

K.S. Jadhav

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO.48 OF 2021

M/s Pal Constructions

...Petitioner

Versus

The Chief Engineer (Navy) & Ors.,

...Respondents

Ms. A.R.S. Baxi, Advocate for Petitioner.

Mr. Yashodeep Deshmukh a/w Ms. Vaidehi Deshmukh & Ms. Aditi Athawale, Advocates for Respondent Nos. 2 to 7.

CORAM : R.I. CHAGLA, J.

DATE : 5TH JUNE, 2023.

ORDER :

1. Heard the learned Counsel for the parties. By this Arbitration Petition, the Petitioner is seeking appointment / substitution of Arbitrator to resolve the dispute between the Petitioner and Respondents as per general conditions of Contract Agreement (IAFW 2249).

2. The Petitioner has stated that the Respondent No.5 by letter dated 13th November 2015 appointed Mr. K.K. Gupta, IDSE stationed

at Lucknow as an Arbitrator. Mr. Gupta had entered into the reference on 1st December, 2015, which is mentioned in Paragraph 7 of the Petition. The Arbitrator had declared that the Award will be published on or before 30th August, 2017. However, the Arbitrator retired from active service and failed to publish the Award in the stipulated time. The Petitioner had requested the Respondent No.5 to appoint another Arbitrator as per letter dated 14th December, 2018. The Petitioner has stated that no action was taken on the request to appoint or substitute the Arbitrator. The Respondent No.1 had also addressed a letter to Respondent No.5 consenting to the appointment of a substitute Arbitrator for completing the Arbitration proceeding under Section 15(2) of the Arbitration and Conciliation Act, 1996. However, till date, no steps have been taken by the Respondents for appointment of a substitute Arbitrator. Accordingly, present Arbitration Petition has been filed.

3. The learned Counsel for the Petitioner as well as Respondent Nos. 2 to 7 make a joint request for appointment of Sole Arbitrator in place of Mr. K.K. Gupta, the erstwhile Arbitrator who had retired prior to the passing of the Arbitral Award.

4. In view of the agreement between the parties for appointment of Sole Arbitrator or substitution of the erstwhile Arbitrator who had been appointed by the Respondent No.5 vide letter dated 13th November, 2015 and annexed at Exhibit-D to the Arbitration Petition and who had thereafter retired prior to passing of the Award, following order is passed :

(i) Shri Widyoot Kumar Pradhan, Chief Mech. Engineer (Retired), Railways who is empaneled as MOD panel of Arbitrators, is appointed as Sole Arbitrator to adjudicate the dispute and differences between the parties as per general conditions of the Contract Agreement between (IAFW 2249).

(ii) The arbitration shall be conducted in Pune, where the Petitioner is situated.

(iii) The Office to inform the Sole Arbitrator regarding appointment.

(iv) The appointed Sole Arbitrator is requested to file the Disclosure Affidavit of Arbitration under Section 11(8)

(i) of the Arbitration and Conciliation Act, 1996 within a

period of three weeks from the date of receipt of the notice issued by the Registrar Judicial-I and provide copies to the parties.

(v) Considering that the erstwhile Arbitrator had proceeded substantially in the matter and prior to passing of the Award retired from services, the Sole Arbitrator shall make an endeavour to conclude the arbitration within six months from the first hearing.

(vi) Parties to appear before the Sole Arbitrator on the date fixed by him.

(vii) Fees of the Sole Arbitrator will be payable in accordance with the Bombay High Court (O.S.) Rules, 2018.

(viii) Arbitration Petition is disposed of in the above terms.

(ix) No costs.

[R.I. CHAGLA J.]