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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.584 OF 2016

M/s.Madhav Structural Engineers Limited)
Having office at 29/1, Juhu Supreme)
Shopping Centre, Gulmohar Cross Road)
No.9, J.V.P.D. Scheme, Mumbai – 49) ...Petitioner

....Versus....

1. The Vice Chairman And)
Managing Director,)
M/s.Maharashtra State Road)
Development Corporation,)
Napean Sea Road, Priyadarshini)
Park, Mumbai – 400 036.)
)
2. Dr.D.K. Sankaran)
The Sole Arbitrator,)
Retired Chief secretary)
(Government of Maharashtra))
Flat No.13, 3rd Floor,)
Fair Field Co-operative Housing)
Society, Plot No.112, Near)
K.C. College, Churchgate,)
Mumbai – 400 032.) ...Respondents

Mr.Anirudha Garge with Mr.Sandeep M. Phatak for the Petitioner.
Mr.Prashant Chavan i/b Ms.Reshmarani J. Nathani for the
Respondent No.1.

CORAM : R.D. DHANUKA, J.
DATE : 16TH JUNE, 2016.

ORAL JUDGMENT :-

1. By this petition filed under section 14 of the Arbitration &

Conciliation Act, 1996 (for short "Arbitration Act"), the petitioner has prayed for an order of termination of mandate of the learned arbitrator, the respondent no.2 herein on the grounds mentioned in the arbitration petition and seeks an appointment of any other suitable person as a sole arbitrator to decide the dispute between the petitioner and the respondent no.1. The learned arbitrator is absent, though served. Some of the relevant facts for the purpose of deciding this petition are as under :

2. The respondent no.1 had awarded a contract to the petitioner for implementation of Nagpur – Butibori – Wardha – Talegaon – Karanja – Malegaon – Mehkar – Shindkhed Raja – Jalna – Aurangabad – Vaijapur – Sanwatsar – Puntamba Phata – Zagde Phata – Sinnar Ghoti N H Standard Road ; Section – Loni – Nagzari – Kherda – Karanja including Karanja Bye-pass road, Package – 6 on the the terms and conditions contained in the said contract dated 2nd March, 2001. On 18th October, 2002, the respondent no.1 terminated the said contract.

3. In the year 2007, the petitioner filed Arbitration Petition (100 of 2007) in this Court *inter-alia* praying for the appointment of a sole arbitrator under clause 67.3 of the contract agreement. On 8th July, 2010, the learned designate of the Chief Justice allowed the said application and directed the respondent no.1 to appoint an arbitrator in accordance with clause 67.3 within 28 days from the date of receipt of the certified copy of the said order. Being aggrieved by the said order dated 8th July, 2010, the respondent no.1 filed Special Leave Petition (C) No.31993 of 2010 in the Supreme Court. On 24th April, 2012, the Supreme Court dismissed the said special leave

petition filed by the respondent no.1 and directed the respondent no.1 to appoint an arbitrator within the period prescribed in the said order. The respondent no.1 thereafter appointed the respondent no.2 as a sole arbitrator on 16th May, 2012.

4. On 20th July, 2012, the learned arbitrator held the first meeting and issued various directions to the parties and fixed the next date of hearing as 15th November, 2012.

5. On 20th September, 2012, the petitioner made a proposal to the respondent no.1 to start conciliation process as per section 30 of the Arbitration Act. On 19th December, 2012, the petitioner made such proposal before the learned arbitrator and requested the learned arbitrator to invoke the provision of conciliation under the Arbitration Act and to act as a sole conciliator. The respondent no.1 agreed to the said request made by the petitioner before the learned arbitrator. The learned arbitrator accordingly kept the arbitral proceedings in abeyance and agreed to act as a sole conciliator as requested by the petitioner. The next date of meeting was fixed as 28th December, 2012.

