

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 02.02.2017****Judgment delivered on 16.05.2017****WPC No. 536 of 2014**

1. M/s. Sharda Engineering Contractors, HIG-10, Sardar Vallabh Bhai Patel Nagar, SADA Colony, P.O. Jamnipali, Korba, Through its authorized signatory namely Nani Gopal Sinha, S/o Late N. Sinha, aged about 71 years, R/o 30, New Colony, Nagpur 01, Police Station and Post New Colony, Nagpur, Civil & Revenue District Nagpur, Maharashtra

---- Petitioner**Versus**

1. South East Central Railway (Construction Branch), through: Chief Engineer (Construction), Bilaspur, Office of Principal Chief Engineer, Bilaspur, District Bilaspur (C.G.)
2. Chief Administrative Officer (Construction), South East Central Railway, Bilaspur, District Bilaspur (C.G.)
3. General Manager (Arbitration), South East Central Railway, Bilaspur, District Bilaspur (C.G.)

---- Respondents

For Petitioner	Shri Manoj Paranjpe, Advocate
For Respondent/SECR	Shri H. S. Ahluwalia, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**C A V Order**

1. In this petition under Article 226/227 of the Constitution of India the petitioner would assail the legality and validity of the orders dated 04.10.2013, 31.12.2013 and 19.09.2013 (Annexures P-1, P-2 & P-5 respectively) with further prayer to provide one opportunity to submit its claim before the

Arbitrator by reviving the Arbitral Tribunal or appointing a substitute Tribunal for continuing the arbitration proceedings and to adjudicate the dispute which will be raised by the petitioner.

2. Facts of the case, stated very briefly, are that in response to the Notice Inviting Tender (NIT) and on completion of the tender process, the offer of the petitioner was accepted for the work of construction of PSC Girder Bridge No.9 of Span 5x12.2 m Span on Khandari Nala at chainage 8018 m (Ex Kachhpura Ch 0.0 m) between Kachhpura and Gwarighat in connection with Gondia-Jabalpur Gauge Conversion Project for the value of Rs.2,04,96,392/-.
3. In course of execution of the awarded work, dispute arose between the parties, which was referred for adjudication in accordance with the arbitration clause of the contract. The General Manager of the respondent SECR appointed one Shri R.S. Poonia, CE (TS&HQ)/SECR/BSP as Arbitrator for adjudicating the claims and disputes. By Annexures -P-8 & P-9, the petitioner was informed about the date of hearing. On 16.07.2013, the petitioner was directed to submit the statement of claim on 20.08.2013 and on petitioner's failure to submit the statement of claim, the Arbitrator terminated the proceedings under Section 25 of the Act, 1996 on 19.09.2013 vide Annexure-P-5. Petitioner's application dated

25.09.2013 before the General Manager (Arbitration) to revive the earlier Arbitral Tribunal or appoint a fresh panel has been rejected by Annexure-P-1 dated 04.10.2013 and Annexure-P-2 dated 31.12.2013.

4. Placing reliance on **M/s Anuptech Equipments Private Ltd. v. M/s Ganpati Co-op. Housing society Ltd., Mumbai and Others¹, Atul R. Shah v. M/s V. Vrijlal Lalloobhai & Co. and another², M/s Senbo Engineering Ltd. v. State of Bihar and others³, Amar Tea Distributors v. Coca-Cola India Pvt. Ltd.⁴ and Mohan Singh and others v. International Airport Authority of India and others⁵**, it is argued that the Tribunal has committed serious error of law by terminating the proceedings and there being no remedy under the Act, 1996, the petitioner has preferred this writ petition for reviving the Arbitral Tribunal.
5. Per contra, learned counsel appearing for the respondent SECR would submit that the appropriate remedy for the petitioner lies in approaching the District Court. He would refer to the decisions rendered in **Juggilal Kamlapat v. General Fibre Dealers Ltd.⁶, Lalitkumar v. Sanghavi (dead) through LRs Neeta Lalit Kumar Sanghavi and Another v. Dharamdas V. Sanghavi and**

1 (1999) AIR Bom 219

2 (1999) AIR Bom 67

3 (2004) AIR Pat 33

4 2016 Law Suit (Bom) 1308

5 (1997) 9 SCC 132

6 AIR 1955 Calcutta 354

Others⁷ and SBP & Co. v. Patel Engineering Ltd. and Another⁸.

