

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.461 OF 2017**

Girish Enterprises

.. Petitioner

vs

Union of India

.. Respondent

Ms.Vaishali Chaudhari for Petitioner

Mr.T.J.Pandian for Respondent.

Coram : G.S.KULKARNI, J

Date : 12 FEBRUARY 2019

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1. This is a petition under section 14 of the Arbitration and Conciliation Act, 1996 (for short the 'Act') wherein the petitioner has prayed that the mandate of the arbitral tribunal constituted by the respondent-General Manager of the Central Railways in pursuance of an order, passed by this Court on 6.10.2010 be terminated, and the Court appoint an independent and a neutral sole Arbitrator to adjudicate the disputes and differences between the petitioner and respondent as per the provisions of section 15 (2) of the Act.

2. The petitioner was awarded a contract by the respondent of earthwork in formation including in approaches of bridges in Section VIII on Panvel-Karjat line. The tender cost was Rs.1,97,96,400/- with period of completion of 9 months including monsoon period commencing from

21.8.1998. The case of the petitioner is that the terms of letter of intent were complied. The petitioner also furnished bank guarantee. The nature of work was that there was lot of agitation by the local citizens. There were also hindrances of electrical and telephone lines passing through the site, the removal of which was beyond the control of the petitioner. Accordingly, extension was also granted to the petitioner by the respondent as per clause 17 (ii) or 17 (iii) of the General Clauses Contract. It is the petitioner's case that despite all these odds, the approach of the respondent was not fair and the respondent terminated the contract of the petitioner on 15.5.2001. The petitioner consequent to the termination of the contract by a letter dated 27.11.2001 raised claims against the respondent for the price of the work already executed. Thereafter the petitioner by its letter dated 20.2.2002 also invoked the arbitration agreement.

3. As per the General Conditions of Contract, providing for the arbitration agreement an arbitral tribunal comprising of three members was formed wherein all the three members, were sitting Officers of the respondent. The arbitral tribunal entered reference. On 31.7.2007 the arbitral tribunal passed an award, which was challenged by both the

parties, before this Court. By an order dated 6.10.2010 both the petitions of the parties were disposed of by this Court and the General Manager of the respondent was directed to appoint a fresh tribunal in accordance with the arbitration clause and denovo pass an award after hearing the parties. Accordingly, the arbitral tribunal was re-constituted after following the procedure under the arbitration agreement. The claims of the petitioner were referred to the arbitral tribunal by a letter dated 25.7.2011. On 15.9.2011 the petitioner filed a fresh statement of claim before the arbitral tribunal and served the same on the respondent on 16.9.2011. On 16.12.2011 the presiding Arbitrator Mr.Bulchandani held an arbitration meeting and directed the respondents to submit a reply and counter claim, if any. However, the respondent did not file a statement of defence within the time granted by the tribunal.

4. The petitioners contend that almost after two years after direction of the presiding Arbitrator on 16.12.2011, the presiding Arbitrator sent a reminder and issued fresh directions to the respondents to file its statement of defence within three weeks. However, the respondent again did not file its statement of defence. It is stated that thereafter on 7.10.2014 the General Manager of the respondent informed

the petitioner that the Presiding Arbitrator Mr.Bulchandani was transferred from Mumbai and one Mr.Naresh Lalwani was appointed in his place as the presiding arbitrator. The new presiding arbitrator fixed a meeting on 28.4.2014 and again directed the respondent to file its statement of defence. On 28.11.2014 a meeting was held. However, it was not attended by one of the co-Arbitrators and the proceedings therefore remained without any progress. Thereafter, on 14.1.2015 the presiding Arbitrator post-poned the scheduled meeting to be held on 15.1.2015 to 21.1.2015 and thereafter the meeting to be held on 28.1.2015 was again postponed, to 18.2.2015.

