

AP 188 of 2019

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

THE BRAITH WAITE BURN & JESSOP CONSTRUCTION CO. LTD.
Versus
GENERAL MANAGER, EASTERN RAILWAY

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

Date : 15th February, 2021.

Appearance:

Mr. Sanjib Kumar Mal, Adv.

Mr. Atanu Raychaudhuri, Adv.

Mr. Pushan Majumdar, Adv.

Ms. Asmita Raychaudhuri, Adv.

...for the petitioner.

Ms. Aparna Banerjee, Adv.

...for the respondent.

The Court : Affidavit-in-opposition filed on behalf of the respondent be kept with the records.

There is no dispute that an arbitral tribunal was constituted in the year 2012 for adjudication of disputes that arose between the parties hereto in relation to a contract which contained an arbitration clause. One sitting was held in the year 2014. Thereafter, nothing happened. The arbitral tribunal did not hold any further sitting. This prompted the petitioner to approach this Court by filing AP No.330 of 2018 which was an application under Sections 14 and 15 of the Arbitration & Conciliation Act, 1996 i.e., for removal of the arbitrators and for appointment of fresh arbitrators. The said application was disposed of by an order dated June 28, 2018 by directing the

arbitral tribunal to conclude the arbitral proceedings by the end of February, 2019.

Even thereafter, nothing happened. Accordingly, a second application was filed by the petitioner for termination of the mandate of the arbitral tribunal being AP No.188 of 2019. On the said application an order dated December 5, 2019 was passed recording that the petitioner has made out a prima facie case for termination of the mandate of the arbitral tribunal. All further proceedings in the subject arbitration between the parties were stayed till January 31, 2020. The respondent was directed to file an affidavit disclosing the panel of arbitrators prepared by the Railways within January 10, 2020. Such affidavit has been filed today, but affirmed on January 24, 2020. In any event, I am not inclined to choose any name from such panel for the reason indicated hereinafter.

Firstly, coming to the question of termination of the mandate of the arbitral tribunal, I have no hesitation in recording that I am shocked to see that an arbitral tribunal that was constituted in the year 2012, has done nothing at all till date except for holding one ornamental sitting. The claim of the petitioner, whatever be its merits, has been hanging in limbo for the last nine years. Whether the petitioner will succeed or not is a different question altogether. The petitioner and indeed all citizens of this country have a constitutional right to have their grievance adjudicated with

some expedition if the same is referred to an adjudicating authority.

Learned advocate for the Railways submits that one more opportunity should be given to the Railways to appoint fresh arbitrators. I am afraid I am unable to accede to such request in the facts and circumstances of the case which reveal gross tardiness and total lack of diligence on the part of the arbitral tribunal constituted by the General Manager of the Eastern Railways. I am minded to constitute a tribunal with the request that such tribunal will publish an award within the time period contemplated by the statute.

As regards my dis-inclination to choose a name from the panel of arbitrators disclosed along with the affidavit filed on behalf of the respondent, such reluctance on my part is prompted by the decisions of the Hon'ble Supreme Court in the cases of *Perkins Eastman Architects DPC and Another -versus- HSCC (India) Ltd.* reported in 2019 SCC Online SC 1517 and *Bharat Broadband Network Limited -versus- United Telecoms Limited* reported in (2019) 5 SCC 755, which are to the effect that in view of Section 12(5) of the Act of 1996 read with the Seventh Schedule of the Act of 1996 if a person is disentitled to act as an arbitrator, he is also not entitled to appoint or nominate an arbitrator. A person who is himself not eligible to act as an arbitrator, is also not entitled to nominate or appoint an arbitrator.

In view of the aforesaid, I appoint Mr. Justice Soumitra Pal (9830929741), a former Judge of our Court, as the sole arbitrator to adjudicate upon the disputes and differences between the parties which have arisen in relation to the said contract. The arbitrator shall be free to fix his own remuneration. He shall be at liberty to engage secretarial staff and also to fix their remuneration. The fees of the arbitrator and the remuneration of the secretarial staff shall be borne by the parties in equal shares. Consequently, the mandate of the present arbitral tribunal stands terminated.

AP No.188 of 2019 is, accordingly, disposed of.

(ARIJIT BANERJEE, J.)

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