

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

ARBITRATION APPLICATION No.105 OF 2016

ORDER:

This application is filed under Section 11(5) of the Arbitration & Conciliation Act, 1996 to appoint one of the retired judges of this Court, named in the application, as an arbitrator for the purposes of adjudicating disputes arising from the agreement dated 04.02.2010.

It is evident from the affidavit, filed in support of the application, that the General Manager, South Central Railway constituted an Arbitral Tribunal vide proceedings dated 19.05.2015 with Sri T.P.R. Narayana Rao as the Presiding Arbitrator and Sri A. Gopinath & Sri V.K. Agarwal as joint arbitrators to adjudicate the claims/disputes arising out of the subject agreement. Subsequently Sri V.K. Agarwal is said to have been transferred and, in his place, another arbitrator was appointed to be a part of the three member panel of arbitrators.

The present application is filed alleging bias against the Arbitral Tribunal, and for appointment of another arbitrator in their place. As held by the Division bench of this Court in **Gurcharan Singh Sahney v. Harpreet Singh Chhabra**¹, allegations of bias, or circumstances which give rise to justifiable doubts as to the independence or impartiality of the arbitrator, falls within the ambit of Section 12(3)(a) of the Act; and, consequently, it is only after an award is passed can the arbitrator be challenged along with an application under Section 34 of the 1996 Act.

¹ 2016(4) ALD 141

As Section 13(2) of the Arbitration Act enables a challenge to be made to the arbitrator, Sri G. Kalyan Chakravarthy, Learned Counsel for the petitioner, submits that the petitioner would avail the remedy under Section 13(2) of the 1996 Act. While Sri C.V. Rajiv Reddy, Learned Counsel for the respondent, would submit that such a remedy is not available, these are matters extraneous to this application. Suffice it if, while granting liberty to the applicant to avail such remedies as are available to him in law, the application is dismissed as not maintainable. The application is dismissed accordingly. No costs.

Date: 11.11.2016

MRKR

RAMESH RANGANATHAN, ACJ