5. On 3.2.2015 the respondents served on the petitioner with its statement of defence dated 23.1.2015, which according to the petitioner was filed after three years from the service of the petitioner's statement of claim. Thereafter on 18.2.2015 an arbitration meeting took place and was adjourned to 9.4.2015. The arbitration meeting to be held on 9.4.2015 however, was cancelled by the presiding arbitrator and a date was fixed on 23.4.2015. However, thereafter up to 7.7.2015, various dates were fixed but no meetings were held.

6. On 28.9.2015, one of the co-Arbitrator Mr.Mittal was transferred from Mumbai and one Mr.Ajay Goel was appointed in his place. Again the meeting which was fixed on 30.9.2015 was post-poned to 15.10.2015 which was again cancelled and a new date was fixed for 22.2.2016. However, the respondents did not appear in the meeting so fixed and held on 22.2.2016 and thus, it was required to be adjourned to 16.3.2016. On 15.3.2016 the respondent again requested to postpone the scheduled meeting which was fixed on 16.3.2016. The arbitral tribunal cancelled the meeting on 16.3.2016 and fixed the meeting on 6.4.2016. On 17.3.2016 the petitioner requested the tribunal to direct the respondent to disclose and submit the documents relied upon by them. Again the meeting so fixed was cancelled.

7. The petitioners have contended that on 12.4.2016 arbitral meeting took place during which, it was realized by the petitioner that two of their claims were not referred by the General Manager to the new Arbitral tribunal although the said claims were made by the petitioner even in the earlier arbitral proceedings. The petitioner therefore by letter dated 25.4.2016 requested the General Manager to refer the said two claims for arbitration. Thereafter, nothing happened. The petitioners,

therefore by their letter dated 16.7.2016 and 27.9.2016 sent a reminder to the General Manager to refer the said two claims to the new tribunal. It is stated till date, there is no response to these letters and these letters remain un-replied. The petitioner contends that in the meantime, on 13.6.2016 the presiding Arbitrator has been transferred from Mumbai and one Mr.Garg has been appointed as the new presiding Arbitrator.

8. On the above background, case of the petitioner is that there is an inordinate delay in conducting the arbitral proceedings, since the new Arbitral tribunal was formed in the year 2011 and thus, for all these reasons, the Court ought to exercise its jurisdiction under the provisions of section 14 (1) (a) of the Act and terminate the mandate of the arbitral tribunal.

9. The parties were heard on the above background. Though the petition is filed on 28.4.2017, the respondents have chosen not to file a reply-affidavit. Learned counsel for the respondent in the above facts and circumstances, would fairly concede that the respondent would not have any objection, if an independent sole Arbitrator is appointed to adjudicate the disputes and differences as arising between the parties.

10. In view of the above consensus, the arbitration petition is required to be allowed. Hence, the following order :

O R D E R

(i) Dr.M.M.Sathaye Advocate of this Court is appointed as the prospective sole Arbitrator to adjudicate the disputes and differences arising between the parties under the contract dated 20.8.1998 in substitution of the arbitral tribunal as appointed by the respondent.

(ii) The prospective sole Arbitrator fifteen days before entering a reference shall make a disclosure as per requirement of section 11 (8) read with section 12 (1) of the Act,1996 and shall forward a copy to the Prothonotary and Senior Master of this Court to be placed on record of this petition as also be forwarded to the parties.

(iii) The learned sole Arbitrator shall endeavour to adjudicate the disputes between the parties as early as possible and endeavour to make an award within a period of one year as prescribed under section 29-A of the Act.

(iv) At the first instance, the parties are directed to appear before the sole Arbitrator within 15 days of this order on a time as may be fixed by the prospective sole Arbitrator.

(v) Office to forward a copy of this order to the learned prospective sole Arbitrator on the following address :

14, First Floor, Mezzanine Floor, Raja Bahadur Mansion,
32, Hamam Street, Nr. Stock Exchange, Fort,Mumbai-23

(v) All contentions of the parties on merits of the matter are kept open.

The petition is disposed of in above terms. No costs.

{G.S.KULKARNI, J}

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