

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

AP 967 of 2017
THE STATE OF WEST BENGAL & ANR.
VS
PAM DEVELOPMENTS PRIVATE LIMITED

IA GA 1 of 2020
AP 973 of 2017
PAM DEVELOPMENTS PRIVATE LIMITED
VS
THE STATE OF WEST BENGAL & ANR.

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
Date: 2nd March, 2021.

(Via Video Conference)

Mr. Subhabrata Datta,
Mr. Debashis Sarkar,
Mr. Paritosh Sinha,
Mr. Tirthankar Das, Advs.
...appears
Mr. Priyanka Saha,
Mr. Amritam Mondal,
Mr. Hemant Tiwari,
Mr. Aditya Mondal, Advs.
...appears

The Court: Two applications are taken up for analogous hearing as they are between the same parties.

AP 967 of 2017 is at the behest of the State of West Bengal seeking extension of the mandate of the sole arbitrator in making and publishing the award between the claimant and the respondent. AP 973 of 2017 is at the behest of the claimant seeking termination of the mandate of such arbitrator.

The parties are described as claimant and respondent for convenience. State of West Bengal is the respondent. Pam Developments Pvt. Ltd. is the claimant.

Disputes and differences arose between the parties with regard to a contract which contained an arbitration clause. An arbitrator was appointed by an order dated

June 29, 2015 to arbitrate the disputes between the parties. The mandate of the arbitrator to conclude the proceeding was extended on May 2, 2016 with the requirement on the arbitrator to conclude the arbitral proceeding as expeditiously as possible and preferably within a period of eight months but not later than 12 months from the date of communication of the photostat copy of the order. Learned arbitrator did not conclude the arbitral proceeding within the time period mandated in the order dated May 2, 2016.

It is contended on behalf of the respondent that, the learned arbitrator was prevented by the claimant from concluding the mandate within the time stipulated by the conduct of the claimant in delaying the filing of the statement of claim and in the conduct of the arbitral proceeding. It is contended that, the arguments on behalf of the claimant before the learned arbitrator was over. The respondent was addressing the learned arbitrator when the mandate of the learned arbitrator expired. In such circumstances, it is contended on behalf of the respondent that the mandate of the arbitrator be extended. Reliance is placed on (2010) 2 Supreme Court Cases 385 (NBCC Limited vs. J.G. Engineering Private Limited) on behalf of the respondent.

Learned advocate appearing for the claimant draws the attention of the Court to the conduct of the learned arbitrator as also conduct of the parties. He submits that, despite a claim being lodged by the claimant, the State delayed in appointing the departmental arbitrator. Ultimately, the arbitrator was appointed by the order dated June 29, 2015. The mandate of such arbitrator to conclude the reference was fixed on May 2, 2016. Thereafter, in the arbitral proceeding, the claimant consented to the extension of time to conclude the arbitration proceeding in order to provide for the so-called delay of the claimant in filing the pleading. Even after the extension the learned arbitrator did not conclude the arbitration proceeding. He submits that, the application for extension of time for the mandate of the arbitrator does not contain any ground far

less due any cogent ground. He submits that the learned arbitrator is involved in various other arbitrations on behalf of the State.

In the facts of the present case, the concerned arbitration is governed by the unamended provisions of the Arbitration and Conciliation Act, 1996. The unamended provisions of the Act of 1996 did not specify any time to limit to conclude the arbitration reference. However, the order dated May 2, 2016 the Court fixed the time limit for the purpose of concluding the arbitration reference. Such time was subsequently extended by consent of the parties. The extended time to conclude the arbitration reference expired. Hence the application for extension of time to complete the arbitration reference.

In NBCC Limited (supra), the Supreme Court observed that there is no provision under the Act of 1996 for the Court to fix a time limit for the conclusion of the arbitration proceeding, but the Court could opt to do so in the exercise of the inherent power on the application of the either parties. In the present case, the arbitration proceeding is at its final stage. The claimant concluded its argument before the learned arbitrator. The respondent is addressing the learned arbitrator.

The allegation of biasness by reason of the learned arbitrator handling other arbitrations involving the state of no substance. Merely because a person is an arbitrator in some matters involving the State the same does not ipso facto establish biasness.

In such circumstances, in my view, interest of justice would be subserved by extending the time of the learned arbitrator to conclude the reference. The learned arbitrator will do so within a period of three months from date. The learned arbitrator will commence the arbitration proceeding for a day to day basis from March 8, 2021 until its conclusion. The arbitration will commence at 10.30 A.M. and will continue till 1 P.M. and will re-commence at 2 P.M. and continue till 4 P.M. on all weekdays until the conclusion of the argument by the parties.

AP 973 of 2017 and AP 967 of 2017 are disposed of accordingly.

Prayer for stay made on behalf of the claimant is considered and refused.

In view of the two applications being disposed of, no order need be passed in IA GA 1 of 2020. The same is also disposed of.

(DEBANGSU BASAK, J.)

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