6. On 4th January, 2013, the conciliation meeting took place. The learned conciliator framed the issues for conciliation. The next meeting was fixed as 28th January, 2013. The process of conciliation however, failed. On 24th September, 2013, the respondent no.1 addressed a letter to the respondent no.1 informing that despite all efforts made by the parties, the conciliation could not succeed and requested the respondent no.2 to proceed with arbitration. On 25th November, 2013, the next meeting came to be held. In the said

meeting the learned arbitrator recorded that conciliation proceedings were called off and the arbitral proceedings could start. The learned arbitrator recorded the need to speed up the proceedings. In the said meeting, the petitioner filed an affidavit to buttress its claim for damages arising out of the termination of the contract. The learned arbitrator also recorded the desire of the petitioner to lead oral evidence and to have inspection of documents. In the said meeting, the learned arbitrator found various discrepancies in the documents produced by the petitioner. The petitioner at that stage requested for time to clarify the issues. The next meeting was fixed for 4th January, 2014 by the learned arbitrator.

7. The next meeting was held by the learned arbitrator on 25th August, 2014. The petitioner argued its case. The matter was adjourned to 10th September, 2014 to enable the respondent no.1 to file their written arguments. The respondent no.1 made a statement that they would not cross-examine the petitioner.

8. The next meeting was held by the learned arbitrator on 10th September, 2014. The petitioner made a statement that it would not lead oral evidence and would file the documents and files. The respondent no.1 made a statement that if any oral evidence was led by the petitioner, the respondent no.1 reserved its right to cross-examine the witness, if any. The learned arbitrator adjourned the arbitral meeting to 13th October, 2014. The respondent no.1 filed an application on 25th September, 2014 requesting for holding the next meeting after November, 2015 as the said date was in proximity of the election dates and the officers of the respondent no.1 would not be available due to election duties.

9. It the case of the respondents that since the petitioner did not take any steps to proceed with the arbitration and did not file any affidavit in lieu of examination-in-chief though time was taken on that ground, the respondent no.1 made an application on 5th February 2015 before the learned arbitrator requesting to fix next date of hearing. Learned arbitrator accordingly fixed the next meeting on 26th March 2016. On 2nd March 2016, the petitioner lodged this petition. The petitioner forwarded a notice dated 23rd March 2016 to the respondent no.1 that the above matter would come up for admission on 28th March 2016. On 28th March 2016, the petitioner or its authorised representative remained absent. The respondent no.1 attended the arbitration meeting through its Techno Legal Consultants. Learned arbitrator did not agree with the request made by the petitioner made through a letter. The learned arbitrator in the minutes of the said meeting recorded that the matter was very old and since all the procedures had been completed and the arguments have been heard, it was decided to proceed with the meeting. The learned arbitrator directed that it was proper to close the matter for declaration of award on 26th April 2016. The respondent no.1 has opposed this arbitration petition by filing an affidavit-in-reply. The petitioner has filed rejoinder.

10. Mr.Garge, learned counsel for the petitioner invited my attention to various correspondence referred to aforesaid and would submit that there was gross delay in appointment of an arbitrator by the respondent no.1. Though the petitioner had applied for appointment of an arbitrator in the year 2002, the respondent no.1 did not appoint any arbitrator. He submits that the petitioner

was thus required to file an arbitration application under Section 11 (6) of the Arbitration Act *inter-alia* praying for an appointment of a sole arbitrator as per clause 67 (3) of the Arbitration Act. He submits that the learned designate of the Chief Justice by an order dated 8th July 2010 directed the respondent no.1 to appoint a sole arbitrator in accordance with clause 67 (3) within 28 days from the date of receipt of the certified copy of the said order. Instead of appointing an arbitrator, the respondent no.1 filed Special Leave Petition impugning the said order in the Supreme Court. He submits that on 24th April 2012, Supreme Court dismissed the said special leave petition and directed the respondent no.1 to appoint a sole arbitrator. The respondent no.1 appointed a sole arbitrator only on 16th May 2012 after the said order dated 24th April 2012 was passed by the Supreme Court.

