HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Arb P No. 45/2025

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Union of India .....Petitioner(s)/Appellant (s)

Through: Mr. Sumant Sudan, Advocate vice
Mr. Vishal Sharma, DSGI.

vs

M/S Bhagwati Associates .....Respondent(s)

Through: Mr. Laksh Puri, Advocate.

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT
02.11.2026

(ORAL)

01. The petitioner, Union of India, has invoked Sections 14(2) read with Sections 11(6) and 15(2) of the Arbitration and Conciliation Act, 1996 ["the Act of 1996"], for the appointment of a substitute arbitrator.

02. Before the grounds urged are adverted to, certain admitted facts are required to be noticed, which are stated as thus:

2.1 The respondent, pursuant to the award of a contract for the construction of 120 Men Barrack and execution of an agreement in this respect, raised a dispute with respect to the contract and invoked the arbitration clause; Clause 25 of the General Conditions of Contract for Central P.W.D. Works, 2014 (GCC-2014), whereupon the Additional Director General (Jammu), CPWD, in terms of his order dated 09.06.2023, appointed Sh. Atul Kumar Garg as Sole Arbitrator to adjudicate upon the claims.

2.2. The Sole Arbitrator entered upon the reference on 30.06.2023. The petitioner, Union of India, preferred an application dated 17.10.2024, vide its communication dated 18.10.2024, before the Sole Arbitrator, stating that since his mandate, in terms of Section 29A of the Act of 1996, had come to an end, he could not continue with the proceedings in the absence of extension. The respondent also approached the Arbitrator by way of a separate application dated 30.11.2024, requesting him to decide the venue of the arbitration proceedings.

2.3. The Sole Arbitrator, vide his procedural order dated 10.12.2024, rejected the application preferred by the petitioner, Union of India, but allowed the application preferred by the respondent, thereby deciding that venue/place of arbitration shall be New Delhi and that provisions of the Act of 1996, as applicable in New Delhi, shall be applicable to the arbitration proceedings before him. The Arbitrator further, in terms of order dated 31.12.2024, held that he had the mandate up to 25.03.2025 and, vide order dated 24.01.2025, requested the parties to approach the Court to seek extension of time after 25.03.2025.

03. Petitioner is aggrieved of the aforesaid observations of the Sole Arbitrator, *inter alia*, on the grounds that since contract was awarded at Jammu, the work was executed at Jammu, the respondent raised the disputes and requested the competent authority at Jammu for the appointment of an Arbitrator, the arbitration proceedings commenced at Jammu after the request for appointment of an Arbitrator was received at Jammu under Section 21 of the Act of 1996, and the cause of action had accrued at Jammu, the seat of arbitration could only be at Jammu.

3.1 According to the petitioner, though J&K Arbitration and Conciliation Act, 1997, came into force in the year 2017, but the Arbitration clause contained in GCC-2014 explicitly provides that arbitration shall be conducted in accordance with the Act of 1996 or any statutory modification or enactment thereof and the rules framed thereunder for the time being in force.

3.2. It is also contention of the petitioner that after the repeal of J&K Arbitration and Conciliation Act, 1997, the Central Arbitration and Conciliation Act, 1996, (the Central Act of 1996) was made applicable to the UT of J&K, but with certain modifications. According to the petitioner, in terms of Section 29A(1) of the Act of 1996, award is to be passed within twelve months from the date of entering upon the reference, i.e., by or before 29.06.2024, and in the absence of any consent for extension of time by the petitioner, mandate of the Arbitrator stood terminated.

3.3. Petitioner has invoked Sections 14(2) read with Section 15(2) of the Act of 1996 for a declaration that mandate of the Sole Arbitrator had terminated and for the appointment of a substitute Arbitrator in his place to enter upon the reference and adjudicate upon the disputes between the parties.

04. The respondent has not come forward with any response to the plea of the petitioner.

05. Having heard learned counsel for the parties, I have gone through the record.

06. As stated, it is an admitted position of fact, borne out from the record, that the contract in question came to be awarded to the respondent at Jammu, the work was also executed by him at Jammu, the respondent raised the dispute and

requested the competent authority for the appointment of the Arbitrator at Jammu, and the Arbitrator also came to be appointed by the Additional Director General (Jammu), CPWD, at Jammu, under the Act of 1996. Be that as it may, the arbitration clause contained in GCC-2014 explicitly provides that Arbitration proceedings with respect to any dispute inter se the parties shall be governed by the Act of 1996, as applicable to the UT of J&K, being the law in force at the time of commencement of the Arbitration proceedings. Therefore, in terms of Section 29A(1) of the Act of 1996, as soon as the Sole Arbitrator received notice in writing of his appointment, he is deemed to have entered upon the reference.

