

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

947 WRIT PETITION NO. 7153 OF 2025

Rajendra s/o Rupchand Malpani,
M/S R. Z. Malpani
Age 65 years, Occu: Business,
R/o Shanti Niketan Colony, Latur.
Tq. & District Latur.

...Petitioner

VERSUS

1. Union of India,
Through: Ministry of Railway,
Represented by the General Manager,
Central Railways, Mumbai.
2. The Chief General Manager,
Central Railway, C.S.D.M. Mumbai.
3. The Deputy Chief Engineer,
Central Railway, Solapur,
Tq, and Dist. Solapur

...Respondents

...
Ms. Anjali Dube, Advocate for the Petitioner
Mr. Rahul B. Bagule, Advocate for Respondent Nos.1 to 3.

...

CORAM : ROHIT W. JOSHI, J.
DATED : 25th JULY 2025

ORAL JUDGMENT :-

1. The petitioner had filed an application under Section 14 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “**Arbitration Act**”). The petitioner had initiated an arbitration proceeding against the respondents claiming recovery of amount pursuant to a work executed by him for the respondents.

2. During the course of hearing held on 11.12.2013 it was found that the claim of the petitioner was more than 20% of the contract value and therefore having regard to the clause 63 and 64 of the General Conditions of the Contract (hereinafter referred to as “GCC”), the dispute was not arbitrable. Vide order dated 01.10.2014, the Arbitral Tribunal had ruled that it did not have the jurisdiction to arbitrate the claim in view of the fact that the same was more than 20% of the contract amount.

3. The petitioner thereafter filed application dated 04.03.2017 *inter alia* praying for recall of the orders dated 12.12.2013 and 01.10.2014. The order dated 12.12.2013 is not on record, however, perusal of paragraph 3 of the application dated 04.03.2017 filed by the petitioner before the Arbitral Tribunal will indicate that the said order dated 12.12.2013 was also an order directing the petitioner to review and revise the claim as per the contract. It appears that thereafter the presiding arbitrator was transferred to some other place and the arbitration proceeding could not be taken up. Communication intimating about transfer of the presiding arbitrator was addressed to the petitioner by the Deputy CEE/TRD For Chief Electrical Engineer vide letter dated 23.03.2017. The Deputy General Manager had also issued communication dated 02.05.2017 calling upon the petitioner

intimating that the arbitration proceedings would be conducted in the light of amendment to the Arbitration Act by Arbitration and Conciliation (Amendment) Act, 2015.

4. It appears that thereafter, the petitioner filed application under Section 14 of the Arbitration Act thereby seeking termination of mandate of the Arbitral Tribunal in view of Section 14 of the Arbitration Act on the ground that dispute raised by him was not arbitrable as expressed by the Arbitral Tribunal vide order dated 01.10.2014. It appears that this application was filed on 01.07.2019. However, the application is registered as Arbitration Case No.22 of 2021. There is no clarity on record with respect to reasons for registration of the application filed in the year 2021. The learned Principal District Judge, Latur has rejected the said application vide order dated 06.01.2025. The learned District Judge has observed that the Arbitral Tribunal had given liberty to the petitioner to reduce his claim in order to bring it within the arbitral limit. The District Judge has recorded that the petitioner did not reduce the claim to bring it within the competence of the Arbitral Tribunal. The District Judge has recorded that the Arbitral Tribunal had passed a clear order dated 01.10.2024 intimating that the dispute was not arbitrable and the petitioner had moved the application under Section 14 of the Arbitration Act after the limitation for filing of Civil Suit had lapsed,

probably with a view to overcome the bar of limitation. The learned Principal District Judge has also observed that there was no dispute with respect to the mandate of the Arbitral Tribunal in view of order dated 01.10.2014. In as much as the Arbitral Tribunal had clearly expressed that *de jure*, it was unable to perform functions as Arbitral Tribunal in view of Clauses 63 and 64 of the GCC.

5. Section 14(1) provides that the mandate of Arbitral Tribunal shall terminate and the arbitrator shall be substituted by another Arbitrator, if he becomes *de jure* or *de facto* unable to perform his functions or fails to act without undue delay or if he withdraws from his office or the parties agree for termination of mandate. Perusal of Section 14 of the Arbitration Act will demonstrate that there is no need for any declaration that the mandate of Arbitral Tribunal is terminated *de jure* or *de facto* unless there is a dispute in this regard. Question of approaching a District Judge for deciding the issue of termination of mandate of arbitrator arises only where there is a dispute as regards termination of mandate.

6. It will be important to mention that the provision speaks about termination of mandate of arbitrator and not termination of arbitral proceedings. This is more clear from the fact that on termination of

mandate of an Arbitrator under Section 14, power is also conferred to substitute the arbitrator whose mandate is so terminated.

7. In the present case, the Arbitral Tribunal had passed a clear order saying that *de jure*, it was not possible for it to function as Arbitral Tribunal since the claim is not arbitrable in view of Clauses 63 and 64 of the GCC. Likewise, the provision under which the petitioners had approached the learned District Judge is not for termination of arbitration proceedings but for termination of mandate of Arbitrator and substitution of such Arbitrator by another.

8. In view of the aforesaid, I find no reason to interfere with the petition. The writ petition is therefore **dismissed** with no order as to costs.

[ROHIT W. JOSHI, J.]