



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
910 ARBITRATION APPLICATION NO. 3 OF 2022

Pramodkumar Govindprasad AgrawalApplicant

VERSUS

Union of India & anotherRespondents

Mr. L. V. Sangeet, Advocate for Applicant.

Mr. M. N. Navandar, Advocate for Respondents.

CORAM : R. M. JOSHI, J.

DATE : 28th FEBRUARY, 2025.

PER COURT :

1. This application is filed by invoking provisions of Sections 11(6), 11(8), 14 and 15 of Arbitration and Conciliation Act, 1996.

2. Admittedly, there is arbitration agreement between the parties. The previous litigation between them indicates that after order being passed by this Court, Arbitration Tribunal was appointed by the Respondents. Arbitration proceedings were being conducted since 2013-2014. Applicant addressed communication dated 10.08.2021 to the Arbitral Tribunal claiming that the mandate of the Arbitral Tribunal is terminated under Section 15 of the Act. The reason for said termination was that the claim was submitted on

31.12.2017 which was responded by the Respondent on 14.02.2018. Written arguments were submitted on 10.08.2019, 19.12.2019 and 21.02.2020. However, inspite of submission of written arguments, since no award was passed the applicant has unilaterally terminated the mandate of the Arbitral Tribunal.

3. There is no dispute about the fact that the Arbitral Tribunal has passed award dated 30.08.2021 bearing No. L.NO. G.191/ARB/2013/783 and the same is published.

4. In the light of these facts, present application is filed by the applicant seeking setting aside of the award dated 30.08.2021 and for appointment of Arbitral Tribunal afresh.

5. Heard learned counsel for both sides.

6. It is the contention of learned counsel for the applicant by drawing attention of the court to the various facts which, according to him, clearly demonstrate that the mandate of the Arbitral Tribunal stood terminated by efflux of law. In this regard, it is his submission that there is no specific term of agreement for

completion of proceeding before the Arbitral Tribunal. However, this Court, in Arbitration Application No. 17/2014, has issued following directions which read thus :-

“27. However, it will be appropriate, in my opinion, to issue following directions to expeditiously disposed of the arbitration proceedings.

(a) The applicant shall submit his claim to the arbitral tribunal with appropriate number of copies and documents by 30th November, 2017 with copy thereof be served on the respondent-Railway authority.

(b) The authority shall thereafter submit his reply to the claim by 1st January, 2018.

(c) The arbitral tribunal shall thereafter make every endeavor to conclude the arbitration proceedings, as expeditiously as possible, in any case, within a period of nine months thereafter.

7. Thus, it is his contention that as per the order of this Court a period of nine months was scheduled for completion of arbitral proceedings and since no extension is sought from this Court, the mandate of the Arbitral Tribunal stood terminated automatically and therefore any award passed by such Tribunal is not maintainable and consequently it deserves to be set aside. To support his submissions, he placed reliance on judgment of Hon'ble

Supreme Court in case of NBCC Ltd. vs. J. G. Engineering Pvt. Ltd., **2010(2) Supreme Court Cases 385** and judgment of coordinate bench of this Court in case of Neeta Lalitkumar Sanghavi and another vs. Bakulaben Dharmadas Sanghavi and others, **2019 SCC OnLine Bom 250**. Reference is also made to the judgment of Calcutta High Court in case of AVA Merchandizing Solution Pvt. Ltd. vs. Torero Corporation Pvt. Ltd., in A.P. No. 136/2019.

8. Learned counsel for Respondents submits that in the judgments cited supra on behalf of the applicant, there was no award passed and hence there was no question involved therein as to whether an award can be set aside by invoking provisions of Sections 11, 14 and 15 of the Act. It is his submission that once award is passed, there is no other option for the application but to file proceedings under Section 34 of the Act.

9. Hon'ble Supreme Court in case of NBCC Ltd. (supra) was dealing with the issue of appointment of Arbitrator for deciding the dispute between the parties on the ground that there is termination of mandate of Arbitral Tribunal. The facts as they appear from the judgment indicate that though it was a case of the Respondent that

the award was ready however admittedly the same was not published, in absence of publication of the award, it does not become an award under the provisions of the Act. Similarly, in case of Neeta Sanghavi (supra), this Court was dealing with the issue as to whether the termination of mandate of Arbitral Tribunal becomes an award to make the party challenge the same under Section 34 of the Act. In this regard, it is held by this Court that in that case it was not an award passed but it was termination of the mandate. It is held that this does not amount to passing of the award. Similar are the facts in case of judgment of Calcutta High Court.

