

HIGH COURT OF CHHATTISGARH, BILASPUR

ARBR No. 27 of 2018

- M/s. Todarmull Balchand Suntwal. (Engineers And Contractors),
Having Registered Office At 18/254, Bhrata Cottage, Shankar Nagar,
Raipur - 492007, Chhattisgarh.

Having Administration Office At 203, Second Floor, AADI Apartment,
Shri Ram Nagar, Phase - II Road, Shankar Nagar, Raipur - 492007,
Chhattisgarh

Through Its Partner And Authorised Signatory Shri Suresh Suntwal
Aged 46 Years, S/o Late Shri Balchand Sharma.

---- Petitioner

Versus

1. South East Central Railways Through Its General Manager, Office Of
General Manager, Bilaspur Chhattisgarh. - 495004
2. Union Of India, Through Senior Divisional Engineer (Co-Ord)
Raipur Chhattisgarh.

----Respondents

For Petitioner	:	Shri Abhishek Vinod Deshmukh, Advocate
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For Respondent	:	Shri Abhishek Sinha, Advocate
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Hon'ble Shri Justice Goutam Bhaduri, Judge

Order On Board

05/09/2019

Heard.

1. The facts of this case that an agreement was entered into on 20.11.2012 in between the petitioner and the respondent. Subsequently, because of certain disputes the Arbitration clause was invoked on 27.05.2016 by issuance of notice. Pursuant thereto the Arbitrator was appointed on 28.09.2016 filed as Annexure P-5. It is contended by the petitioner that as per mandate of Section 29 (A) of the Arbitration and Conciliation Act, 1996 (for short 'the Act of 1996') as the Arbitrator has failed to adjudicate and pass the award within the stipulated period of 12 months and further according to Sub Section 3 of Section 29 (A), or within

the extended period of 6 months, the mandate of the Arbitrator shall be terminated according to sub Section 4 of Section 29 (A). It is contended that the Arbitrator commenced the proceedings as per Section 21 on 27.05.2016, therefore, since the authority of the Arbitrator stands terminated, a new Arbitrator needs to be appointed.

2. Learned counsel for the Respondent opposes the same argument and would submit that the agreement was of 2012 and as per Section 26 of the Act of 1996 (Amendment Act of 2015) the mandate of new act would not come into play as the proceedings have commenced prior to the amendment.

3. Heard the learned counsel for the parties and perused the documents.

4. The agreement between the parties on 20.11.2012 is not in dispute (Annexure P-2 & P-3). Records would show on 27.05.2016 because of certain dispute by Annexure P-4 the petitioner invoked the Arbitration clause and subsequent thereto, the Tribunal was constituted by the respondent on 28.09.2016 by Annexure P-5. Section 21, of the Act of 1996, speaks about the commencement of arbitral proceedings. For ready reference Section 21, of the Act of 1996, is reproduced hereinunder:-

21. Commencement of arbitral proceedings:- Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

5. According to language of Section 21, of the Act of 1996, the arbitral proceedings in respect to particular dispute shall commence on the date on which the request for the dispute to be referred to the Arbitration is received by the respondent.

6. Here in the instant case, after the amendment of Arbitration and conciliation Act 2015, the request was made on 27.05.2016, therefore, the amended Section 26, would come into play and the date of invocation,

27.05.2015, would be the date of commencement of the Arbitrator.

7. The detail record filed along the petition would suggest that after the Arbitrator commenced the proceedings and entered into reference, the award has not been passed. The Arbitrator was appointed on 28.09.2016. Section 29 (A) of the Act of 1996, fixes the time limit for passing of the arbitral award. For ready reference Section 29 (A) of the Act of 1996, is reproduced hereinunder:-

29A. Time limit for arbitral award - (1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

Explanation.- For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

8. Admittedly, since the award has not been made within 12 months from the arbitral tribunal has entered upon the reference and further by virtue of sub Section (3) of Section 29 (A) the award is not passed even within a outer limit of 6 months. Consequently as per sub Section 4 of Section 29 (A) the mandate of Arbitrator shall statutorily stands terminated. In a result, the Arbitrator so appointed

by the respondent shall not be within his limits as the jurisdiction to arbitrate is seized by virtue of sub section 4 of Section 29 (A) of the Act of 1996.

9. The petitioner in this case on 27.07.2018, has made an application again to the respondent for appointment of Arbitrator and as the reply would reflect till date the arbitrator has not been appointed. Consequently, Hon'ble Justice Shri L.C. Bhadoo, retired Judge of this Court is appointed to arbitrate the matter. Communication be immediately sent to him by the Registry. The charges of the arbitration shall be fixed according to the schedule apart from the expenses, which is left open to the parties.
10. Accordingly, the petition stands disposed of.

Jyoti

Sd/-
(Goutam Bhaduri)
Judge