11. It is submitted by the learned counsel for the petitioner that though the first meeting was held on 20th July 2012, till February 2016 learned arbitrator did not do much progress in the matter and committed undue delay in proceeding without any reasons attributable to the petitioner. He submits that since the learned arbitrator has failed to act without undue delay, the petitioner is entitled to apply for termination of the mandate of the learned arbitrator and for substitution of the said arbitrator by another arbitrator. He submits that the since learned arbitrator appointed by the respondent no.1 was unable to perform the task assigned to him, if this Court terminates his mandate, this Court has ample power to appoint an independent arbitrator by over riding procedure prescribed in the contract agreement entered into between the parties. In support of this submission, learned counsel

placed reliance on the judgment of the Supreme Court in the case of **Union of India & Ors. Vs. Uttar Pradesh State Bridge Corporation Limited, (2015) 2 SCC 52** and in particular paragraphs 14 to 20 thereof.

12. The next submission of the learned counsel for the petitioner is that the petitioner has obtained a copy of the report from the website of the State Government submitted by the Commission of Enquiry headed by Shri Justice J.A. Patil, former Judge of this Court, State of Maharashtra thereby conducting an enquiry into the alleged participation of various persons in allotting the flats in Adarsh Cooperative Society Ltd. Colaba, Mumbai and other connected issues and disputes. He submits that the petitioner has also got copy of the said report when he has visited the session in Assembly. It is submitted that in the said report, it has been observed that the respondent no.2 has violated the provisions of the All India Civil Service Conduct Rules and his son had been allotted one flat in Adarsh Society. He submits that since the learned arbitrator has been indicted about his conduct in the said report, he cannot be allowed to act as an arbitrator, he having become *de-jure* or *de-facto* unable to perform his function as an arbitrator.

13. Learned counsel also placed reliance on proviso (a) to Section 10 (1)(b) of the Consumer Protection Act, 1986 and would submit that the on conviction, a person shall be disqualified as a member of the tribunal. He submits that in so far as the appointment or continuance of an arbitrator is concerned, for becoming *de-jure* or *de-facto*, conviction is not required. Since he is already indicted in

Commission of Enquiry headed by retired Judge of this Court, he is not expected in law to act as an arbitrator. He submits that the learned arbitrator has not even chosen to remain present or file affidavit-in-reply to controvert the allegations made against him by the petitioner in this petition. He submits that in view of the misconduct of the learned arbitrator in proceeding with the arbitration proceedings and threatening to make an award also would be a ground for termination of the mandate of the learned arbitrator by this Court under Section 14 of the Arbitration Act.

14. Mr.Chavan, learned counsel for the respondent no.1, on the other hand, invited my attention to the correspondence annexed to the arbitration petition and also to the affidavit-in-reply filed by the respondent no.1 and would submit that the application filed by the petitioner under Section 11 (6) of the Arbitration Act was opposed by the respondent no.1 on various grounds. Since the respondent no.1 was aggrieved by the order passed by the learned designate of this Court on 8th July 2010, the respondent no.1 was advised to file special leave petition for impugning the said order. He submits that immediately after dismissal of the said special leave petition, the respondent no.1 nominated the respondent no.2 as a sole arbitrator for deciding the dispute between the parties on 16th May 2012.

15. It is submitted that a preliminary meeting was held by the learned arbitrator on 20th July 2012 for giving various directions to the parties. The petitioner had agreed to submit its statement of claim on or before 3rd September 2012. The petitioner, however, failed to submit its statement of claim within the time prescribed

and applied for extension of time. The petitioner ultimately filed statement of claim on 17th October 2012 which was an incomplete copy and had further requested for some more time. Thereafter, the respondent no.1 filed its statement of defence on 26th November 2012.

16. It is submitted by the learned counsel that the petitioner, thereafter, made an application before the learned arbitrator on 20th September 2012 informing that in a meeting held between the parties, both the parties had agreed to expedite the process of arbitration through 'Amicable Settlement.' By the said application, the petitioner requested the learned arbitrator to give consent to proceed with the settlement within the framework of the Arbitration Act. The petitioner requested the learned arbitrator to act as a Conciliator under Section 30 of the Arbitration Act read with Section 61 and to pass an award on the basis of the agreement / consent / amicable settlement of both the parties within a shorter period. The petitioner requested the learned arbitrator to accept the said process and agreed to give joint undertakings as per Section 81 recording that if those conciliation proceedings were not successful, the arbitration proceedings would be continued under the Chairmanship of the learned arbitrator. The petitioner requested the learned arbitrator to decide the date of next meeting as a conciliator for amicable settlement. The petitioner informed the learned arbitrator that the respondent no.1 would also issue its consent letter.

