, Govt of India, 104 South
Block, New Delhi 110011 2: The Secretary

Age:

Occupation :

Ministry of Road

Transport and Highway(MoRTH) Transport Bhawan

1 Parliament Street

New Delhi 110011

3: The Superintending Engineer

Age:

Occupation :

Regional Office

ministry of Road

Transport and Highway (MoRTH)

Govt of India

First Floor

campus of Chief Engineer (WE)

Mowb-II

Itanagar

791111

4: The Secretary

Age:

Occupation :

Border Road Development Board (BRDB)

ministry of Defence (BR)

Sena Bhawan

B Wing

4th Floor

New Delhi 110011

5: The Director General of Border Roads Organization

Age:

Occupation :

Seema Sadak Bhawan

Ring Road

Delhi Cantt

New Delhi 110011

6: The Chief Engineer

Age:

Occupation :

Project Vartak

C/o 99 APO

Tezpur 931716

Assam

7: The HQ Chief Engineer

Age:

Occupation :

Project Pushpak

C/o 99 APO

Pin 930017

8: The Commander

Age:

Occupation :

763 BRTF (GREEF)

C/o 99 APO

Khirmu

Tawang

Arunachal Pradesh Pin 930117

9: The OC

Age:

Occupation :

Contract

117 RCC (GREEF) C/o 99 APO

Lumla

Tawang

Arunachal Pradesh Pin 9300117

10: The Engineer in Charge

Age:

Occupation :

177 RCC (GREEF) C/o 99 APO

Lumla

Tawang

Arunachal Pradesh

Pin 9300117

11: The Supervisor JE

Age:

Occupation :

117 RCC (GREEF) C/o 99 APO

Lumla Tawang

Arunachal Pradesh Pin 930011

VERSUS

M/s Puna Hinda

having its registered office at C/o Times Video Library, Akash Deep, PO and PS Itanagar, Papum Pare District, Arunachal Pradesh represented by its Attorney Shri Rubu Hangu, Son of Shri Rubu Jarbo, C/o New Holland Construction Equipment's (P) Ltd, Pappu Nallah, PO and P Spappu Nallah, Papum Pare District, Arunachal Pradesh.

Advocate for the Petitioner : Marto Kato, M Tanga, DSGI

Advocate for the Respondent : Jungam Jini, Tao Tarin, Kirmani Lollen, A T Tara, Binter Picha

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 12.12.2024

Heard Mr. M. Kato, learned counsel for the petitioner. Also heard Mr. B. Senapati, learned counsel along with Mr. B. Picha, learned counsel for the sole respondent.

2. The present Civil Revision Petition has been instituted by the petitioners herein, assailing an order dated 30.09.2024, passed by the learned District & Sessions Judge, West Kameng, Pakke Kesang, East Kameng, Bichum & Tawang (*hereinafter referred to as 'the District Judge'*), in Arbitration No. 01/2024, whereby the preliminary objection raised by the petitioners herein, as respondents, with regard to maintainability of the application so filed by the respondents herein,

under Section 29A of the Arbitration and Conciliation Act, 1996, came to be rejected. The learned District Judge, proceeded to hold that he had the jurisdiction to entertain the application so preferred before him, by the respondents herein, invoking the provisions of Section 29(A) (4) of the said Act of 1996.

3. Mr. Kato, learned counsel for the petitioner has submitted that the Arbitrator, in the matter, being so appointed by this Court, it is only this Court that would have the jurisdiction to entertain any application, including an application preferred under sub-Section (4) of Section 29(A) of the said Act of 1996. He further submits that the learned District Judge erred in proceeding to conclude that he had jurisdiction to entertain the application so preferred under sub-Section (4) of Section 29(A) of the said Act of 1996 by the petitioners, herein, for extension of the mandate of the arbitrator to continue with the Arbitration proceeding and pass the award therein. Accordingly, he submits that the order dated 30.09.2024 would call for an interference by this Court.

4. Per contra, Mr. D. Senapati, learned counsel appearing for the respondents herein, had submitted that the respondents had instituted an application, invoking the provisions of sub-Section (4) of Section 29(A) of the said Act of 1996 before the learned District Judge, praying for extension of the mandate of the arbitrator. He submits that the provisions of sub-Section (4) of Section 29(A) of the said Act of 1996, mandates that the mandate of the arbitrator(s) shall terminate unless the Court has either prior to or after the expiry of the period so specified, extends the period of mandate of such arbitrator. He submits that the term 'Court' so finding mention in the provisions of sub-Section (4) of Section 29(A) of the said Act of 1996 is defined under the provisions of Section 2(1) (e) of the said Act of 1996 and the said term has been so defined to mean the Principal Civil Court of original jurisdiction in a district and also includes the High Court in exercise of the original civil jurisdiction.

5. Mr. Senapati, learned counsel further submits that the Gauhati High Court does not have an ordinary original Civil jurisdiction and accordingly, the application so preferred under sub-Section (4) of Section 29(A) of the said Act of 1996 would be maintainable only before the Principal Civil Court of original jurisdiction and the learned District & Sessions Judge, West Kameng, Pakke Kesang, East Kameng, Bichum & Tawang being the Principal Civil Court of the district, the order dated 30.09.2024, passed by the learned District Judge would not call for any interference.