6. To appreciate the rival submissions, it would be necessary to refer to the provisions contained in Sections 25 and 32 of the Act, 1996 which are reproduced hereunder for ready reference:-

25. Default of a party.—Unless otherwise agreed by the parties, where, without showing sufficient cause,—

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited.

(c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

32. Termination of proceedings.—(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

7 (2014) 7 SCC 255

8 (2005) 8 SCC 618

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

7. In **M/s Anuptech Equipments Private Ltd.** (supra) relied in **M/s Senbo Engineering Ltd.** (supra), the Bombay High Court dealt with the issue as to what is remedy available to an aggrieved party against an order passed under Section 25 (a) or under Section 32 (2) of the Act, 1996.
8. After lengthy discussion, the learned Single Judge concluded that there being no remedy provided against the order passed under Section 25 (a) and 32 (2) clauses (a), (b) & (c), the writ petition under Article 226 of the Constitution of India is maintainable.
9. In juxtaposition to the above judgment, the Supreme Court in **Lalitkumar v. Sanghavi (dead) through LRs Neeta Lalit Kumar Sanghavi** (supra) while dealing with the similar order

where due to non-cooperation of the claimant the arbitral proceeding was declared terminated, the Supreme Court quoted its earlier judgment rendered in **SBP & Co.** (supra) to reiterate its disapproval 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 of India. Such an intervention by the High Court is not permissible. The Supreme Court thereafter quoted the scheme under Chapter III of the Act, 1996 to conclude thus in paras 11 to 15 as under :

11.....From the language of Section 32, it can be seen that arbitral proceedings get terminated either in the making of the final arbitral award or by an order of the arbitral tribunal under sub-Section (2). Sub-section (2) provides that the arbitral tribunal shall issue an order for the termination of the arbitral proceedings in the three contingencies mentioned in clauses (a) to (c) thereof.

12. On the facts of the present case, the applicability of clauses (a) and (b) of Section 32 (2) is clearly ruled out and we are of the opinion that the order dated 29th October, 2007 by which the Tribunal terminated the arbitral proceedings could only fall within the scope of Section 32, sub-Section (2), clause (c) i.e. the continuation of the proceedings has become impossible. By virtue of Section 32(3), on the termination of the arbitral proceedings, the mandate of the arbitral tribunal also comes to an end. Having regard to the scheme of the Act and more particularly on a cumulative reading of Section 32 and Section 14, the question whether the mandate of the arbitrator stood legally terminated or not can be examined

by the court "as provided under Section 14(2)".

13. The expression "Court" is a defined expression under Section 2(1)(e) which reads as follows:-

2(1)(e) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes;"

14. Therefore, we are of the opinion, the apprehension of the appellant that they would be left remediless is without basis in law.

15. The appellants are at liberty to approach the appropriate court for the determination of the legality of the termination of the mandate of the arbitral tribunal which in turn is based upon an order dated 29th October, 2007 by which the arbitral proceedings were terminated.

10. In the case at hand also, the arbitration proceeding has been terminated under Section 25 read with Section 23 (1) of the Act, 1996 which is essentially one of the method of termination of contract as envisaged under Section 32 (2) (c) of the Act, 1996, therefore, in view of the law laid down by the Supreme Court in **Lalitkumar v. Sanghavi (dead) through LRs Neeta Lalit Kumar Sanghavi** (supra), the present writ petition is not maintainable, as the petitioner has the remedy of moving an application before the jurisdictional

Principal Civil Court of original jurisdiction as provided under Section 14 (2) of the Act, 1996.

11. As an upshot, the writ petition, being devoid of merit, is liable to be and is hereby dismissed with liberty to the petitioner to approach the jurisdictional Principal Civil Court of original jurisdiction.

Sd/-

Judge

Prashant Kumar Mishra

Gowri