

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CR-3775-2023 (O&M)
Date of Decision:- 21.8.2023

Uttar Haryana Bijli Vitran Nigam Ltd. ... Petitioner

Versus

M/s Arvindera Electricals and others ...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Naresh Markanda, Senior Advocate with
Mr. Rohan Markanda, Mr. Lakshay Mehta,
Mr. Nikunj Mahajan, Advocates for the petitioner.

Mr. Mohinder S. Nain, Advocate for the respondents.

GURVINDER SINGH GILL, J.

1. The petitioner seeks to invoke powers of this Court under Article 227 of the Constitution of India for setting aside order dated 17.5.2023 (Annexure P-2) passed by the Arbitrator in the Arbitration case titled 'M/s Arvindera Electricals Vs. Uttar Haryana Bijli Vitran Nigam Limited'.
2. The petitioner – 'Uttar Haryana Bijli Vitran Nigam Limited' is an instrumentality of the State and entrusted with the task of supplying electricity in State of Haryana and to ensure that the entire infrastructure is kept well maintained. Pursuant to publication of a notice dated 21.2.2014 by petitioner inviting tenders for supply, erection, testing, commissioning of 11 KV lines/feeders and augmentation of existing 11 KV lines, respondent no. 1 was awarded contract for the same. A dispute having arisen amongst the parties, an Arbitrator was appointed by this Court vide order dated 13.3.2020

(Annexure P-5). The relevant events which had taken place during the course of proceedings of arbitration are stated herein-under :-

Sr. No.	Date	Particulars
1.	13.03.2020	Respondent No.2 was appointed as the Sole Arbitrator by this Hon’ble Court (Annexure P-5).
2.	08.04.2020	The first order was passed by respondent No.2 directing the parties to file their pleadings. Next date of hearing was fixed as 19.06.2020 (Annexure P-6).
3.	28.05.2020	Statement of claims filed by respondent No.1 on 27.05.2020 alongwith an application for interim relief. Application for interim relief fixed for 8.6.2020 (Annexure P-7).
4.	30.08.2020	Statement of Defence and statement of counterclaims filed by the petitioner.
5.	10.12.2020	Replication and reply to counterclaims filed by respondent No.1 (Annexure P-8).
6.	24.01.2021	Petitioner filed rejoinder to the reply to the counter claims alongwith the affidavit of admission and denial of the documents. The pleadings in the matter was thus completed (Annexure P-9).
7.	27.02.2021	Both the parties mutually agreed to extend the mandate of the Tribunal for a period of six months upto 28.11.2021 since the period to make the award was to expire on 28.05.2021 (Annexure P-10).

8.	07.03.2022	From March 2021 to March 2022 the evidence and cross-examination of witnesses took place. The parties closed their evidence on 7.3.2022 and matter adjourned for arguments to 21.4.2022 (Annexure P-11).
9.	21.02.2023	Respondent No.1 concluded their arguments, and the matter was adjourned to March 2023 for the arguments of the petitioner (Annexure P-12).
10.	23.03.2023	Petitioner vide email requested respondent No.2 (Ld. Arbitrator) No.2 to adjourn the proceedings <i>sine die</i> since the mandate of the Arbitral Tribunal stood terminated by lapse of time. No orders/ directions were issued to this email (Annexure P-13).
11.	23.03.2023	Respondent No.1, replying through e-mail to Annexure P-13, objected to the request of the petitioner, and stated that there was no need to apply for an extension under Section 29A of the Act (Annexure P-14).
12.	24.03.2023	Petitioner reiterated the fact that the mandate of the Hon'ble Arbitral Tribunal stood terminated and unless an application is moved under Section 29A by either of the parties the proceedings could not be held. The matter was adjourn to 11.04.2023. It was stated by respondent No.2 that no further adjournments shall be granted (Annexure P-15).
13.	10.04.2023	Counsel for the petitioner contracted COVID-19 and a request was made to respondent No.2 through e-mail to adjourn the hearing (Annexure P-16).