17. It is submitted by the learned counsel for the respondent no.1 that the respondent no.1 accepted the said request of the

petitioner and conveyed its consent by its letter dated 31st October 2012 and requested the learned arbitrator to invoke conciliation within arbitration under the said Arbitration Act. He submits that the learned arbitrator, thereafter, proceeded with the conciliation proceedings and kept arbitration proceedings in abeyance. The learned conciliator directed both the parties to submit their statements as per Section 65 of the Arbitration Act. The petitioner submitted the documents. The next meeting of the conciliation was kept by the learned conciliator on 29th December 2012. In the meeting held on 4th January 2013, the learned conciliator framed various issues for conciliation and adjourned the meeting to 28th January 2013.

18. Learned counsel invited my attention to the letter dated 24th September 2013 addressed by the respondent no.1 to the learned conciliator that despite all efforts made by the parties, the conciliation could not succeed. The petitioner also confirmed the failure of the said conciliation proceedings and requested the learned conciliator to proceed with the arbitration. He submits that the learned arbitrator, thereafter, proceeded with the arbitration proceedings. The petitioner made its arguments before the learned arbitrator in the meeting held on 25th August 2014.

19. The learned arbitrator adjourned the meeting to 10th September 2014 to enable the respondent no.1 to file its written arguments. He submits that however in the meeting held on 10th September 2014, the petitioner informed the learned arbitrator that it would lead oral evidence and would file documents and files. He submits that since the petitioner desired to lead oral evidence and to file documents and files, the respondent no.1 also reserved its

right to cross examine the witness of the petitioner. Meeting was accordingly adjourned to 13th October 2014. It is submitted by the learned counsel for the respondent no.1 that though the petitioner, in the meeting held on 10th September 2014, informed the learned arbitrator that it would lead oral evidence and to file documents and files, the petitioner did not file affidavit in lieu of examination-in-chief or documents.

20. The respondent no.1, thereafter, applied before the learned arbitrator vide its application dated 5th February 2015 to fix the next date of hearing. He submits that in the meeting held on 25th August 2014, the learned arbitrator had rightly recorded that the said meeting was held after a prolonged delay due to the long illness of Shri Chavan, representing the petitioner-company. The learned arbitrator had stressed the need to reach a conclusion in the matter under dispute and requested both the parties to make their presentations. He submits that the petitioner was responsible for gross delay and not the respondent no.1 or the learned arbitrator as canvassed by the petitioner. It is submitted that instead of filing affidavit in lieu of examination-in-chief or any further documents as prayed before the learned arbitrator, the petitioner filed this petition in this Court and did not press for early hearing of the petition and served the petition upon the respondents few days before hearing. He submits that this arbitration petition under Section 14 alleging undue delay on the part of the learned arbitrator is thus not maintainable.

21. In so far as the submission of the learned counsel for the petitioner that in view of alleged indictment of the learned arbitrator

in the Commission of Enquiry report proceeded by Shri Justice J.A. Patil, former Judge of this Court is concerned, learned counsel for the respondent no.1 invited my attention to some of the averments made in the arbitration petition and in particular paragraphs 43 to 47. He submits that in the grounds raised in the petition, the petitioner has contended that the indictment of the learned arbitrator gave rise to justifiable doubts as to his independence or impartiality in the arbitration proceedings and therefore it was necessary to terminate the mandate of the learned arbitrator.

22. Learned counsel placed reliance on Section 12 (3) (a) of the Arbitration Act. He submits that since the petitioner had invoked Section 12 (3) (a) of the Arbitration Act, the petitioner ought to have adopted the challenge procedure prescribed under Section 13 of the Arbitration Act within the time prescribed therein. The arbitration petition invoking Section 14 of the Arbitration Act is thus not maintainable on this ground. He submits that the petitioner admittedly did not file any such objection challenging the arbitration within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any alleged circumstances referred to in Sub-section (3) of Section 12 of the Arbitration Act. The petitioner cannot file the petition under Section 14 on that ground.

