

AP No. 35 of 2020
IA No. GA 1 of 2021
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

M/S. ROYAL INFRACONSTRU LTD.
VERSUS
EASTERN RAILWAYS REPRESENTED BY THE GENERAL MANAGER

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date: 26th March, 2021.

(Via Video Conference)

Appearance:
Mr. Arnab Chakraborty, Adv.
For the petitioner.

Mr. Anuran Samanta, Adv.
For the respondent.

The Court :- The petitioner seeks termination of mandate of the arbitrator and constitution of an arbitral tribunal for adjudication of the dispute between the parties.

Learned Advocate appearing for the petitioner submits that, the arbitral tribunal was constituted by three in service railway officials in accordance with the arbitration agreement. Such constitution occurred on May 20, 2014. Subsequent thereto, either by reason of transfer of one of members of the arbitral tribunal or for superannuation, the arbitral tribunal stood reconstituted from time to time. There was no progress in the arbitration. Being dis-satisfied with such conduct, the petitioner approached the Court under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 by way of an

application in AP No. 736 of 2017. Such application was disposed of by an order dated November 20, 2017 requiring the arbitral tribunal to make and publish the award within three months. In the event of default, the petitioner was granted liberty to approach the Court for appropriate reliefs in view of the ratio laid down by the Supreme Court in **(2015) 2 SCC 52 (Union of India-Versus-U.P. State Bridge Corporation Ltd.)**. He submits that, subsequent to the order dated November 20, 2017, no progress was made. He draws the attention of the Court to the minutes of the meeting on September 9, 2020 of the arbitral tribunal. He submits that, the arbitral tribunal threatened to proceed ex parte on such date, although the notice for the meeting of September 9, 2020 was posted on October 10, 2020. The subsequent meeting on October 3, 2020 was cancelled. He draws the attention of the Court to the documents annexed to the affidavit in opposition and submits that the arbitrators are corresponding with the respondent without reference to the petitioner with regard to the subject matter of the arbitration. He submits that, the arbitral tribunal is guilty of misconduct.

Learned Advocate appearing for the railways submits that, the delay was occasioned by reason of transfer and superannuation. He submits that, here on the arbitral tribunal will proceed expeditiously, if permitted to do so.

The arbitration reference is pending since 2017. The petitioner approached Court under Sections 14 and 15 of the Act of 1996 by way of AP No. 736 of 2017. Such application was disposed of by an order dated November 20, 2017 when the learned Judge was pleased to direct the new arbitral tribunal to proceed with the arbitral proceeding on the basis of the existing pleadings of the respective parties. The arbitral tribunal was directed to make and publish the

award positively within a period of three months from the first day of entering appearance. In default, the petitioner was granted leave to approach Court seeking appropriate reliefs in view of the ratio of **U.P. State Bridge Corporation Ltd** (supra).

In the facts of the present case, the arbitral tribunal is yet to make and publish the award. In fact there is no progress subsequent to the order dated November 20, 2017. The lack of progress is sought to be justified on the basis of reconstitution of the arbitral tribunal from time to time. The justification advanced is specious and cannot be accepted. There is nothing on record to suggest why the arbitral tribunal could not comply with the order dated November 20, 2017. The fact remains that, the arbitration proceedings is yet to be disposed of in terms of the order dated November 20, 2017.

In **U.P. State Bridge Corporation Ltd.** (supra) the Supreme Court is of the view that the Courts are not powerless to remedy such situations in exercising powers under Section 11 of the Act of 1996 to constitute an arbitral tribunal when, there is delay on the part of the appointing authority to appoint an arbitrator.

Section 12(5) of the Act of 1996 was introduced in the statute book with retrospective effect from October 23, 2015. The arbitrators presently constituting the arbitral tribunal are service-holders of the railways. Moreover, they failed to discharge their duties as arbitrators despite the order of the Court. The documents annexed to the affidavit in opposition establish that the arbitrators were corresponding with the respondent without reference to the

petitioner with regard to the subject matter of the arbitration. That is a gross misconduct of the arbitration.

In such circumstances, it would be appropriate to declare that, the arbitral tribunal is incapable of acting as arbitrators. It would be appropriate to reconstitute the arbitral tribunal.

In such circumstances, Ms. Justice Nadira Patherya (Retired) is appointed as Arbitrator in respect of the disputes between the parties. The learned Arbitrator is at liberty to fix her remuneration to be paid by the parties in equal share. The parties will bear their costs and expenses of the arbitration in equal share.

The learned Arbitrator is at liberty to proceed from the stage already reached in the earlier proceedings, if the learned Arbitrator chooses to do so.

The parties are at liberty to inform the learned Arbitrator of this order.

AP No. 35 of 2020 and IA No. GA 1 of 2021 are disposed of accordingly.

(DEBANGSU BASAK, J.)