

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 3522 of 2017**

M/s MBL Infrastructure Ltd., Through its Assistant General Manager (Business Development), Mr. D.S. Nayal, S/o Late Shri R.S. Nayal, Aged about 43 years, Having its office at, Bani Corporate One, 303, Third Floor, Plot No. 5, Commercial Center, Jasola, New Delhi -110076

---- Petitioner

Versus

1. Naya Raipur Development Authority, Through its Chief Executive Officer, Having its Registered office at 1st Floor, Utility Block, Capital Complex, Sector 19, Naya Raipur (C.G.)-492002
2. The Chief Engineer, Naya Raipur Development Authority, 1st Floor, Utility Block, Capital Complex, Sector 19, Naya Raipur (C.G.)
3. Chairman, Naya Raipur Development Authority, 1st Floor, Utility Block, Capital Complex, Sector 19, Naya Raipur (C.G.)

---- Respondents

For Petitioner	: Shri B.P. Sharma & Mr. Sameer Uraon, Advocate.
For Respondents	: Shri Akash Pandey, Advocate, on advance copy.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

03/01/2018

(1) In exercise of power conferred by Clause 25 of the General Conditions of the Contract appended with tendered documents/agreement Chairman, Naya Raipur Development Authority, respondent No. 3 herein appointed Shri N.S. Bhadoria, Retired Engineer in Chief, Water Resources Department as sole arbitrator to decide and make his award regarding the claims / disputes by petitioner by order dated 24.06.2017.

(2) Feeling aggrieved and dissatisfied with the order dated 24.06.2017, instant writ petition has been filed stating that appointment of sole arbitrator

give rise to justifiable doubts as to his independence or impartiality and he does not possess qualifications agreed to by the parties.

(3) Mr. B.P. Sharma, learned counsel appearing for the petitioner would submit that appointment of Shri N.S. Bhadoria, Retired Engineer in Chief, Water Resources Department as sole arbitrator is unsustainable and bad in law and, therefore, his appointment is liable to be set aside. He placed reliance upon the judgment of the Supreme Court in the matters of **Indian Oil Corporation Limited and others Vs. Raja Transport Private Limited**¹, **Sushil Suri Vs. Central Bureau of Investigation and another**², **Bipromasz Bipron Trading SA Vs. Bhart Electronics Limited (BEL)**³, **Newton Engineering and Chemicals Limited Vs. Indian Oil Corporation Limited and others**⁴ & **TRF Limited Vs. Energo Engineering Projects Limited**⁵ in support of his submissions.

(4) On the other hand, learned counsel appearing for the respondents, on advance copy, would submit that procedure for challenge the appointment of arbitrator is provided in Section 13 of the Arbitration and Conciliation Act, 1996 (henceforth 'Act, 1996') and, therefore, the petitioner be relegated to the procedure provided in Section 13 of the Act, 1996 to challenge the appointment of Arbitrator and the present writ petition as framed and filed is not maintainable in law.

(5) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

(6) The question for consideration would be whether appointment of an

1 (2009) 8 SCC 520

2 (2011) 5 SCC 708

3 (2012) 6 SCC 384

4 (2013) 4 SCC 44

5 (2017) 8 SCC 377

arbitrator can be challenged in writ proceedings under Article 226 of the Constitution of India.

(7) It is appropriate to notice Section 13 of the Act, 1996, which prescribes the procedure for challenging the appointment of arbitrator :-

“13. Challenge procedure.- (1) Subject to sub-section (1), the parties are free to agree on a procedure for challenging an arbitrator.

(2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen 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, send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(4) If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.

(5) Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with Section 34.

(6) Where an arbitral award is set aside on an application made under sub-section (5), the Court may decide as to whether the arbitrator who is challenged is entitled to any fees.”

(8) A focused glance of the aforesaid provision would show that in absence of agreement for challenging the appointment of arbitrator, a party who intends to challenge the appointment of arbitrator after coming to know the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of Section 12 is required to send a written statement of the reasons for the challenge to the arbitral tribunal. Sub-Section 3 of Section 13 of the Act, 1996 provides unless if the arbitrator challenged under sub-section (2) withdraws from his office, the arbitral tribunal is obliged to decide on the challenge and further procedure has been detailed in sub Section (3) (a),(5) & (6) to challenge the action.

(9) At this stage, it would also be appropriate to notice Section 12 of the Act, 1996, which specifies the ground for challenge, states as under:-

“12. Grounds for challenge.- [(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,-

(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject matter in dispute, whether financial business, professional or other kind, which is likely to give tojustifiable doubts as to his independence or impartiality; and

(b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration witin a period of twelve months.

Explanation 1.- The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.

Explanation 2. - The disclosure shall be made by such person in the form specified in the Sixth Schedule.]

(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.

(3) An arbitrator may be challenged only if-

(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality; or

(b) he does not possess the qualifications agreed to by the parties.”

(10) The petitioner has challenged the appointment of arbitrator on the ground mentioned in Section 12(3) (a) of the Act but he has not followed the procedure envisaged under Section 13 of the Act of 1996 and has directly filed the writ petition before this Court for quashing the appointment of arbitrator.

(11) It is the basic principle of law long settled, that, if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in the matter of **Taylor v. Taylor**⁶, which was followed by Lord Roche in the matter of **Nazir Ahmed v. King Emperor**⁷, who stated as under :-

“Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.”

(12) Similar is the proposition laid down in the matter of **State of U.P. v.**

⁶ (1876) 1 Ch D 426

⁷ AIR 1936 PC 253(2)

Singhara Singh and others⁸ in which the Supreme Court has clearly held that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that the other methods of performance are necessarily forbidden.

(13) A power under a statute has to be exercised in accordance with the provisions of the statute and in no other manner. (See **J.N. Ganatra v. Morvi Municipality, Morvi**⁹ and **Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala and others**¹⁰).

(14) In view of the aforesaid legal position, the petitioner is required to proceed under Section 13(2) and (3) of the Act, 1996 to challenge the appointment of Arbitrator made by respondent No. 3. Since the procedure has been prescribed in the Act itself for challenging to appointment of Arbitrator, the instant writ petition as framed and filed is not maintainable. In taking the view, I am supported by decision of the Division Bench rendered by Punjab & Haryana High Court in the matter of **M/s Hirike Rice Mills Vs. State of Punjab**¹¹

(15) As a fallout and consequence of aforesaid discussion, the writ petition being sans substratum, deserves to be and is accordingly dismissed in limine reserving liberty in favour of the petitioner to proceed further in accordance with Section 13(2) and (3) of the Act, 1996.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

8 AIR 1964 SC 358

9 (1996) 9 SCC 495

10 (2002) 1 SCC 633

11 1997 SCC Online (P&H) 1367