23. It is submitted that even if the petitioner could have challenged the learned arbitrator under Section 13 read with Section 12(3)(a), the petitioner has not disclosed in the arbitration petition as to when the petitioner came to know about the report submitted by the Commission of Enquiry headed by Shri Justice J.A.

Patil, former Judge of this Court allegedly indicting the learned arbitrator in the said report. Learned counsel for the respondent no.1 placed reliance on the judgment of the Delhi High Court in the case of **Delhi State Industrial & Infrastructure Development Cop. Ltd. Vs. Integrated Techno System Pvt. Ltd. & Anr., (2009) 2 Arb.L.R. 493** and in particular paragraphs 7 to 10 thereof. He submits that if according to the petitioner, the learned arbitrator had acted bias or has not conducted arbitration proceedings properly, the remedy of the petitioner, if any, would be not under Section 14 of the Arbitration Act but would be to challenge the arbitral award if it is aggrieved by the same as and when the same is delivered by the learned arbitrator.

24. Learned counsel for the petitioner in rejoinder submits that there was gross delay on the part of the respondent no.1 in appointing the learned arbitrator at the first instance. He submits that thereafter gross delay was committed by the learned arbitrator in commencing and concluding the arbitration proceedings. He submits that the petitioner is thus entitled to file this arbitration petition under Section 14 for appropriate reliefs.

REASONS AND CONCLUSIONS :-

25. I shall first decide the issue raised by the petitioner whether the learned arbitrator had failed to act as an arbitrator without undue delay as canvassed by the petitioner. A perusal of the record indicates that the petitioner filed an arbitration application under Section 11(6) of the Arbitration Act in the year 2007. The said arbitration application, however, opposed by the respondent no.1 on various grounds. The arbitration application was allowed by the learned designate of the Chief Justice by an order dated 8th July

2010. The said order was impugned by the respondent no.1 before the Hon'ble Supreme Court. The Hon'ble Supreme Court dismissed the said special leave petition by an order dated 24th April 2012. The respondent no.1, thereafter, appointed the respondent no.2 as a sole arbitrator by its letter dated 16th May 2012. In my view, Section 14 of the Arbitration Act cannot be invoked for alleged delay in appointment of an arbitrator by the opponent. There is thus no merit in the submission of the learned counsel for the petitioner that the mandate of the learned arbitrator shall be terminated on the ground of alleged delay on the part of the respondent no.1 in appointing the learned arbitrator.

26. A perusal of the record indicates that the learned arbitrator fixed the preliminary meeting on 20th July 2012 and issued various directions to both the parties and fixed the next date of meeting as 15th November 2012. However before the next meeting could be held by the learned arbitrator, the petitioner made a proposal to the respondent no.1 to start conciliation proceedings as per Section 30 of the Arbitration Act. The said proposal was also conveyed to the learned arbitrator to act as a conciliator as per Section 62(1) of the Arbitration Act and to keep the arbitration proceedings in abeyance. The respondent no.1 also accepted the request of the petitioner and gave its consent to the learned arbitrator to act as a conciliator. The arbitral proceedings were thus kept in abeyance at the request of the petitioner by the learned arbitrator.

27. A perusal of the record further indicates that the learned arbitrator who acted as a conciliator held conciliation meetings. Various issues were framed by the learned conciliator. Since the

parties could not arrive at any amicable settlement in the said conciliation proceedings, the said conciliation proceedings failed. The petitioner filed the statement of claim belatedly after obtaining extension from the learned arbitrator. The respondent no.1 filed its statement of defence. A perusal of the record and more particularly the minutes of meeting dated 25th August 2014 indicates that the said meeting was held after a prolonged delay due to the long illness of Shri Chavan, representing the petitioner-company. In the minutes of the said meeting, learned arbitrator recorded these facts which are not disputed by the petitioner. In the minutes of the said meeting, the learned arbitrator requested both the parties to make their presentations.

