

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

% **Order delivered on: 2nd June, 2016**

+ **O.M.P. (T) No.43/2015**

B.S. SANGWAN Petitioner
Through Mr.S.W. Haider, Adv.

versus

UNION OF INDIA Respondent
Through Mr.Jagjit Singh, Adv. with Mr.Preet Singh, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The petitioner in the above said matter has filed the petition under Section 14 & 15 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act") seeking termination of the mandate of the existing Arbitrators and appointment of an independent Arbitrator in their place.

2. Brief facts as per the petition are that the work pertaining to complete track renewal of 13.14 kms on 90R/90Lbs. Rail laid on CST-9/ST sleepers with 52 Kg., 72UTS (SH) rails on PSC/ST/CST-9 sleepers to required density with deep screening from Km. 0.00 to 13.14 on PHR-LNK section under PWI/NRO was awarded to the petitioner vide Agreement No.272-W/FZR-II dated 25th September, 2001 for Rs.50,04,511/- and the stipulated date of completion of work was 6 months from the date of issuance of acceptance letter on 13th August, 2001 i.e., the work awarded was to expire on 12th February, 2002. The respondent despite successful completion of the contractual work in

the month of March, 2005, did not release the final bill, which ought to have been paid within a period of three months from the date of completion as per the terms governing the contract. Consequently, the petitioner vide his letter dated 17th January, 2007 invoked the arbitration clause as contained under clause 64 of the General Conditions of the Contract as applicable to the parties hereto, calling upon the respondent to constitute the Arbitral Tribunal for adjudication of the claims of the petitioner.

3. The petition filed by the petitioner seeking appointment of the Arbitrator was disposed of by order dated 25th January, 2008. On 25th November, 2008, the respondent finally constituted the panel of three Arbitrators, namely, Mr.Vinay Singh, CE/Const/NC, Kashmere Gate, Northern Railway, Delhi as Co-Arbitrator, Mr.R.K. Manocha, F&CAO/RCF, Rae Bareli Project, Kishan Ganj, Delhi as the other Co-arbitrator and Mr.V.K. Madhukar, Chief Engineer, Rail Coach Factory, Rae Bareli Project, Kishan Ganj, Delhi as the Presiding Arbitrator for adjudication of the disputes between the parties. The petitioner filed his claim petition on 19th January, 2009. Since nothing moved in the case, the petitioner having no option left wrote a letter dated 15th February, 2011 to the Arbitrators requesting to conclude the arbitration proceedings in the absence of any reply from the Department despite expiry of two years. Consequent thereto, the co-Arbitrators on 9th November, 2011 held a meeting and then a decision was taken by them to again send a copy of the statement of claim filed by the petitioner to the concerned Division of the department for their reply. The concerned Division of the respondent department in the month of December, 2011 filed their reply to the claim petition as well as their counter-claim. However, despite filing of the reply by the

Department, the arbitration proceedings never got started or conducted, despite expiry of such long period of time. Hence, the present petition has been filed by the petitioner.

4. Notice of this petition was issued to the petitioner. However, no reply has been filed by the respondent despite several opportunities granted to it in this regard. The Arbitral Tribunal was constituted by order dated 25th January, 2008. There is hardly any progress in the matter, except the claims were filed and reply thereto. Eight years have already been expired. Section 14 of the Act provides for the Arbitral Tribunal for his failure on the basis of which mandate stands terminated. In this case, it appears to the Court that there is undue delay in publication of Award. The Court, under such situation, has power to terminate the mandate. The present case is a fit case where the arbitration proceedings are liable to be terminated.

5. Under these circumstances, the prayer made in the petition for substituting and appointing an independent and neutral person as Arbitrator is allowed. The mandate of the earlier Arbitral Tribunal is terminated. Accordingly, Justice Mool Chand Garg (retired Judge of Madhya Pradesh High Court), C-113, East of Kailash, Ground Floor, Near Iskon Temple, New Delhi. (Mobile No.9899337979) is appointed as sole Arbitrator to adjudicate the disputes between the parties as mentioned in the present petition. The parties are also allowed to file their respective claims and counter-claims before the Arbitrator.

6. The Arbitrator shall ensure the compliance of the provisions of Arbitration and Conciliation (Amendment) Act, 2015 before commencing the arbitration. The fees of the learned Arbitrator shall be

in terms of the schedule of the amended Act. The parties to appear before the Arbitrator on 29th July, 2016 at 4:30 pm for directions.

7. The petition is accordingly disposed of.

8. Copy of this order be given *dasti* to the learned counsel for the parties and a copy thereof be delivered to the learned Arbitrator forthwith.

(MANMOHAN SINGH)
JUDGE

JUNE 02, 2016

