

ORDER SHEET
AP-COM/405/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

ANAMIKA ENTERPRISES
VS
UNION OF INDIA

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 4th August, 2025.

Appearance:
Ms. Sristi Barman Roy, Adv.
Mr. Kamal Kr. Chattopadhyay, Adv.
Mr. Aurin Chakraborty, Adv.
Ms. Rimi Chatterjee, Adv.
...for the petitioner

Mr. Shiv Chandra Prasad, Adv.
Ms. Sumita Sarkar, Adv.
...for CPWD

The Court:

1. This is an application for appointment of an arbitrator upon recording termination of the mandate of the sole arbitrator, who was appointed from the panel of Arbitrators maintained by the CPWD. The petitioner was all along willing to cooperate and participate in the arbitral proceedings which was being conducted by an Arbitrator chosen by the

respondent. The petitioner invoked arbitration sometime in 2024 with regard to a dispute which arose in 2022. Without having any knowledge about the modification of Clause 25 of the GCC of 2020, the petitioner prayed for constitution of a Dispute Redressal Commission for adjudication of the claim, as a precursor to the invocation of the arbitration clause. The respondent constituted the DRC. As the claims remained unresolved, the petitioner invoked arbitration in terms of the erstwhile clause 25 of the 2020, GCC.

2. The challenge is that, the appointment was violative of the procedure prescribed in the modified GCC. The appointment was unilateral and the petitioner was not given a chance to choose an arbitrator from the panel maintained by the CPWD. The petitioner's choice of a retired officer from the panel maintained by the CPWD was ignored and the Chief Engineer referred the dispute to a person of his own choice, without any consent from the petitioner.
3. That participation in an arbitral proceeding would not debar the petitioner from challenging the jurisdiction of the arbitrator on the ground that the arbitrator was de jure unable to perform on account of severe infractions of the law and the GCC.
4. During the pendency of the arbitration, the petitioner wanted to amend the statement of claim, by incorporating further claims towards escalation charges and compensation. Such prayer was disallowed by the learned Arbitrator on the ground that the claim could not be entertained and the statement of claim could not be amended. Only

those disputes which were referred by the Chief Engineer of the concerned department could be taken up by the arbitrator for adjudication. After the order was passed, the petitioner came to know that the Clause 25 of the GCC of 2020 was amended and the said relevant clause discussed above had been done away with. The procedure for dispute redressal through a DRC was deleted. Reference of the dispute to conciliation was permitted only on limited grounds and the same was not mandatory. The clause that, the arbitrator could adjudicate only those disputes referred to him by the appointing authority had been deleted, prior to the dispute having arisen between the parties. Neither the arbitrator, nor the respondents had applied the correct provisions of the GCC and the petitioner was misled. The amended provisions stated that if the claim was below Rs.100 crores, a sole arbitrator would be appointed. A party could also opt for appointment of an Arbitrator from the Ministry of Housing and Urban Affairs. In case, the party seeking arbitration applied for appointment of an arbitrator from the Ministry of Housing and Urban Affairs, then an express agreement towards waiver of Section 12(5) of the Arbitration and Conciliation Act, 1996 was to be entered into. If the party did not opt for an arbitrator of the Ministry of Housing and Urban Affairs or did not submit the waiver agreement, the appointing authority was to propose five arbitrators from the list of CPWD's empanelled arbitrators to the party seeking arbitration. The party seeking arbitration was to give his choice for one of them within 15 days of receiving the notice and

the arbitrator appointing authority was to appoint the chosen person as the sole arbitrator within 15 days of the receipt of choice. The above provisions were not followed. The appointment was not only contrary to the modified conditions of clause 25 of the GCC, but also contrary to law.

5. The relevant provisions are quoted below :-

“25.2 Arbitration: If the aforesaid conciliation proceedings fail or the Conciliator fails to give proposal for settlement within the aforesaid period, either party may promptly give notice in the proforma prescribed in Appendix XVIII, under intimation to the other party, to the Chief Engineer or the Superintending Engineer concerned with the work (as applicable), hereinafter referred to as the Arbitrator Appointing Authority as indicated in Schedule F. for appointment of Arbitrator. However, a party may seek appointment of Arbitrator without taking recourse to the process of conciliation mentioned in sub-clause 25.1 above.

