

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1635/2016 & C.M.No.7074/2016**

**NTPC LIMITED KAHALGAON SUPER THERMAL POWER
STATION**

..... Petitioner

Through **Mr.Vikas Singh, Sr.Advocate with
Mr.S.K.Dhingra, Advocates.**

versus

**HINDUSTAN STEEL WORKS CORPORATION LIMITED AND
ANR**

..... Respondents

Through **None**

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Date of Decision: 29th February, 2016

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN**

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed seeking to restrain the respondent No.2 from passing any order with respect to the review petition filed by respondent No.1.

2. Learned senior counsel for the petitioner states that petitioner and respondent No.1 had entered into a contract for work of SG Area, Civil Work Package, Unit 5 & 6 Stage-II, Phase-I (2X500 MW) and Main Plant Civil Work Package Unit-7, Stage-II, Phase-II, (1X500 MW) respectively. He states that disputes arose between the parties and a reference was made to an Arbitrator under the Permanent Machinery of Arbitration (PMA) Scheme in accordance with OM

dated 12th June, 2013.

3. In the present case, the Arbitrator passed an award in favour of respondent No.1. The said award was challenged by the petitioner herein before the appellate authority Dr. S.S. Chahar. The said appeal was partly allowed in favour of the petitioner vide order dated 11th February, 2015.

4. It is stated that on 30th November, 2015, petitioner herein received a communication from one Mr. Dinesh Bhardwaj, who according to the petitioner had no connection whatsoever with the present case, inviting the petitioner to make its submissions with regard to the maintainability of the review petition filed by respondent No.1 against the order of the Appellate Authority dated 11th February, 2015.

5. It is contended that Mr. Dinesh Bhardwaj was informed that there is no provision for review under the PMA Scheme, and even if there is, he does not have the authority or jurisdiction to hear the review petition preferred by respondent No.1 as the appeal was not decided by him.

6. However, learned senior counsel for the petitioner states that Mr. Dinesh Bhardwaj held the review petition to be maintainable and has now decided to proceed ahead with the review petition on merits. He emphatically submits that Mr. Dinesh Bhardwaj has no jurisdiction to proceed ahead with the review petition.

7. A Coordinate Bench of this Court in ***Kandla Port Trust vs. PEC Limited, W.P.(C) 7887/2011, 7898/2011*** as well as a Division Bench of this Court in ***Ircon International Ltd. vs. National Building***

Construction Corporation Limited, 155 (2008) DLT 226 (DB) have held that the permanent machinery for arbitration is essentially an arbitration and insofar as it excludes the Arbitration and Conciliation Act, it is void. It was further held that the judicial review is available on the limited grounds as provided under the Arbitration and Conciliation Act, 1996.

8. A Constitution Bench of the Supreme Court in ***SBP & Co. VS. Patel Engineering Ltd. and Another, (2005) 8 SCC 618*** has disapproved the approach of some of the High Courts that any order passed by an arbitral tribunal is capable of being corrected under Article 226 or 227 of the Constitution. The relevant portion ***SBP & Co. VS. Patel Engineering Ltd. and Another*** (supra) is reproduced hereinbelow:-

“45. It is seen that some High Courts have proceeded on the basis that any order passed by an Arbitral Tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution. We see no warrant for such an approach. Section 37 makes certain orders of the Arbitral Tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating its grievances against the award including any in-between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act. The party aggrieved by any order of the Arbitral Tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The Arbitral Tribunal is, after all, a creature of a contract between the parties, the arbitration agreement, even though, if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the Arbitral Tribunal. It will still be a forum chosen by the parties by agreement. We, therefore,

disapprove of the stand adopted by some of the High Courts that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution. Such an intervention by the High Courts is not permissible.

46. The object of minimising judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution against every order made by the Arbitral Tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage.

(emphasis supplied)

9. At this stage, learned senior counsel for the petitioner states that the Supreme Court in the said judgment has only dealt with the cases during the pendency of the arbitration, whereas, in the present case, the award has already been passed. However, the fact of the matter is that it is the case of the alleged Arbitrator that he is exercising his powers in accordance with para X of the PMA. The relevant portion of said para is reproduced hereinbelow:-

“The Appellate Authority will have the power to revise his/her own decision for rectification of any error or for editorial corrections etc.”

10. In the opinion of this Court, the Arbitration and Conciliation Act, 1996 deals not only with pendency of arbitration proceedings but also with pre and post arbitration awards. This Court is also of the view that the petitioner would have sufficient opportunity to challenge

whatever decision is taken by Mr. Dinesh Bhardwaj, in accordance with the Arbitration and Conciliation Act, 1996. Further, the fact that PMA is an Alternative Dispute Resolution cannot be lost sight of. Consequently, the writ petition and the application are dismissed.

MANMOHAN, J

FEBRUARY 29, 2016
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