

ORDER SHEET

AP-COM/791/2024

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

SATYENDRA SHARMA
VS
UNION OF INDIA

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 10th September, 2024.

Appearance:

Mr. Rupak Ghosh, Adv.

Mr. Vivek Basu, Adv.

Mr. Arindam Paul, Adv.

Ms. Debarati Das, Adv.

...for the petitioner

Mr. Siddhartha Bhattacharyya, Adv.

Mr. Manabendranath Bandyopadhyay, Adv.

...for the respondent

The Court: Learned counsel for the petitioner argues that the arbitration clause in the agreement between the parties is violative of *Perkins Eastman Architects DPC vs. HSCC (India) Ltd.*, reported at (2020) 20 SCC 760 and the principle embodied in Section 12 of the Arbitration and Conciliation Act, 1996 inasmuch as the same contemplates appointment of employees of the respondent authorities as Arbitrator.

It is submitted that the matter has a chequered history and there were previous appointments of Arbitrator, lastly culminating in an objection raised by the petitioner to the unilateral appointment of an Arbitrator by the

Principal Chief Engineer of the South Eastern Railway. Such letter is annexed at Page 175 of the present application.

It was clarified in the said letter that the petitioner was not submitting statement of claim as he is denying the mandate of the arbitral tribunal.

Learned counsel appearing for the respondent authority seeks two days' adjournment for taking further instructions. However, since the matter is pending for quite some time, such adjournment is refused; however, learned counsel for the respondent is permitted to submit the documents on which he seeks to rely.

From the documents handed over in Court today by the respondent, which apparently includes a copy of a letter dated August 12, 2024 relied on by the respondent, it transpires that the Arbitrator purportedly appointed by the respondent unilaterally, namely one Pankaj Kumar, who is an employee of the respondent authorities, having designated himself as "Chief Bridge Engineer", had referred to a previous nomination and iterated that the petitioner had consented to his nomination as Arbitrator.

However, from the clauses of the agreement and the statement and materials before the Court, it is clear that the nomination of the said person as Arbitrator is violative of the *Perkins* judgment as well as Section 12 of the 1996 Act, since the said nominee is an employee of the respondent and his appointment as Arbitrator would hit the very principles of fairness and impartiality.

Since the said person is ineligible within the contemplation of the 1996 Act to act as an Arbitrator, the approach of the petitioner before this Court for appointment of an Arbitrator is justified.

Since the dispute is otherwise arbitrable and comes within the ambit of the arbitration clause, there cannot be any reason not to appoint an Arbitrator.

As no affidavits are directed, it is deemed that none of the factual allegations made in the application are admitted by the respondent.

Accordingly, AP-COM/791/2024 is allowed on contest, thereby appointing Mr. Rajarshi Dutta, a member of the Bar Library Club (Mobile No. 9903039663), as the sole Arbitrator to resolve the disputes between the parties subject to a declaration being obtained under Section 12 of the Arbitration and Conciliation Act, 1996 from the said learned Arbitrator.

The learned Arbitrator shall fix his own remuneration in consultation with the parties and within the framework of the 1996 Act and its Fourth Schedule.

The documents handed over in Court today by the learned counsel for the respondent be kept on record.

It will be open to the parties to urge all issues, including that of jurisdiction of the Arbitrator, before the learned Arbitrator.

(SABYASACHI BHATTACHARYYA, J.)