
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
IN ITS COMMERCIAL DIVISION
COMM. ARBITRATION PETITION NO. 38 OF 2024

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Central Bank of India
through its Chief Manager
Sanjay Kumar Dubey

...Petitioner

Versus

Pune Mahanager Parvahan Mahamandal
Limited (PMPML)
through its Chairman and
Managing Director

...Respondent

Mr. Shilpan Gaonkar *a/w. Prabhakar M. Jadhav, for Petitioner.*

Ms. Madhavi Mangesh Tavanandi, *for Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

Date : January 9, 2025

P. C.

1. This is a Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (“***the Act***”) in connection with the disputes and differences relating to a Service Agreement dated November 7, 2015 (“***Agreement***”) between the Petitioner and the Respondent.

2. Learned Counsel for both parties are at pains to point out that they are State-owned entities in one manner or the other. A perusal of the record would show that arbitration agreement is contained in Clause 19 of the

Agreement which is at page 72 of the Petition, which is not extracted, in the interest of brevity.

3. Suffice it to say that Clause 19.1 required disputes and differences that are resolved at an operational level by mutual consent, to be notified by one party to another, after which, an “adjudicator” (who is not an arbitrator) would be appointed by the Joint Managing Director of the Respondent and the Deputy General Manager of the Petitioner. It is common ground that pursuant to an invocation of Clause 19.1 on September 13, 2022, an adjudicator came to be appointed. The adjudicator attempted to resolve the dispute and came up with a firm failure in resolution on August 18, 2023. The Petitioner invoked arbitration on April 26, 2024.

4. The core objection raised by the Respondent to this Petition is that Clause 19.2 provides that the reference to arbitration must be made by either party within 30 days of the decision of the adjudicator or the communication of the failure of a decision by the adjudicator. Therefore, the contention is that the procedure agreed to by the parties contemplated that the reference to arbitration must be made within 30 days, whereas, the reference has evidently been made nearly eight months after the adjudicator’s confirmation of failure to resolve the dispute. Put differently, the core objection appears to be that the principle of party autonomy stipulates that a pre-agreed

procedure for dispute resolution being in place, the deadline is an integral part of such arrangement agreed between the parties. Therefore, the 30-day deadline is argued to be sacrosanct, beyond which, arbitration cannot be invoked.

5. In my opinion, *prima facie*, although one could argue that such deadline is mandatory in character, it could equally be argued that going by the very conduct of the parties, such deadline was directory in nature. Whether a certain deadline in an instrument is mandatory or directory would be a mixed question of fact and law, which will necessarily require evidence to be seen and the only forum whose domain it is to carry out such exercise, in my opinion, is the arbitral tribunal. In fact, it is the principle of party autonomy that the deadlines for conduct by the adjudicator in 19.1. and 19.2 were already missed inasmuch as the adjudicator did not give a decision within fifteen days as contemplated in Clause 19.2, but took nearly a year in taking a decision. The upshot appears to be that commercial entities, particularly State-owned commercial entities, did their best to try and resolve their disputes, before resorting to the arbitral proceedings. That cannot shake the foundation of the arbitration agreement.

6. Learned Counsel for the Respondent also submits that this Petition under Section 11 of the Act too was filed eight months after the adjudicator's

report of August 18, 2023. She would point to this being a indicator of the tardiness on the part of the Petitioner. Learned Counsel for the Petitioner submits that the invocation of Clause 19.1 was effected by the Petitioner on September 13, 2022, to which the Respondent replied on February 13, 2023, and the parties eventually agreed on April 19, 2023, to enable the adjudicator to conduct his work. The adjudicator, in turn, who had a time frame of fifteen days envisaged in Clause 19.2 took four months thereafter to report failure. All these circumstances, *at least, prima facie* point to the fact that these deadlines were perhaps intended by the parties to be directory in nature and not mandatory in character. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter. The parties are free to agitate all issues, including the issue of limitation before the arbitral tribunal hereby appointed.

7. The Supreme Court has repeatedly now endorsed that the Court exercising jurisdiction under Section 11 must also not delve into facets of limitation, which itself would be a mixed question of fact and law, and would need to be assessed on the basis of evidence obtaining from the material on the record. The role of this Court is to examine the existence of an agreement and the existence of a dispute. Both these factors are writ large on the face of the record.

8. Learned Counsel for the Respondent also alludes to an Office Memorandum dated March 31, 2020 published by the Ministry of Law, Government of India, Department of Legal Affairs, dealing with dispute resolution mechanisms, and indicates that, that Office Memorandum should guide dispute resolution in the instant case.

9. I have no hesitation in rejecting the aforesaid contention inasmuch as on the face of it, the Office Memorandum applies to disputes between Central Government Ministries, Departments, and Statutory Bodies under their administrative supervision and control of the Central Government. The Petitioner is a scheduled commercial bank carrying on commercial activity, whereas the Respondent is a local municipal transport operator in the city of Pune.

10. The arbitration agreement contemplates arbitration by a three-member tribunal. However, Learned Counsel for both parties fairly state that they would be agreeable to proceed with arbitration by a sole arbitrator, by consent (only for identity of the arbitrator), and they seek to proceed to arbitration by Smt. Justice Vasanti A. Naik (Retd.). Therefore, the following order is passed :

- a. Smt. Justice Vasanti A. Naik (Retd.), is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above. The contact particulars are set out below :

Address : 5, Samarth Nagar (West), Wardha Road, Nagpur-440015.

AND

Off. 322, Verma Chambers, Near Horniman Circle, 11, Homji Street, Fort, Mumbai-400001.

Mobile No. : 9822472080

Email : vasantianaik@gmail.com

- b. A copy of this Order shall be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioner within a period of one week from today. The Petitioner shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;
- c. The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act to the parties within a period of two weeks from receipt of a copy of this Order;
- d. The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings

etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

- e. All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Arbitral Tribunal in relation to costs and ;
 - f. The parties have agreed that the venue and seat of the arbitration will be in Mumbai. It is clarified that it shall be open to the Arbitral Tribunal to conduct the proceedings online through electronic mode.
11. This Arbitration Petition is ***finally disposed of*** in the aforesaid terms.
12. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]