28. In the said meeting held on 25th August, 2014, the petitioner made its arguments before the learned arbitrator. The learned arbitrator adjourned the arbitral meeting to 10th September 2014 and recorded that the respondent no.1 would file its written arguments and would not cross examine the petitioner.

29. A perusal of the minutes of meeting dated 10th September 2014 indicates that the learned arbitrator had noted that the arbitration proceedings had been lingering on and emphasized the need to expedite it. In the said meeting, the representative of the petitioner made a statement that he would lead oral evidence and would file documents and files though the petitioner had already argued its case on 25th August 2014. The respondent no.1 accordingly reserved the right to cross examine the witness, if any. Learned arbitrator adjourned the meeting to 13th October 2014.

30. It is an admitted position that the petitioner did not file any affidavit in lieu of examination-in-chief or further documents though an opportunity was rendered by the learned arbitrator. The respondent no.1 therefore made an application dated 5th February 2015 before the learned arbitrator recording various facts and requested to fix next date of hearing so as to decide the matter in dispute. The learned arbitrator accordingly fixed the next meeting on 28th March 2016. The learned arbitrator however received a legal notice requesting not to hold any meeting on 28th March 2016 since the petitioner had proposed to file a petition in this Court for various reliefs. None appeared for the petitioner in the meeting held on 28th March 2016. The petitioner forwarded a notice dated 23rd March 2016 to the respondent no.1 informing that this matter would come up for admission on 28th March 2016. The petitioner did not appear before the learned arbitrator on 28th March 2016. The learned arbitrator did not agree for any adjournment on the ground that the matter was very old, the conciliation proceedings did not fructify, all the procedures had been completed and the arguments have been heard. The learned arbitrator therefore closed the proceedings for declaration of award and declared the date for declaration of award.

31. A perusal of the record thus indicates that after appointment of the learned arbitrator by the respondent no.1, there was delay on the part of the petitioner in filing statement of claim. The petitioner thereafter made a request to the respondent no.1 to commence conciliation proceedings under the provisions of the Arbitration Act and made a request to the learned arbitrator to act as a conciliator. The respondent no.1 accepted the said request of

the petitioner and gave its consent in the learned arbitrator acting as a conciliator under the provisions of the Arbitration Act. Learned arbitrator kept the arbitral proceedings in abeyance and held various conciliation meetings. Learned arbitrator who acted as a conciliator also had framed various issues. Since the said conciliation proceedings did not result in settlement of dispute, the respondent no.1 placed these facts vide its letter dated 24th September 2013 and requested the learned arbitrator to proceed with the arbitration. Neither the respondent no.1 nor the learned arbitrator was thus responsible for holding the said conciliation proceedings which were held at the request of the petitioner. The alleged delay in conducting the arbitral proceedings due to such conciliation proceedings could not thus be attributed to the respondent no.1 or to the learned arbitrator.

32. A perusal of the record further indicates that since Shri Chavan, representative of the petitioner was unwell, the petitioner had sought some time. At the request of the petitioner, the arbitration meeting thus could not be held by the learned arbitrator for quite some time. The learned arbitrator has recorded these facts in the minutes of meeting held on 25th August 2014 which facts are not disputed by the petitioner. The petitioner argued his case on 25th August 2014. It was for the respondent to file written arguments on or before 10th September 2014. The petitioner, however, made a request to the learned arbitrator for an opportunity to lead oral evidence and to file documents though the petitioner had already made its submission in the earlier meeting on 25th August 2014.

33. Though the learned arbitrator rendered an opportunity to

lead oral evidence and to file documents admittedly the petitioner did not file any affidavit in lieu of examination-in-chief and also the documents. The respondent no.1 thus made a request to the learned arbitrator to proceed with the arbitral proceedings which were lingering for quite some time which was attributable to the petitioner. The petitioner was admittedly absent in the meeting held by the learned arbitrator on 28th March 2016.

