

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ARBAP No. 10 of 2019**

Shai Transporters Registered Office At 8-B, Industrial Estate, Bhilai, District Durg, Chhattisgarh. 490026 Through the partner Namely Hemant Sial S/o Late Shri B.S. Sial, Aged About 47 Years, R/o 78-A/3, Nehru Nagar (West), Bhilai, District Durg Chhattisgarh. ---

Petitioner**Versus**

Bhilai Steel Plant (Unit of Steel Authority Of India Ltd.) through C.E.O. Bhilai Steel Plant, Ispat Bhawan, Bhilai, District Durg Chhattisgarh, District : Durg, Chhattisgarh ---

Respondent

For the Petitioners : Mr. Dharmesh Shrivastava, Advocate

For the Respondent/BSP : Dr. Sourabh K. Pandey, Advocate

Hon'ble Shri Justice Goutam Bhaduri**ORDER****04.10.2019**

1. The present petition appears to have been filed because of the order dated 19.07.2019 passed by the arbitrator. The back ground of this case is that this Court vide order dated 03.08.2018 invoking the power u/s 11(6) of Arbitration & Conciliation Act, 1996 (for short "Act 1996) had appointed the retired Justice Vijay Kumar Shrivastava to arbitrate the matter. After such appointment of arbitrator, the proceeding before the arbitrator commenced. It is contended that the statement of claim and reply having been filed, finally the issues were framed on 17.03.2019. On the next date of hearing on 17.04.2019 an application was filed by the respondent (applicant therein) that earlier the arbitrator has conducted the arbitral proceedings in the matter of M/s Singh

Transporters vs. SAIL-BSP (arising out of ARBA No.27 of 2017) as well as M/s. Singh Transporters vs. Sail (arising out of ARBA No.28 of 2017) wherein also the respondent was arrayed and the arbitration proceedings in both the cases reached their culmination with the passing of the award which had gone against the answering respondent i.e., SAIL. It is further stated that the crux of the dispute in the arbitral proceeding pivots round almost similar issues as was decided in the other cases. It was further stated that after meticulous discussions, the management of the respondent Company in order to maintain fairness away from any prejudicial notions, has decided to withdraw its consent from the ongoing Arbitral Proceedings.

2. The averments of Paras 3 to 6 of the application filed by the respondent Company would be relevant and reproduced hereinbelow:

“3. That, it is most respectfully submitted that this Hon'ble Arbitral Tribunal had also conducted arbitral proceedings in the matter of M/s. Singh Transporters vs. SAIL-BSP (arising out of ARBA 27 of 2017) as well as M/s. Singh Transporters vs. SAIL (arising out of ARBA 28 of 2017) in which the answering respondent was arrayed as a respondent party. The arbitration proceedings in both the cases have reached their culmination with the passing of the Award which had gone against the answering respondent.

4. That, the subject matter and the crux of the dispute in the instant Arbitral Proceedings pivots round almost similar issues as was in the matters mentioned herein above.

5. That, this Hon'ble Tribunal was pleased to enumerate this fact in its order sheet dated 17.03.2019.

6. That, after meticulous discussions, the management of the respondent Company, in the present circumstances, for the purpose of maintaining fairness away

from any prejudicial notions, has taken a decision to withdraw its consent from the ongoing Arbitral Proceedings.”

3. It is for the above reasons eventually the Arbitrator by order dated 19.07.2019 observed that by making the aforesaid statement in the application, the respondent impliedly shows no confidence and may create in future unnecessary obstructions in smooth functioning of the matter, therefore, after due consideration of all the facts and circumstances, the Arbitrator withdrew himself to arbitrate further dispute. Under the circumstances, since the arbitrator opted not to continue the arbitration proceedings, the present petition has been filed to substitute the arbitrator.
4. Since the arbitrator has wished not to continue with the arbitral proceeding and not to decide the dispute, Hon'ble Mr. Justice G. Minhajuddin, Retired Judge of this High Court, is appointed as Arbitrator to arbitrate the dispute. Accordingly, Registry is directed to communicate this order to Hon'ble Mr. Justice G. Minhajuddin.
5. Though the arbitrator has withdrawn himself taking into consideration of all those circumstances from conducting arbitral proceedings, but this Court is not inclined to shelve the reasons stated in the application which caused the arbitrator to withdraw himself to conduct as arbitrator in the instant matter.
6. The reasons mentioned in the application which was moved before the arbitrator would show that since in two earlier arbitral disputes the award was passed against the respondent, as such, primarily it was stated that for the

purpose of maintaining fairness away from any prejudicial notions, the decision was taken by the respondent Company to withdraw its consent from the ongoing Arbitral Proceedings. This almost attributes wilful allegations and attack on the arbitrator.

