

S/L 15
17.7.2023
Court No.26
SD

WPA 8118 of 2016

M/s. Khagaul Loco Labour's Co-operative Society Limited & Anr.
Vs.
Union of India & Ors.

Mr. Phatick Chandra Das

...for the Petitioners.

Mrs. Aparna Banerjee

...for the Respondents.

Heard counsel appearing on behalf of the parties.

The claim of the petitioners in this writ petition is that penalties have been imposed upon the petitioners for the work carried out in violation of the specific terms and conditions of the agreement between the parties dated December 19, 2011.

Mrs. Aparna Banerjee, counsel appearing on behalf of the respondents, has pointed out paragraph 14 in the agreement that allows the respondents to impose penalty in certain events. She has further pointed out that there is an arbitration clause in the agreement at paragraph 22.

However, on perusal of the said clause, it appears that the clause provides the power to the General Manager to appoint an Arbitrator. In light of the judgment in ***TRF Ltd. vs. Energo Engineering Projects Ltd.*** reported in ***(2017) 8 SCC 377*** and in ***Perkins Eastman Architects DPC and Ors. vs. HSCC (India) Ltd.*** reported in ***(2020) 20 SCC 760***, such unilateral appointment cannot be sustained now.

The petitioners are accordingly given liberty to file a Section 11 application for appointment of an Arbitrator in this matter allowing the exclusion of time under Article 14 of the Limitation Act for the period in which the writ petition was filed and was kept pending by this Court.

I make it clear that I have not entered into the merits of the case.

With these observations, WPA 8118 of 2016 is disposed of.

There will be no order as to costs.

All parties are to act on the website copy of this order.

(Shekhar B. Saraf, J.)