14.	10.04.2023	Counsel for respondent No.1 opposed through e-mail, the request of the counsel for the petitioner and stated that the said request was frivolous and only to delay the proceedings (Annexure P-17).
15.	02.05.2023	Application dated 07.04.2023 seeking adjournment of Arbitration proceedings <i>sine die</i> filed before respondent No.2 by the petitioner (Annexure P-3).
16.	10.05.2023	Reply to the application filed by respondent No.1 (Annexure P-18).
17.	17.05.2023	The impugned order was passed by respondent No.2 wherein the right to argue the matter of the petitioner was closed, cost of Rs.50,000/- was imposed and the award was reserved (Annexure P-2).
18.	03.07.2023	Aggrieved by the impugned order, the present revision has been filed.

3. The learned counsel for the petitioner has vehemently argued that since the mandate of the Arbitrator stood expired, by lapse of time the petitioner had sent an e-mail to the Arbitrator on 23.3.2023 (Annexure P-13) with a request that the matter be adjourned *sine die*, which was objected to by respondent no. 1. It has further been submitted that the petitioner subsequently sought adjournment on various occasions for the same reason or for genuine reasons of illness of his counsel but the Arbitrator instead of adjourning the matter *sine-die* chose to pass impugned order dated 17.5.2023 (Annexure P-2).

4. This Court has considered the submissions addressed before this Court and has also perused the impugned order and other documents annexed in the paper book.

5. The impugned order dated 17.5.2023 (Annexure P-2) reads as under :-

“Number of time on Respondents’ request that Application under Section 29-A of the Arbitration and Conciliation Act, 1996 would be made to the Court for extension of time. The case was adjourned, but no application has been made by Respondent. Same request in same words has been again repeated today by Respondent. This process cannot be allowed to continue for an indefinite period.

2. The counsel for the Claimant states that Application can be made as and when the Respondent desires and they have not objected and they would not object. In these circumstances, request for sine die adjournment is declined with costs. Costs assessed Rs.50,000/- (Rupees Fifty Thousand only).
3. At this stage, the Counsel for the Respondent states that he has not made a request for adjournment. Now, the Respondent can proceed with arguments on merits.
4. At this stage, the learned Counsel for the Respondent states that since the arbitration proceedings sought to be adjourned sine die. Counsel for the Respondent further submits that the arbitration proceedings can proceed only if Application under Section 29-A of the 1996 Act for extension of time is pending in the Court or moved in the Court.
5. As already stated above, I have observed that the Application may be made to the Court for extension of time as requested by Respondent on earlier date of hearing was ordered, yet neither of the parties moved the Court. In these circumstances, the case cannot be adjourn sine die. The Application filed by the Respondent is rejected. The Respondent is at liberty to argue the case on merits, if he so desires.

6. Since the application for adjourning the case sine die has been declined by me, I asked the Counsel for Respondent to argue the case on merits, which he did not do. (The Counsel for the Respondent has opposed that his right to argue could not have been closed by this Hon'ble Tribunal). I find no force in this objection. To come up for Award. Award is reserved.”
6. From perusal of the aforesaid order and also previous orders, this Court finds that it is the petitioner who has not been co-operating for efficient conduct of proceedings and had been seeking adjournment on one count or the other. It is specifically recorded that on several occasions, it is the petitioner (arrayed as respondent before Arbitrator) who had requested for adjournments so as to move appropriate application under Section 29-A of the Act but no such application was moved. Nor the counsel came forward to argue the matter and the only anxiety shown by the petitioner before the Arbitrator was to get the matter adjourned *sine die* so that the matter is further prolonged. Such like dilatory tactics militate against the very concept of Arbitration, the purpose of which is to provide a mechanism for effective and efficient adjudication. It was noticing the conduct of the petitioner that the Arbitrator was constrained to impose cost of Rs. 50,000/-. The conduct of the petitioner rather amounts to defiance. The Arbitrator was left with no choice but to pass the impugned order which cannot be said to be illegal or perverse under the circumstances of the case.
7. Still further, the instant petition has been filed under provisions of Article 227 of the Constitution of India. Article 227 of the Constitution of India cannot be invoked casually to challenge every order passed by an Arbitrator. It is in rarest of the cases where a person is left remediless that Article 227 of the Constitution of India may come to aid of such person. The petitioner, in

the present case, was expected to argue the matter before the Arbitrator, when the same was fixed for arguments. In case, any award is passed against the petitioner, he can avail of statutory remedy under Section 34 of the Arbitration Act, which is the appropriate course.

8. The instant petition under Article 227 of the Constitution of India is found to be not maintainable under the present circumstances and the same is hereby dismissed.

21.8.2023
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(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No