

OD-11

ORDER SHEET

AP/639/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

BUDDHADEB SAMANTA
VS
THE WEST BENGAL SURFACE TRANSPORT CORPORATION LTD.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 30th November, 2023

Appearance:

Mr. Rajat Dutta, Adv.

Ms. Sanjukta Ray, Adv.

Mr. Shounak Mitra, Adv.

Mr. Niladri Bhattacharjee, Adv.

Mr. Soham Bandopadhyay, Adv.

Ms. Priyanka Kundu, Adv.

The Court: This is an application for termination of the mandate of the present Arbitrator and appointment of a new Arbitrator under Sections 14 and 15 of the 1996 Act, respectively.

The factual background which has necessitated the present application are alarming, to say the least.

It is admitted that the arbitration commenced on 12th September, 2008, the first appointed Arbitrator resigned on 22nd March, 2016, the second Arbitrator passed away on 8th July, 2021 and the present Arbitrator was appointed on 23rd November, 2021. The arbitration clause in the Agreement

dated 28th September, 2007 designates the Chairman, West Bengal Surface Transport Corporation (WBSTC) Limited to act as the sole Arbitrator.

The first question which, therefore, would arise is whether this Clause/appointment can be sustained after several decisions of the Supreme Court barring unilateral appointments and more important Section 12(5) of The Arbitration and Conciliation Act, 1996.

Learned counsel appearing for the respondent seeks to defend the appointment on the ground that the arbitration commenced before 23rd October, 2015 when the amending Act of 2016 came into force. Counsel submits that Section 12(5) was inserted into the 1996 Act in terms of the amendment of 2016.

Learned counsel appearing for the petitioner does not oppose the submission made on behalf of the respondent that the Arbitrator may be directed to pass the Award within a specific time-frame.

With regard to applicability of Section 12(5) of the Act, the law is now substantially settled that arbitrations which have commenced prior to the amendment Act of 2016 will not fall within the dictates of the amendment including of Section 12(5) with regard to independence and impartiality of the Arbitrator; Ref: *S. P. Singla Constructions Private Limited vs. State of Himachal Pradesh and Anr*, (2019)2 SCC 488; *Union of India vs. B. M. Construction Company*, (2020)2 SCC 464.

Although the respondent's defence of an arbitration, which has been going on for the last 15 years is unacceptable, the Court must also bear in

mind that a new appointment may entail (God forbid) another 15 years. Therefore, it is in the best interest of the parties to continue with the present Arbitrator and within specific timelines.

The Court is informed that the respondent's witness is due to give evidence in the arbitration.

AP/639/2023 is accordingly disposed of by directing the learned Arbitrator to complete the arbitration and pass the Award by 31st January, 2024. Needless to say, the petitioner will be at liberty to approach the Court if there is any further delay in the making of the Award.

Since affidavits have not been called for, the allegations made in the petition are deemed not to have been admitted.

(MOUSHUMI BHATTACHARYA, J.)

bp.