

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO.7 OF 2023

GE T & D India Limited] .. Applicant

vs.

Maharashtra State Electricity Transmission Co.Ltd.].. Respondent

Mr.Rishab Gupta a/w Atika Vaz and Rohit Iyengar i/b Shardul Amarchand Mangaldas & Co. for the Applicant.

Mr.Karan Bhosale a/w Sharayu Kale, Shivanji Chandra and Neha Bhosale i/b NDB Law for Respondent.

CORAM : BHARATI DANGRE, J

DATE : 18th JANUARY, 2023.

P.C.

1] The present Application filed under Section 11 of the Arbitration and Conciliation Act, 1996 seek substitution of the Arbitrator, appointed under the order of this Court on 02.03.2022.

The said relief is sought in the wake of recusal of the Arbitrator by his communication dated 26.04.2022 addressed to the parties, where he has expressed his inability to continue to act as Sole Arbitrator in the arbitration proceedings referred to him.

In terms of Section 14 of the Arbitration and Conciliation Act, he sought withdrawal with a request to the parties to take necessary steps for substitution of the Arbitrator.

The present Petition is follow up of the said communication.

2] Heard the learned counsel for the Applicant and the learned counsel for the Respondent.

On perusal of the proceedings, it can be seen that on 02.03.2022, based on the Consent Terms signed by the parties, Shri Justice Ranjit More (Retired Judge) was appointed as Sole Arbitrator to adjudicate the disputes that arose between the parties out of the Implementation Agreements dated 27.08.2009 and for resolving all the issues and disputes which form the subject matter of the Petition filed in the Court, without limiting it to the validity and legality of circular dated 10.01.2019 and all consequent actions taken thereon.

3] In furtherance of the appointment, the Sole Arbitrator conducted a meeting on 22.04.2022 for the purpose of issuance of preliminary directions. However, since on 29.07.2022 name of the learned Arbitrator was nominated for the post of Chairman, Central Administrative Tribunal, he recused himself from the arbitration proceedings.

Upon his recusal, the parties could not arrive at consensus about the name of substitute Arbitrator, and this has constrained the Petitioner to approach this Court claiming appointment of the Arbitrator.

He is seeking substitution of the Arbitrator by holding that the mandate of the erstwhile Arbitrator stand discharged under Section 15 of the Arbitration and Conciliation Act.

4] Since the factual aspects are not disputed and the fact which emerges from perusal of the Application alongwith its accompaniments is that the erstwhile Arbitrator has recused himself from the arbitration proceedings, I deem it appropriate to pass the following order :

ORDER

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator :

Smt.Justice Sadhana Jadhav (Retired Judge), is hereby appointed as a Sole Arbitrator to decide the disputes and differences between the parties under the documents referred to above.

(b) Communication to Arbitrator of this order :-

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the applicant/petitioner within one week from the date this order is uploaded.

(c) Disclosure : The learned Arbitrator, within a period of 15 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.

(d) Appearance before the Arbitrator : The parties shall appear before the Sole Arbitrator within a period of two weeks from today and the learned Arbitrator shall fix up a first date of hearing in the week commencing from 06/02/2023. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

(e) Contact and communication information of the parties : Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. This information shall include a valid and functional E-mail address as well as mobile numbers of the parties, participating in the

process as well as of the Advocates.

(f) Section 16 application : The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.

(g) Fees : The Arbitrator shall be entitled to fees prescribed as per the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

(h) Venue and seat of Arbitration : Parties agree that the venue and seat of the arbitration will be in Mumbai.

(i) Procedure : These directions are not in derogation of the powers of the learned Sole Arbitrator to decide and frame all matters of procedure in arbitration.

(j) All the rights and contentions of the parties are kept open.

Commercial Arbitration Application is disposed off in the aforesaid terms.

[BHARATI DANGRE, J]