

ORDER SHEET

AP/501/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

INTERNATIONAL COMMERCE LIMITED
VS
EASTERN COALFIELDS LTD.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 31st July, 2023.

Appearance:

Mr. Jishnu Saha, Sr. Adv.

Mr. Victor Dutta, Adv.

Mr. Sourojit Dasgupta, Adv.

...for the petitioner

Mr. Utpal Bose, Sr. Adv.

Ms. Sanchita Barman Roy, Adv.

...for the respondent

The Court: This is an application made by a claimant in an arbitration for the Court to issue appropriate Summons to two persons named in prayer (a) of the application for adducing oral/documentary evidence directly to the learned arbitral tribunal.

The evidence of the parties is presently being taken by the arbitral tribunal and the application has been made at the stage of the claimant's evidence of witnesses. The two persons mentioned in prayer (a) are the officers of the respondent, more specifically, the General Manager and the person who used to oversee the day-to-day activities of the entire area which has been

mined by the petitioner/claimant. The claim, which has been briefly described to the Court, arises out of an e-tender notice issued by the respondent to the claimant, pursuant to which the claimant started working in the area of Asansol. The dispute is with regard to the claimant/petitioner abandoning the work midway and thereafter referring the claim towards unpaid dues and damages to the Arbitrator.

The learned counsel appearing for the respondent opposes the relief claimed in the application on essentially factual grounds. According to counsel, the petitioner's application for expert evidence under Section 26 of the 1996 Act was rejected by the tribunal and that the petitioner has given incomplete particulars of at least one of the persons mentioned in prayer (a) of the application. Counsel further submits that the petitioner may have approached the two persons who are erstwhile employees of the respondent, and further that the petitioner's application is also not warranted in the face of a letter issued by one of the two persons supporting the case of the respondent. Counsel relies on Section 27(3) of the Act to urge that the Court has the power to weigh the necessity or propriety of an application made under Section 27 of the Act.

Learned counsel has placed the relevant documents in the application including the order passed by the learned sole Arbitrator which was communicated to the parties on 7th July, 2023.

Section 27(1) of The Arbitration and Conciliation Act, 1996 authorises the arbitral Tribunal or a person approved by the Tribunal to apply to the Court for assistance in taking evidence. Section 27(2) contains three sub-

clauses that reflect that the application must be specific and that the applicant must discharge the onus of proving that the evidence is required from the persons mentioned in the application within the outlines of the claims and the reliefs sought in the arbitration. Section 27(3) empowers the Court in fit circumstances to execute the request for assistance in taking evidence, provided the Court is of the view that the Court is competent to agree to the request in accordance with the rules of taking evidence. Except for Section 27(3), where the Court may pause to determine its competence and the evidentiary value and rules for allowing such a request, there is another subsection in Section 27 that precludes the Court from allowing such a request. The only requirement is that the request must be clear, specific, and with necessary particulars – Section 27(2).

In the present case, any doubt that the Court may or could have had on the necessity or competence of allowing assistance in taking evidence is amply resolved by the order passed by the learned arbitrator, which was subsequently communicated to the parties. The Arbitrator records in the order not only the approval given by the Tribunal to the claimant/petitioner to make the present application to the Court for assistance in taking evidence of the two concerned officers but has also given a clear finding that the testimony of these two officers is material since the officers were at the site during the course of the execution of the contract by the petitioner.

Nothing further remains for the Court to get into the factual arena to determine its competence since Section 27(1) provides that the arbitral Tribunal itself or a person approved by the Tribunal may apply to the Court for

assistance in taking evidence. Further, Section 27 does not empower the Court to revisit a factual finding of the Tribunal and sit in appeal over the finding. Since the Arbitrator is of the view that the evidence of the two persons is material for the ongoing evidence before the Tribunal, this Court does not have the statutory indulgence to enter into the factual arena and disallow the application.

The only difficulty, however, is that only one of the two persons has an accompanying address. This is not sufficient for the purposes of Section 27(2)(a) which requires that the names and addresses of the parties be provided. The officer whose address has been given in the present application will hence be the only officer who will be allowed to give evidence before the Tribunal.

AP/501/2023 is accordingly allowed and disposed of, but only to the extent of permitting Mr. Narinder Kumar Tripathi, residing at Varanasi Enclave Colony, (PO), Bhullanpur, PAC District- Varanasi, Uttar Pradesh – 221108 and directing Mr. Tripathi to adduce oral/documentary evidence directly to the learned arbitral Tribunal. Appropriate Summons and Commissions may be issued to this person for examination, including for the production of documents, in accordance with Section 27(6) of the 1996 Act.

(MOUSHUMI BHATTACHARYA, J.)