

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
APPLICATION FOR APPOINTMENT OF
ARBITRATOR NO. 9 OF 2018

The Government of Goa and ors. Applicants.

Versus

National Projects Construction
Corporation Ltd. Respondent.

Ms. Susan Linhares, Additional Govt. Advocate for the Applicants.

Mr. Guru Shirodkar, Advocate for the Respondent.

Coram : M.S. SONAK, J.

Date : 20th September, 2019.

P.C.:

Heard Ms. Susan Linhares, learned Additional Govt. Advocate for the Applicants and Mr. Guru Shirodkar, learned Counsel for the Respondent.

2. By this Application, the Applicants seek appointment of an Arbitrator to adjudicate into the disputes relating to the award of penalty under the contract for construction of high level bridge across river Chapora.

3. The record indicates that the clause in the agreement was initially invoked by the parties and the Arbitrator made an award on 31.01.1992, awarding a claim of ₹ 55,75,262/- in favour of the

Respondent and an amount of ₹ 21,89,937/- in favour of the Applicants in the counter-claim raised by them.

4. It was the case of the Applicants that there was no adjudication on the claim for penalty in an amount of ₹ 23.50 lakhs in terms of Clause 16 of the agreement. In fact, the record indicates that the Arbitrator refused to adjudicate on this claim because the Arbitrator felt that this claim has to be adjudicated by the Superintending Engineer.

5. The record further indicates that the Superintending Engineer, at some later point of time, did adjudicate upon such claim and levied penalty of ₹ 23.50 lakhs upon the Respondent. This was challenged by the Respondent by filing Writ Petition No.47/1993 before this Court, which was disposed of by an order dated 9th July, 1993, by making the following direction :

"For the foregoing discussions, we dispose of this writ petition by directing the Chief Engineer, Mandovi Bridge Project, to refer the dispute relating to the claim of the respondent for compensation to the Arbitrator in accordance with the terms of the contract. The reference should be made within 6 weeks and the Arbitrator will make his award in accordance with the first schedule to the Arbitration Act."

6. In terms of the aforesaid, the matter was again referred to the Arbitrator, but on 21/02/1995, the Arbitrator made the following

order :

"In the above referred case, extension was granted to the respondent to file their reply before 10.02.1995, as applied for by them. Since the reply has not been filed within the extended period it is now finally concluded that the respondent has nothing to contest their case and as such the proceedings in this are finally closed.

7. Since making of the order dated 21.02.1995, none of the parties applied for recall of the order dated 21.02.1995, or setting aside of the order dated 21.02.1995. Instead, the matter was pursued before the executing Court. It is only on 7.11.2017, that the present Application has been taken out for appointment of a new Arbitrator.

8. Mr. Shirodkar, learned Counsel for the Respondent rightly points out that unless and until the order dated 21.02.1995 made by the Arbitrator is set aside, there is no question of seeking fresh appointment of an Arbitrator. Apart from the aforesaid, we find that there is absolutely no proper explanation for the delay of virtually 22 years in taking out the application for appointment of a fresh Arbitrator.

9. Upon overall consideration of the aforesaid facts and circumstances, this Application is dismissed. There shall, however, be no order as to costs.

M.S. SONAK, J.