10. The applicant placed reliance on order dated 13.10.2017 passed by this Court in Arbitration Application No. 17/2014, wherein direction was given to complete the arbitral proceeding within a month i.e. on or before September, 2018. As per the case of applicant, proceeding continued before Tribunal even after expiry of the said period. Both sides thereafter too, appeared and participated in the proceedings. The communication dated 10.08.2021, placed on record by the Applicant indicates that the parties appeared without any grievance before Tribunal till 2021. The last written argument was filed on 20.02.2020. At this stage, there is nothing on record to

indicate that the parties did not participated in the proceeding involuntary. Thus, there is inevitable inference which can be drawn from these facts is that the parties voluntarily subjected themselves to the jurisdiction of the Arbitral Tribunal inspite of expiry of time stipulated by this Court. It is permissible for the parties to agree upon for the extension of the mandate of Arbitral Tribunal.

11. Now, question arises herein this case that would it be permissible for this Court to appoint Arbitrator, where there is already an award passed by the Tribunal duly appointed. Secondly, owing to the provisions of the Act, it would be open for this Court to cause interference/set aside award passed by Tribunal, while entertaining application in the nature it is filed herein.

12. Undisputedly, here in this case, award is passed and the same is sought to be challenged by invoking provisions of Sections 11, 14, and 15 of the Act. It would be relevant to take note of said provisions, which read thus :-

Section 11 : Appointment of arbitrators :-

- (1) xxx
- (2) xxx
- (3) xxx

(4) xxx

(5) xxx

(6) Where, under an appointment procedure agreed upon by the parties, -

(a) a party fails to act as required under that procedure, or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement, expected of them under that procedure, or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, [the appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, as the case may be] to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(6-B) The designation of any person or institution by the Supreme Court or, as the case may be, the High Court, for the purposes of this section shall not be regarded as a delegation of judicial power by the Supreme Court or the High Court.]

(7) xxx

(8) xxx

- (9) xxx
- (10) xxx
- (11) xxx
- (12) xxx
- (13) xxx
- (14) xxx

Section 14 : Failure or impossibility to act :-

(1) [The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if]-

- (a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and
- (b) he withdraws from his office or the parties agree to the termination of his mandate.

(2) If a controversy remains concerning any of the grounds referred to in clause (a), of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.

(3) If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12.

Section 15 : Termination of mandate and substitution of arbitrator :-

(1) In addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate -

- (a) where he withdraws from office for any reason; or
- (b) by or pursuant to agreement of the parties.

(2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.

13. Perusal of the said provisions clearly indicates that this Court would get jurisdiction to appoint Arbitrator under Section 11(6) provided conditions requisite are complied with. Similarly, subject to

satisfaction of conditions prescribed in Section 15, there could be an order of substitution of another Arbitrator. In addition to circumstances referred in Sections 13 and 14, this Court can invoke powers under Section 15 for appointment of Arbitrator.

14. These provisions however, do not contemplate taking exception/challenge to the Arbitral Award passed under Section 31 of the Act. There are specific provisions made under Section 33 of the Act for correction and interpretation of award, by Arbitral Tribunal. Section 34 of the Act, provides for making an application for setting aside award. Section 35 makes award passed by Tribunal as final. Section 36 enables parties to enforce the award, after expiry of time for making application under Section 34 to set aside award. Against order passed under Section 34, an appeal is provided under Section 37 of the Act.

15. The scheme of the Arbitration Act, is self contained code and deviation to the said provisions is impermissible. It would therefore, be not open for the applicant to challenge the award in question except by invoking provisions of Section 34. Thus, this Court can not cause interference in the award dated 30.08.2021

bearing No. L.No. G.191/ARB/2013/783, while exercising jurisdiction under Sections 11, 14 or 15 of the Act. The judgments cited supra by applicant have no application to the present case and would not come to the aid of the applicant in any manner whatsoever.

16. Application therefore, deserves to be dismissed and the same is accordingly dismissed.

17. At this stage, learned counsel for the applicant submits that the period which is lapsed in prosecuting this application may be excluded from computation of limitation for filing application under Section 34 of the Act. Learned counsel for Respondent opposes the same.

18. Though application is dismissed, in case application is filed by applicant under Section 34 of the Act challenging award dated 30.08.2021, the time consumed for prosecuting the present application be excluded from the calculation of period of limitation.

(R. M. JOSHI)
Judge