

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

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**908 CIVIL REVISION APPLICATION NO. 140 OF 2015
WITH CIVIL REVISION APPLICATION/133/2015**

**STATE OF MAHARASHTRA THROUGH CHIEF ENGINEER PUBLIC
WORKS DEPT AND OTHERS**

VERSUS

M/S KALYAN TOLL INFRASTRUCTURE LTD, INDORE MP

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Advocate for Petitioners : Mr. Thigale Girish K. (Naik)

Advocate for Respondents : Mr. Anil S. Bajaj

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CORAM : S. V. GANGAPURWALA, J.

DATE : 22nd September, 2015

PER COURT :

1. The matter is referred to the Arbitral Tribunal amongst the parties. The present petitioners filed an application under section 16 of the Arbitration and Conciliation Act, 1996 (for short 'Arbitration Act'). The said application was purportedly filed on 6th April, 2015 raising dispute about arbitrability of the proceedings. The application was not decided immediately. The present applicants filed an application under section 14 of the Arbitration Act before the District Court. The said application is rejected. Aggrieved thereby, the present revision.

2. Mr. Thigale, the learned counsel for the applicants strenuously contends that the application though was purportedly said to have been filed under section 16, it was an application under section 16 read with section 14 of the Arbitration Act. According to the learned counsel, the contents of the application are required to be considered. Though the application was filed on 06.04.2015, and it was also heard immediately, the orders were not passed by the Arbitral Tribunal, which itself gives right to the applicants to file an application under section 14 for termination of the mandate of the Arbitral Tribunal. The learned counsel submits that the District Judge, while rejecting the said application, has not considered provisions of section 14(1)(a) in its correct perspective. The learned counsel submits that not deciding the application without undue delay is sufficient to terminate the mandate of the arbitrator.

3. In Civil Revision Application No.140 of 2015, the application was given on 6th April, 2015. The arguments were also heard on 6th and 7th April, 2015.

However, the Arbitral tribunal, in its minutes of the meeting, stated that the decision would be taken on the said application later i.e. Arbitral Tribunal refused to decide the said application, immediately. The learned counsel submits that as the Arbitrator failed to act without undue delay, the mandate of the Arbitral Tribunal stand terminated.

4. The learned counsel relied on the judgment of the Apex Court in the case of **NBCC Ltd. Vs. J.G. Engineering, reported in (2010) 2 SCC 385**. The learned counsel submits that even as per clause 3.4.17 of the agreement, the proceedings could not have been referred to the arbitrator. This aspect has not been considered. According to the learned counsel, after the proceedings were presented before the District Judge under section 14 of the Arbitration Act, the Arbitral Tribunal, after long slumber of two months, decided the application under section 16 of the Act.

5. The learned counsel submits that FIR is lodged against one of the Arbitrators. On that count also, the mandate of said arbitrator would terminate as a

reasonable apprehension has arose in the mind of the litigant i.e. the applicants. The learned counsel relies on the judgment of the Apex Court in the case of **V.K. Dewan & Co. Vs. Delhi Jal Board, (2010) 15 SCC 717**. The learned counsel also relies on the judgment of the Division Bench of Gauhati High Court in case of **State of Arunachal Pradesh Vs. Subhash Projects and Marketing , [2007 (1)ARBLR 564]**

6. Mr. Bajaj, the learned counsel for the respondents supports the order and submits that it is not without undue delay, the Arbitral Tribunal has decided the application under Section 16 of the Arbitration Act on 6th April, 2015, the present applicants had filed application under section 16. The arguments were also heard. Immediately thereafter, on the same day, another application was also filed. Even arguments were also heard on the another application filed under section 31(6) of the Arbitration Act by the claimants. The Court decided to pass the order later. The Court did not refuse to pass the order. According to the learned counsel, in the application under section 14 also, no allegation were made against

any of the arbitrators.

7. Mr. Thigale, the learned counsel submits that in the application before the District Judge, the personal allegations against the arbitrator was not made but during the course of argument, filing of FIR against one of the arbitrators was brought to the notice of the District Court.

8. With the assistance of learned counsel, I have gone through the order.

9. It is not disputed that no time limit is fixed for culmination of arbitral proceedings. The application under section 16 , filed by the present petitioner is decided by the Arbitral Tribunal on 14.06.2015 i.e. within two months in Civil Revision Application No.140 of 2015. Whereas, in Civil Revision Application No. 133 of 2015 it is decided immediately.

10. Section 14 (1)(a) of the Arbitration Act lays down that the mandate of an arbitrator shall terminate, if he becomes *de jure* or *de facto* unable to perform his function or for other reasons, fails to

act without undue delay. The application under section 16 was filed on 6th April, 2015. Argument on the said application was also heard on 6th and 7th April, 2015 and the Arbitral Tribunal decided to pass order on the said application later and on 11.06.2015, present applicants filed application before the District Judge, purportedly under section 14 of the Arbitration Act for termination of mandate of the arbitrator.

11. It would have been another thing, if time limit was fixed for culmination of the arbitration proceedings. No personal bias is alleged against any of the arbitrators nor in an application before the District Judge, filed under section 14 of the Arbitration Act, any allegations were leveled against any of the arbitrators. It is not the case that the arbitrator was unduly adjourning the matter. No such case is put-forth by any of the parties. On 6th and 7th of April, 2015, the Arbitral Tribunal has heard the argument on an application under section 16 filed by the present applicants and on application under section 31(6) filed by the claimants and decided to give the

decision on both the applications later, perhaps to deliberate amongst themselves, with regard to the contents of the applications and upon the submissions and the arguments. The said application was decided on 14.06.2015.

12. As far as the arbitrability of the proceedings is concerned, the same would be within the ambit of section 16 of the Arbitration Act and the decision on the said application can be challenged while challenging the final award under Section 34 of the Arbitration Act. As such in the present proceedings arbitrability need not be gone into.

13. In the light of above, I do not find any ground being made out to terminate the mandate of the Arbitral Tribunal.

14. In the case of **V.K. Dewan & Co**, referred supra, there was apprehension of bias and reasonable apprehension as to the independence of the arbitrator was brought on record. In the application filed under section 14 of the Arbitration Act, the averments do

not even remotely suggest any apprehension of personal bias against any arbitrator.

15. As regards Civil Revision Application No. 133/2015, the Arbitral Tribunal has passed order on 21.04.2015 after hearing the arguments on application under section 16 of the Arbitration Act on 14.04.2015. As such, it would be seen that the order has been immediately passed without any undue delay.

16. Considering the above, no case for interference is made out.

17. It is made clear that I have considered only objection which were raised in an application before the District Judge under section 14 of the Act.

18. In light of above, both the revision applications are dismissed. No costs.

(S. V. GANGAPURWALA, J.)

JPC