07. The petitioner, Union of India, is aggrieved of the impugned orders dated 10.12.2024 and 31.12.2024, whereby the Sole Arbitrator came to conclude that the venue/place of Arbitration shall be New Delhi and that provisions of the Act of 1996, as applicable in New Delhi, shall be applicable to the Arbitration proceedings before him, primarily on the ground that though, after the repeal of the J&K Arbitration and Conciliation Act, 1997, the Central Act of 1996 was made applicable to the UT of J&K, but there is a material difference in the languages of Sections 29A(1) of the Act of 1996 and that of the Central Act, applicable to the rest of India.

7.1. Section 29A(1) of the Act of 1996, as applicable to the UT of J&K and Section 29A(1) of the Central Act of 1996, for the ease of reference, are extracted below:

Section 29A(1) (as applicable in UT of J&K)

"*29A(1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.*"

Section 29A(1) (as applicable in Rest of India)

> **29A(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under Sub-section (4) of Section."*

08. It is evident from a bare perusal of the languages of Section 29A(1) of the Act of 1996, applicable to the UT of J&K, and the corresponding provision applicable to the rest of India, that there is material difference between the two provisions. Under Section 29A(1) of the Act of 1996, applicable to the UT of J&K, award is to be made by the Arbitrator within a period of twelve months from the date the Arbitral Tribunal enters upon the reference, whereas under Section 29A(1) of the Act of 1996, applicable to the rest of India, award is to be made by the Arbitral Tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4).

09. Since the Sole Arbitrator came to be appointed by the competent authority under the Act of 1996, applicable to the UT of J&K, and the Arbitration clause contained in GCC-2014 also explicitly provides that arbitration shall be conducted in accordance with the Act of 1996 or the statutory modifications or enactments or the rules made thereunder for the time being in force, it is unambiguously clear that Arbitration proceedings with respect to the dispute in question are to be governed by the Act of 1996, as applicable to the UT of J&K, being the law in force at the commencement of the Arbitration proceedings, i.e., at the time when the notice of appointment came to be received by the Sole Arbitrator at Jammu. Under Section 29A(1) of the Act of 1996, applicable to the UT of J&K, the Sole Arbitrator was to make the award within a period of twelve months from the date he entered upon the reference, i.e., by or before 29.06.2024. Therefore, the impugned order dated 10.12.2024 came to be passed by the Sole Arbitrator only after become *functus officio.*

10. Now, Section 14 of the Act of 1996 deals with the consequences on account of the failure or impossibility on the part of the Arbitrator to act.

10.1. Section 14, for the facility of reference, is extracted below:-

> **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.*

11. After the termination of the mandate of the Arbitrator under sub-section (1) of Section 14, he is to be substituted by another Arbitrator under sub-section (2) of Section 15 of the Act of 1996, which, for the facility of reference, is extracted below:

> **"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".*

12. It is evident from the above that under Sub-Section 1 of Section 14, mandate of an Arbitrator terminates and he is substituted by another arbitrator if, in terms of Clause (a), he becomes de jure or de facto unable to perform his functions or, for other reasons, fails to act without undue delay and under sub-section (2) of Section 14, if the controversy remains concerning the grounds referred to in clause (a) of sub-section (1), the party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate. Further, after the termination of the mandate of the Arbitrator, he is to be substituted by another Arbitrator under sub-section (2) of Section 15 of the Act of 1996.

13. As stated, since the Sole Arbitrator appointed by the competent authority in the present case has failed to make the award within the time limit of twelve months from the date he entered upon the reference under Section 29A(1) of the Act of 1996, applicable to the UT of J&K, and has failed to act without undue delay, his mandate came to be terminated, and he is required to be substituted according to the rules applicable to the appointment of the Arbitrator being replaced.

14. Further, since the Act of 1996, applicable to the UT of J&K, was applicable to the Arbitration proceedings before the Arbitral Tribunal, and the cause of action accrued at Jammu, it implies that seat of arbitration is to be at Jammu.

15. For what has been observed and discussed above, the present petition is allowed, and it is hereby declared that mandate of the Sole Arbitrator, Sh. Atul Kumar Garg, stands terminated w.e.f. 29.06.2024, and **Er. Vinod Gupta Retd. Commissioner, J&K Govt. H. No. 42, Sec 1A, Trikuta Nagar, Jammu 180020**

is appointed as a substitute Arbitrator in his place to enter upon the reference and adjudicate upon the disputes between the parties.

16. The substitute Arbitrator is directed to proceed in the matter in accordance with the provisions of the Act of 1996 and to make an award within the time provided under the Act, after charging the prescribed fee along with the incidental expenses to be shared by the parties.

17. The Registry is directed to send a copy of this order to the substituted Arbitrator.

18. Disposed of.

(Rajesh Sekhri)
Judge

Jammu
02.11.2026
Abinash