In the event of either party giving a notice to the Arbitrator Appointing Authority for appointment of Arbitrator, the said Authority shall appoint Arbitrator as per the procedure given below and refer such disputes to arbitration.

(a) Number of Arbitrators: If the contract amount is less than Rs.100 crore, the disputes may be referred for adjudication by a sole Arbitrator. If the contract amount is Rs. 100 crore or more, the disputes may be referred to an Arbitral Tribunal of three Arbitrators.

(b) Qualification of Arbitrators: It is a term of this contract that each member of the Arbitral Tribunal shall be Graduate Engineer with experience in execution of public works engineering contracts, and he should have worked earlier at a level not lower than the Chief Engineer (equivalent to level of Joint Secretary to the Government of India).

The aforesaid educational qualification and work experience shall be mandatory for appointment as Arbitrator.

The age of Arbitrator at the time of appointment shall not exceed 70 years. An Arbitrator may be appointed notwithstanding the total number of active arbitration cases with him.

(c) Parties to select Arbitrator: Based on the criteria specified above, a list of empaneled Arbitrators has been prepared in CPWD, and the parties shall have option to select an Arbitrator from the list sent to them.

25.3 Appointment of Sole Arbitrator: The parties may opt for appointment of the Arbitrator of the Ministry of Housing and Urban Affairs. In such cases, the party seeking arbitration has to submit an express agreement in writing as per Appendix XIX towards waiver of

Section 12(5) of the Arbitration and Conciliation Act, 1996 along with the notice for appointment of Arbitrator in the proforma prescribed in Appendix XVIII. under intimation to the other party. The Arbitrator Appointing Authority shall, within 30 days of receipt of the said notice, appoint Arbitrator of the Ministry of Housing and Urban Affairs as Arbitrator in the matter, provided the other party also submits waiver of Section 12(5), ibid in Appendix XIX within 7 days of the receipt of the said notice.

Where any one of the parties does not opt for the Arbitrator of the Ministry of Housing and Urban Affairs, or does not submit the waiver agreement, the Arbitrator Appointing Authority shall propose five Arbitrators from the list of CPWD Empaneled Arbitrators 10 the party seeking arbitration under intimation to the other party within 15 days of receiving the notice. The party seeking arbitration shall give his choice for one of them within 15 days of receiving the list, and the Arbitrator Appointing Authority shall appoint the chosen personas the Sole Arbitrator within 15 days of the receipt of choice.

It is a term of this arbitration agreement that if the parties fail to select, within the period prescribed above, an Arbitrator of their choice from the list of CPWD Empaneled Arbitrators forwarded to them, the Arbitrator Appointing Authority shall himself select and appoint Arbitrator from the said list.”

6. In view of the above non-compliances and also because the appointing authority unilaterally appointed the arbitrator, the mandate must be terminated. It is submitted by the petitioner that upon coming to know of the amendment, the petitioner realized that the procedure followed by the authority was vitiated and the learned arbitrator could not continue as he was de jure unable to perform his duty in terms of Section 12(5) of the Act and modified provision of the GCC. Even if the GCC was not known to the petitioner, the authority being aware of such fact, should not have misguided the petitioner. The amended provision is also inoperative to the extent that the petitioner cannot be forced to chose from the list of five arbitrators to be supplied by the respondents, unless the petitioner chooses voluntarily.

7. The court records termination of the mandate.
8. This Court appoints a substitute arbitrator from the list provided by the petitioner. The petitioner submits before this Court that a retired officer from the CPWD's panel should be appointed as the dispute arises out of a construction contract, which requires intricate measurements to be carried out by experts.
9. Under such circumstances, I do not find that the respondent should have any objection at all if one of their own retired engineers is appointed. Sri Sansar Pattanayak (Mobile: 7504213002; Email ID: sansar_pat@yahoo.com) is appointed as a substitute arbitrator. The proceedings shall continue before the substitute arbitrator from the stage it was last held. The award shall be published within one year from the date of communication of this order. The petitioner may pray for amendment of the statement of claim before the newly appointed arbitrator. Such prayer will be considered in accordance with law. Both the parties shall pray for return of the arbitral records from the erstwhile learned arbitrator.
10. All points are left open, to be agitated before the learned arbitrator. The fee of the learned arbitrator shall be as per schedule of rates prescribed by CPWD.
11. Liberty is granted to file the affidavit in opposition in the department.
12. The application is disposed of.

(SHAMPA SARKAR, J.)