7. Section 2 of the Contempt of Courts Act, 1971 prescribes definitions. Imputing oblique motives, impropriety, incompetence and dishonesty against a Judge amounts to Scandalizing as per the “Law of Contempt of Court” Second Edition by Justice J.D. Kapur wherein clause 124 of synopsis reads thus :

124. Imputing Oblique Motives, impropriety, Incompetence and Dishonesty against a Judge amounts to Scandalizing

Attributing malafides, wilful and reckless allegations against the court, vindictive or scurrilous attacks on a court and imputation of impropriety, lack of integrity and oblique motives against a Judge or Court also amount to contempt by scandalizing the Court. Where during the pendency of an appeal before the High Court against a judgment an article imputing dishonesty and lack of integrity on the part of the Judge in a case decided by him was published it was held that “The publication of disparaging statement will be an injury to a public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge or to deter actual and prospective litigants from placing complete reliance upon the Courts' administration of justice or if it is likely to cause embarrassment in the minds of judge himself in the discharge of his judicial duties.” And this was held to constitute Contempt of Court; *Perspective Publication (P) Ltd v. State of Maharashtra, AIR 1971 SC 221*. Accusing judicial officers of incompetence and their work as one which did not inspire public confidence amounts to contempt; *Brahma Prakash Sharma v. state of Uttar Pradesh AIR 1954 SC 10*.”

8. Here it is not the case that the arbitrator himself has

withdrawn the consent to arbitrate the matter. It was on the application of respondent Company, the arbitrator has expressed his opinion that if the consent has been withdrawn, he too does not want to arbitrate the matter. Certainly the disparaging statement made in the application of the respondent Company creates an apprehension in the minds of litigants and the people in general regarding ability and fairness of the arbitrator Judge or to deter actual and prospective litigants from placing complete reliance upon the court administration of justice. The reasons of withdrawal of consent would show that it would cause embarrassment in the mind of the judge who had to arbitrate the issue in discharge of his duty which was cast upon him by the order of this Court. It is not necessary to prove affirmatively that there has been actual interference with the administration of justice by reasons of such defamatory statement; but the language employed in the statement and the course of action which was followed would show that there has been interference in proper administration of justice and it amounts to attack on arbitrator/judge in respect of the awards already passed in two arbitral disputes. The said stand taken by the respondent to withdraw its consent clearly goes to show that since the arbitrator has passed two similar awards against the respondent in the past, it has caused prejudice to the respondent/SAIL therefore he filed the application seeking withdrawal of consent from the instant arbitral proceedings. In such circumstances, the act of the respondent sounds in contempt.

9. The likewise situation was considered by Supreme Court in a

judgment rendered in WP(C) No. 191 of 2019 National Lawyers Campaign for Judicial Transparency and Reforms & others **Vs.** Union of India and others. Para 9 of the said judgment would be relevant here and quoted below:

“9. When contempt is committed in the face of the Court, judges' hands are not tied behind their backs. The majesty of this Court as well as the administration of justice both demand that contemptuous behaviour of this kind be dealt with sternly. An early judgment of this Court in *Sukh Dev Singh Sodhi v. Chief Justice S. Teja Singh*, 1954 SCR 454 proceeded cautiously, but made it clear that where a judge is personally attacked, it would be improper for the judge to deal with the matter himself, in cases of contempt in the face of the Court. This Court state the law thus:

“We wish however to add that though we have no power to order a transfer in an original petition of this kind we consider it desirable on general principles of justice that a judge who has been personally attacked should not as far as possible hear a contempt matter which, to that extent, concerns him personally. It is otherwise when the attack is not directed against him personally. We do not lay down any general rule because there may be cases where that is impossible, as for example in a court where there is only one judge or two and both are attacked. Other cases may also arise whether it is more convenient and proper for the judgment to deal with the matter himself, as for example in a contempt in facie curiae. All we can say is that this must be left to the good sense of the judges themselves who, were are confident, will comfort themselves with that dispassionate dignity and decorum which benefits their high office and will bear in mind the oft-quoted maxim that justice must not only be done but must be seen to be done by all concerned and most particularly by an accused person who should always be given, as far as that is humanly possible, a feeling of confidence that he will receive a fair, just and impartial trial by judges who have no personal interest or concern in his case.”

10. In view of the aforesaid discussion, apart from the appointment of the new arbitrator, Registry is directed to

register separate MJC against the Company/ concerned Officer Incharge of the respondent Company/SAIL under the Contempt of Courts Act and place it before the appropriate Court for further hearing.

11. Accordingly, this Arbitration Application is allowed.

Sd/-

**GOUTAM BHADURI
JUDGE**