

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
(Original Side)

A.P. No. 126 of 2021

(Through Video Conference)

Reserved on: 05.01.2022

Pronounced on: 13.01.2022

Pam Developments Private Limited

...Applicant

-Vs-

Union of India and Others

...Respondents

Present:-

Mr. Priyankar Saha,
Mr. Hemant Tiwari,
Mr. Amritam Mondal, Advocates
... for the applicant

Mr. Shankar Ranjan Sen, Advocate
... for the respondents

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

Prakash Shrivastava, CJ:

1. This application has been filed for appointment of arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996.
2. A preliminary objection has been raised by the respondent that the present application is not maintainable as the earlier application has already been dismissed by this Court and that order has attained finality.
3. Having examined the record, it is noticed that earlier, the arbitration proceedings had taken place and the award dated 30th December, 2015 was passed by the sole arbitrator which was subject

matter of challenge at the instance of the applicant in AP No. 152 of 2016. This arbitration petition was allowed by order dated 08.12.2016 by setting aside the award and with a direction to the Railway Authorities to appoint an arbitrator following the procedure laid down in Clause 64 of the GCC without requiring the petitioner to invoke afresh the arbitration clause.

4. The applicant had again filed AP No. 86 of 2017 with the plea that the arbitrator was not appointed within time as per the direction of this Court in the order dated 08th December, 2016. AP No. 86 of 2017 was disposed of in view of the communication dated 16th January, 2017 whereby the respondent railways had nominated the panel of Gazetted Retired Railway Officers and requested the applicant to suggest the applicant's nominee arbitrator. Thereafter, certain proceedings took place and the applicant being dissatisfied with the appointment of Arbitral Tribunal had filed AP No. 494 of 2017 which was disposed of by order dated 13th July, 2018 by this Court, taking note of the fact that meanwhile the arbitral award was passed against the appellant and consequently, the application under Section 11(6) of the Act had become infructuous. This order was not challenged by the applicant any further and the same has attained finality. The applicant has now filed a fresh application under Section 11(6) of the Act and has raised the same plea that the constitution of the Arbitral Tribunal was not proper and seeking appointment of arbitrator in terms of Section 11 of the Act.

5. The order dated 13.07.2018 in AP 494 of 2017 has attained finality. If the applicant was not satisfied with the order dated 13th July, 2018 passed in AP No. 494 of 2017, he should have challenged it

in the appropriate proceedings. That apart, present application has been filed almost after two and a half years of passing of the earlier order of 13th July, 2018.

6. Since the earlier application AP No. 494 of 2017 has already been disposed of by order dated 13th July, 2018, therefore, on the same plea, the fresh application cannot be maintained. Hence, the present AP is dismissed as not maintainable.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

Kolkata
13.01.2022

PA(RB)