

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.5559/2011
AND
CIVIL APPLICATION NO.1148/2019

Chief General Manager, WCL & oth.

..VS..

Gayacharad Mahavirprasad Trivedi

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S. C. Mehadia, Advocate for the petitioner
Dr Anjan De, Advocate for the respondent

CORAM : Z.A.HAQ, J.
DATED : 06/06/2019

CIVIL APPLICATION NO.1148/2019

Heard.

2] Considering the facts of the case, prayer for grant of early hearing of the petition is granted. Civil application is allowed. Writ petition is taken up for final hearing.

WRIT PETITION NO.5559/2011

The petitioners have challenged the order passed by the trial Court, rejecting the application filed by them under Section 8 of the Arbitration and Conciliation Act, 1996. The respondent/plaintiff filed the civil suit in 2009. This writ petition is pending since 2011. After hearing the learned advocates for the respective parties, it appears that the main objection of

the plaintiff was to arbitration by an Officer of the defendant-Western Coalfields Ltd. In view of the amended provisions of Section 12 of the Act of 1996, any person, having direct or indirect relationship with any of the parties, cannot act as Arbitrator. The learned advocate for the petitioners accepted this legal position and submitted that now if the arbitration is to be conducted, it will have to be by an independent person. In view of these facts, the respondent has filed pursis dated 6th June 2019 agreeing for reference of the dispute to an independent Arbitrator. The learned advocates appearing for the petitioners and the respondent agreed that any retired District Judge can be appointed as arbitrator.

In view of the above, following order is passed.

ORDER

- i] The impugned order is set aside.
- ii] The dispute is referred to Shri K. B. Zinjarde, retired District and Sessions Judge for arbitration.
- iii] The parties/representatives of parties shall appear before Shri K. B. Zinjarde, Arbitrator appointed as per this order, on 6th July 2019 at 11:00 a.m. Learned Arbitrator need not issue notices to the parties.

iv] The learned advocates for the parties have fairly submitted that they will fix the programme accordingly in consultation with Shri K. B. Zinjarde, who is now practicing at Nagpur.

v] The respondent (original plaintiff) shall deposit Rs.5000/- with the Registry of this Court, within 15 days, towards processing charges.

vi] In view of the above order, the proceedings of Spl. Civil Suit No. 4 of 2019, filed by the respondent/ plaintiff and pending before the Civil Judge Junior Division, Wani does not survive and are disposed of accordingly.

vii] The trial court is directed to transmit the record of Spl. Civil Suit No.4 of 2009 to the Registry of this Court immediately.

The Registrar (Judicial) shall ensure that the record and proceedings of Spl. Civil Suit No. 4 of 2009 are received by the Registry of this Court within 15 days and handed over to the learned Arbitrator till 1st July 2019.

viii] The writ petition is **disposed** in the above terms. In the circumstances, the parties to bear their own costs.

(Z.A.HAQ, J.)