34. On 30th March 2016, the learned counsel appearing for the respondent no.1 made a statement before this Court that the learned arbitrator had adjourned the meeting by four weeks. By an order dated 21st April 2016, this Court directed the office to issue notice before admission upon the learned arbitrator, returnable on 16th June 2016 and in the meanwhile directed the learned arbitrator not to proceed with the arbitral proceedings till next date. It is thus clear that the petitioner who had taken time to file affidavit in lieu of examination-in-chief and documents, did not file either affidavit in lieu of examination-in-chief or documents. The respondent no.1 or the learned arbitrator were thus not responsible for default committed by the petitioner. In my view, there is thus no substance of any nature whatsoever in the submission of the learned counsel for the petitioner that the learned arbitrator failed to act without undue delay. There was gross delay on the part of the petitioner in proceeding with the arbitral proceedings.

35. In so far as the alleged delay canvassed by the petitioner on the part of the respondent no.1 in appointing the learned arbitrator till May 2012 is concerned, admittedly the proceeding filed by the petitioner for appointment of the arbitrator was pending

in this Court. After disposal of the said proceedings, the respondent no.1 impugned the order passed by the learned designate of the Chief Justice of this Court in the Supreme Court of India. Immediately after dismissal of the special leave petition filed by the respondent no.1, the respondent no.1 appointed the respondent no.2 as a sole arbitrator. Be that as it may, the alleged delay prior to the date of the appointment of the learned arbitrator cannot be a ground of termination of mandate of the learned arbitrator under Section 14(1)(a) of the Arbitration Act. I am thus not inclined to terminate the mandate of the learned arbitrator on the ground of alleged delay in appointment of the learned arbitrator on the part of the respondent. The petitioner having participated in the arbitration proceedings unconditionally and argued its case, the petitioner cannot be allowed to raise issue of any alleged delay prior to the date of such arguments advanced by the petitioner.

36. I shall now decide as to whether the petitioner can apply for termination of mandate of the learned arbitrator on the ground that he was alleged to have been indicted about his conduct in the Commission of Enquiry report headed by Shri Justice J.A. Patil, former Judge of this Court and even if indicted could be a ground for termination of this mandate under Section 14(1)(a) or on the ground that the learned arbitrator had become *de-jure* or *de-facto*. I shall also decide as to whether the petitioner has made out a case for such reliefs.

37. A perusal of the averments made and the grounds raised in the arbitration petition filed by the petitioner on this issue clearly indicates that relying upon the report submitted by the Commission

of Enquiry headed by Shri Justice J.A. Patil, former Judge of this Court, it is urged by the petitioner that the the indictment of the learned arbitrator in the said report gave rise to justifiable doubts as to his independence or impartiality as contemplated under Section 12(3)(a) of the Arbitration Act. It is alleged that in the said report, it was observed that the respondent no.2 had violated the provisions of the All India Civil Service Conduct Rules and his son had been allotted one flat in Adarsh Society.

38. A conjoint reading of Section 12(3)(a) of the Arbitration Act and Section 13(2) clearly indicates that an arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his independence or impartiality. A party may challenge an arbitrator within 15 days after becoming aware of the constitution of arbitral tribunal or after becoming aware of any circumstances referred to in Sub-section (3) of Section 12 and shall send a written statement of the reasons for the challenge to the arbitral tribunal.

39. Section 13(3) of the Arbitration Act provides that the arbitral tribunal shall decide on the challenge unless he withdraws from his office. If the challenge procedure is not successful, the arbitral tribunal shall continue the arbitral proceedings and shall make an arbitral award. If the arbitral award is made under Section 13(4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with Section 34. If such arbitral award is set aside on an application made under Sub-section (5) of Section 13, the Court may decide as to whether the arbitrator who is challenged is entitled to any fees.

40. It is an admitted position that the petitioner has applied for termination of mandate of the learned arbitrator also on the ground that the circumstances gave rise to justifiable doubts as to independence or impartiality of the learned arbitrator. Such ground is raised based on the report of Commission of Enquiry alleged to have been received by the petitioner from the website of the State Government and also when the petitioner had alleged to have been visited the session in Assembly.

