

Petition with liberty to file an appropriate application since the Petitioners had sought to challenge the impartiality of the Arbitrator under Section 12 of the Act. The Petition was accordingly disposed of as withdrawn. Thereafter, the Petitioners had taken out application before the Arbitrator challenging his appointment as Arbitrator and which application was rejected by the Arbitrator. The Arbitrator is continuing with the proceedings and the Petitioners being aggrieved have filed the present Petition seeking substitution of the Arbitrator and appointment of fresh Arbitrator.

3 The learned Counsel for the Petitioners has submitted that under Section 12 (5) of the Act, it is provided that “Notwithstanding any prior agreement to the contrary, any person whose relationship with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator”. He has submitted that the present Arbitrator has good relationship with the Respondent’s family and, therefore, by operation of law, the Arbitrator cannot act as Arbitrator and can be removed by the Petitioners. He has further submitted that the Arbitrator is ineligible in view of Clauses 18 and 19 of the Fifth Schedule of the Act, as the son of the Arbitrator is financially involved in the dispute. He has submitted that as per the arbitration agreement between the parties in the

memorandum of understanding dated 17.06.2017, the named arbitrator had been appointed. However, as per the notice dated 20.03.2021 for removal of the arbitrator issued by the Petitioners, the Arbitrator has been removed. He has submitted that in view thereof, the Arbitrator requires to be substituted by placing reliance on Sections 14 and 15 of the Act and for appointment of the substituted Arbitrator in his place.

4 The learned Counsel for the Respondent has opposed the Petition and has relied on Section 13(3) and (4) of the Act which provides that unless the arbitrator challenged withdraws from his office or the other parties agrees to the challenge, the arbitral tribunal shall decide on the challenge. Further in sub-section 4 of Section 13 is provided that if a challenge under any procedure agreed upon by the parties or under the procedure under Sub-section 2 of Section 13 for challenge of the Arbitrator is unsuccessful, the Arbitral Tribunal shall continue the arbitral proceedings and make an arbitral award. He has referred to Section 37 of the Act wherein there is no appeal provided from an order rejecting the challenge to the arbitrator on any of the grounds mentioned in Section 12 of the Act. He has submitted that the only remedy of the Petitioners is to await the award and, thereafter, challenge it under Section 34 of the Act.

5 Having considered the submissions, it appears that a Section
11 Petition had previously been filed by the Petitioners which was
thereafter sought to be withdrawn with liberty to file appropriate
application before the Arbitrator challenging his impartiality under
Section 12 of the Act. This Court by order dated 16.06.2021 permitted
the withdrawal of the Arbitration Petition (Stamp) No.8975 of 2021 with
liberty to apply to the Arbitrator and had left all contentions open and the
learned arbitrator to decide the challenge uninfluenced by disposal of the
Petition.

6 The Sole Arbitrator being a named arbitrator appointed
under the arbitration agreement in the memorandum of understanding
dated 17.06.2017 had upon an application being made by the Petitioners
rejected the challenge and continued to act as Arbitrator. The Sole
Arbitrator had not accepted his removal by notice of the Petitioners dated
20.03.2021.

7 It is clear from Section 14 of the Act that where a controversy
arises as to the Arbitrator becoming de jure or de facto unable to perform
his functions or for other reasons fails to act without undue delay, a party
may, unless otherwise agreed by the parties, apply to the Court to decide
on the termination of the mandate. In the present case, the Petitioners

have raised a controversy as to the Arbitrator becoming de jure or de facto unable to perform his functions and hence, it was required for the Petitioners to apply to the appropriate Court to decide on the termination of the mandate. It is only upon such application, if successful, that the mandate of the Arbitrator shall terminate and he may be substituted by another Arbitrator. This has been held by the High Court of Chhattisgarh in *Rahul Somani vs. Ramgopal Somani*¹. The Court had considered a similar application under Section 11 (6) r/w Sections 12, 14 and 15 of the Act, as made in the present case. The Court had held that such present joint application for termination of the mandate as well as for appointment of new Arbitrator is not maintainable unless the mandate of the earlier appointed Arbitrator is terminated in accordance with Section 14 of the Act. It is clear from the provisions of the Act that such an application under Section 14 of the Act is a pre requisite for termination of the mandate of the arbitrator and, thereafter for substitution by another arbitrator. The Petitioners are required to apply to the appropriate Court under Section 14 of the Act to decide on termination of mandate. In such application if filed, it would be open for the Respondent to contend that the Arbitrator cannot be removed and/or mandate terminated in view of the decision taken by the Arbitrator

1 2017 SCC OnLine Chh 1531

rejecting the challenge and upon which the Arbitrator continued to act as Arbitrator and is to make the arbitral award under Section 13(4) of the Act. It is further open to the Respondents to contend that the Arbitrator has not become de jure or de facto.

8 Hence, the Petition under Section 11(6) r/w Sections 12, 14 and 15 for substituting the Arbitrator without terminating his mandate, is required to be dismissed. The Petitioners are at liberty to adopt appropriate proceedings under Section 14 of the Act in the appropriate Court seeking termination of the mandate of the Arbitrator. All contentions of the parties are kept open.

9 The Arbitration Petition is dismissed with no order as to costs.

(R.I. CHAGLA, J.)

Digitally
signed by
WAISHALI
SUSHIL
WAGHMARE
Date:
2021.11.23
02:36:24
+0530