6. In support of his submission, Mr. Senapati, learned counsel has placed reliance on a recent decision of the Hon'ble Supreme Court, in the case of **Chief Engineer (NH) PWD (Roads) Vs M/S BSC & C and C JV**[vide order dated **13.05.2024** in **SLP (C) No(s). 10544/2024**]. In the above premises, Mr. Senapati, learned counsel has submitted that the present Civil Revision Petition would be required to be dismissed, *in limine*.

7. I have heard the learned counsels appearing for the parties and also perused the materials placed on record.

8. The respondents herein had instituted an application before the learned District Judge by invoking the provisions of sub-Section (4) of Section 29(A) of the said Act of 1996 and therein, a preliminary objection came to be raised by the petitioners herein, with regard to the jurisdiction of the learned District Judge to consider the said application. The learned District Judge, on consideration of the said application, proceeded to hold that the said application would be maintainable before him and accordingly, rejected the preliminary objection, regarding jurisdiction, so raised by the petitioners herein. It is also to be noted that the preliminary objection so raised, was to the effect that this Court having appointed the arbitrator in the matter, the application so preferred by the respondents herein, invoking the provisions of sub-Section (4) of Section 29(A) of the said Act of 1996

would be maintainable before this Court and not before the learned District Judge.

9. The provisions of sub-Section (4) of Section 29(A) of the said Act of 1996 being relevant, is extracted herein below:-

“29 A. Time Limit for arbitral award.-(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of Section 23.

.....

(2).....

(3).....

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five percent, for each month of such delay:

Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.”

10. A perusal of the provisions of sub-Section (4) of Section 29(A) of the said Act of 1996, would go to reveal that the mandate of an arbitrator would stand terminated in the event, the award is not made within the period specified in sub-Section (1) or the extended period specified under sub-Section (3) of Section 29(A), unless the Court has either prior to or after the expiry of the period so specified, extended such period.

11. The term 'Court' finding mention in the provisions of sub-Section (4) of Section 29(A) of the said Act of 1996, is defined under the provisions of Section (2)(1)(e) of the said Act of 1996. The said definition being relevant is extracted herein below:-

“2. Definitions.-(1) In this Part, unless the context otherwise requires,-

(a).....

(b).....

(c).....

[(ca).....]

(d).....

(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;

(ii) in the case of international commercial arbitration, 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, and in other cases, a High Court having jurisdiction to hear appeal from decrees of courts subordinate to that High Court;]”

12. The arbitration involved in the present proceedings not being an international commercial arbitration, the provisions of Section (2) (1)(e)(i) of the said Act of 1996 would be applicable. The term 'Court' as defined under Section (2) (1)(e)(i) of the said Act of 1996 would mean the Principal Civil Court of original jurisdiction in a district, and also would include the High Court in exercise of its ordinary original civil jurisdiction. It is to be noticed that the Gauhati High Court does not have an ordinary original civil jurisdiction. Accordingly, on a conjoint reading of the provisions of sub-Section (4) of Section 29(A) and Section (2) (1)(e)(i) of the said

Act of 1996, would go to reveal that the 'Court' as finding mention in the provisions of sub-Section (4) of Section 29(A) of the said Act of 1996 would mean the Principal Civil Court of original jurisdiction in a district. Accordingly, the learned District Judge would be the Principal Civil Court of original jurisdiction for the purpose of entertaining an application under the provisions of sub-Section (4) of Section 29(A) of the said Act of 1996.

13. Support in this connection, has been drawn from the decision of the Hon'ble Supreme Court, in the case of **Chief Engineer (NH) PWD (Roads) (supra)**. The conclusion as drawn by the Hon'ble Supreme Court in the matter, being relevant, is extracted herein below: -

“The power under sub-Section (4) of Section 29(A) of the Arbitration Act vests in the Court as defined in Section 2(1) (e) of the Arbitration Act. It is the principal Civil Court of original jurisdiction in a district which includes a High Court provided the High Court has ordinary original civil jurisdiction.

In this case, the High Court does not have the ordinary original civil jurisdiction. The power under sub-section (6) of Section 29A is only a consequential power vesting in the Court which is empowered to extend the time. If the Court finds that the cause of delay is one or all of the arbitrators, while extending the time, the Court has power to replace and substitute the Arbitrator(s). The said power has to be exercised by the Court which is empowered to extend the time as provided in sub-Section (4) of Section 29A of the Arbitration Act.”

14. The conclusions as reached by the Hon'ble Supreme Court, in the above mentioned case is squarely applicable to the present case, and accordingly, this Court is of the considered view that the order dated 30.09.2024, passed by the learned District & Sessions Judge, West Kameng, Pakke Kesang, East Kameng, Bichum & Tawang, in Arbitration No. 01/2024, holding that he had the jurisdiction to entertain the application so filed by the respondents herein, invoking the

provisions of sub-Section (4) of Section 29(A) of the said Act of 1996, is not erroneous and would not require any interference.

15. It is to be noted that this Court, in the present order, has only considered the order dated 30.09.2024 to the extent of the issue of jurisdiction raised by the petitioners, herein, before the learned District Judge and has not considered the other issues so arising in the Arbitration Case No. 01/2024 on merit. The learned District Judge would now proceed to consider the issues so arising in Arbitration Case No. 01/2024, expeditiously.

16. In view of the above discussion, the present Civil Revision Petition is held to be devoid of any merit and accordingly, the same stands dismissed, however, there would be no order as to costs.

JUDGE

Comparing Assistant