

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION APPLICATION NO.68 OF 2022

Pramod Bijoykumar Nayak ..Applicant
Vs.
Bharat Petroleum Corporation Ltd. & Ors. ..Respondents

Mr. Prafulla Khubalkar for Applicant.
Mr. S. R. Page for Respondents.

CORAM : G.S. KULKARNI, J.
DATE : APRIL 13, 2022.

PC.:

1. This is an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 whereby a prayer has been made for appointment of an arbitral tribunal for adjudication of the disputes and differences which have arisen between the parties under a Memorandum of Agreement for jobs dated 05 August, 2019. The arbitration agreement between the parties is contained in clause 18(a) of the agreement in question. There is no dispute in regard to the arbitration agreement between the parties.

2. Mr. Page, learned counsel for the respondents considering a subsisting arbitration agreement between the parties, in fairness, would submit that the respondent would not have any objection for this Court to appoint an arbitral tribunal.

3. There is also no dispute on invocation of the agreement which is by the applicant's advocate's notice dated 21 February, 2021, which also was replied by the respondents by their letter dated 04 March, 2021,

whereby an inability was expressed on behalf of the respondents to appoint an arbitrator for the reason that under the arbitration agreement it was the respondents who were to appoint an arbitral tribunal, however, in view of the settled position in law, that one of the contracting parties cannot unilaterally appoint an arbitral tribunal, hence, the respondents were unable to make any appointment.

5. In the above circumstances, the application is required to be allowed. It is accordingly allowed by the following order:-

ORDER

(i) Mrs. Justice P. V. Ganediwala, Former Judge of this Court, is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the Memorandum of Agreement for jobs dated 05 August, 2019.

(ii) The learned sole prospective arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application with a copy to be forwarded to both the parties;

(iii) At the first instance, the parties shall appear before the prospective arbitrator within 10 days from today on a date which may be mutually fixed by the prospective sole arbitrator;

(iv) All contentions of the parties on merits of the matter are expressly kept open;

(v) The fees payable to the arbitral tribunal shall be in accordance with the Bombay High Court (Fee Payable to the

Arbitrators) Rules, 2018;

(vi) The application is disposed of in the above terms. No costs.

(vii) Office to forward a copy of this order to the learned Arbitrator on the following address:

“12, Karamchand Mansion, New Marine Line, Barrack Road,
Mumbai – 400 020
Contact No. 09403930494”.

[G.S. KULKARNI, J.]