41. A perusal of the petition clearly indicates that the petitioner has not averred or disclosed as to when the petitioner came to know about such report submitted by the Commission of Enquiry headed by Shri Justice J.A. Patil, former Judge of this Court. Admittedly the said report was submitted long back by the said Commission of Enquiry. It is an admitted position that the petitioner did not challenge the learned arbitrator under the challenge procedure prescribed under Section 13(2) within the mandatory period of 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in Sub-section (3) of Section 12. In my view, since the arbitration petition is totally vague and without particulars as to the knowledge of the petitioner about any circumstances referred to in Sub-section (3) of Section 12 of the Arbitration Act and in any event, the petitioner not having filed any application challenging the learned arbitrator based on the circumstances referred to in Sub-section (3) of Section 12 within a period of 15 days from the date of alleged knowledge of the petitioner or otherwise, the petitioner cannot be allowed to raise this issue for the first time in this petition.

42. A plain reading of Section 14 of the Arbitration Act makes it clear that the mandate of an arbitrator cannot be terminated on the ground that the circumstances existed which gave rise to justifiable doubts as to independence or impartiality of an arbitrator prescribed under Section 12(3) (a). In my view, even if any circumstance existed that gave rise to justifiable doubts as to independence or impartiality of the learned arbitrator, an arbitrator could be challenged only under the mandatory procedure prescribed under Section 13(2) within the mandatory period. In my view, a party who had failed to follow this procedure within the time prescribed, cannot apply for termination of mandate of the learned arbitrator by invoking Section 14 which does not provide for termination of mandate on the ground of Section 12(3)(a) of the Arbitration Act.

43. In my view, even if any observations are rendered in the report by the Commission of Enquiry about the conduct of the learned arbitrator, the petitioner could not apply for termination of mandate of the learned arbitrator on that ground. This Court cannot terminate the mandate of an arbitrator merely on the basis of any alleged observations made against the learned arbitrator in the Commission of Enquiry report. Though the petitioner has referred to Section 14 of the Arbitration Act in the first paragraph of the arbitration petition, a perusal of the grounds raised by the petitioner that the circumstances gave rise to justifiable doubts as to independence or impartiality of the learned arbitrator existed, would not fall under Section 14 of the Arbitration Act and thus the said provision could not be invoked by the petitioner for termination of mandate of the learned arbitrator on that ground.

44. In so far as the judgment of the Supreme Court in the case of **Union of India & Ors. Vs. Uttar Pradesh State Bridge Corporation Limited** (supra) relied upon by the learned counsel for the petitioner is concerned, since this Court is not inclined to terminate the mandate of the learned arbitrator, the question of appointment of any other arbitrator in place of the learned arbitrator does not arise. The said judgment of the Supreme Court thus relied upon by the learned counsel for the petitioner does not assist the case of the petitioner.

45. In so far as the judgment of the Delhi High Court in the case of **Delhi State Industrial & Infrastructure Development Cop. Ltd. Vs. Integrated Techno System Pvt. Ltd. & Anr.** (supra) relied upon by the learned counsel for the respondent no.1 is concerned, the Delhi High Court has held that under the provisions of Sections 14 and 15 of the Arbitration Act, the mandate of an arbitrator cannot be terminated on the ground that he was acting in a biased manner or he was conducting proceedings in an improper manner or that he was not following the judicial discipline or he was acting arbitrarily which grounds may be good grounds for challenging an award but cannot be the grounds for interfering during the arbitral proceedings by the Court. In my view, refusal on the part of the learned arbitrator to grant adjournment to the petitioner on the ground that the petitioner had filed this petition under Section 14 of the Arbitration Act for termination of mandate of the learned arbitrator cannot be a ground for termination of his mandate under Section 14 of the Arbitration Act. In my view, if the learned arbitrator renders any award by which the petitioner is

aggrieved, the petitioner can raise such a ground in the arbitration petition which may be filed under Section 34 of the Arbitration Act. I am in agreement with the views expressed by the Delhi High Court in the case of **Delhi State Industrial & Infrastructure Development Cop. Ltd. Vs. Integrated Techno System Pvt. Ltd. & Anr.** (supra). The petition is devoid of merits and is accordingly dismissed. No order as to costs.

46. At this stage, learned counsel for the petitioner seeks continuation of the ad-interim order passed by this Court. The learned arbitrator shall not publish his award for a period of six weeks from today.

(R.D. DHANUKA, J.)