
(2018) 06 CAL CK 0077
In the Calcutta High Court
Case No : AP 419 OF 2016

Joy Enterprise

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 21-06-2018

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(6), 12, 13(3), 13(4)(5), 14

Citation : (2018) 06 CAL CK 0077

Hon'ble Judges : ASHIS KUMAR CHAKRABORTY, J

Bench : Single Bench

Advocate : Ayan Banerjee, Arijit Bhowmick, Paritosh Sinha, Arindam Mondal

Final Decision : Disposed Of

Judgement

In this application under section 14 read with section 11(6) of the Arbitration and Conciliation Act, 1996 (in short, the "Act of 1996"), the

petitioner has prayed for termination of the mandate of the sole arbitrator and appointment of a fresh arbitrator.

According to the petitioner, it filed an application under section 12 of the Act of 1996 before the arbitrator and thereafter by a letter dated December

23, 2015 addressed to the Chief Engineer, Headquarter of the respondent the arbitrator sought for leave to recuse from the arbitral proceeding.

However, by a letter dated March 22, 2016 the Chief Engineer, Headquarter of the respondent requested the said arbitrator to proceed with and

complete the arbitral proceeding in accordance with the Act of 1996. According to the petitioner, when the arbitrator sought to recuse himself from

the arbitral proceeding but after receipt of the said letter dated March 22, 2016 from the Chief Engineer, he is once again proceeding with the arbitral

proceeding it should be held that the arbitrator has become de jure or de facto

unable to perform his function as arbitrator.

Thus, the petitioner has pressed for removal for the present arbitrator and appointment of a fresh arbitrator by this Court. Considering the facts of the case, I find that the arbitral proceeding between the parties commenced before October 23, 2015, that is, before the amending Act 3 of 2016 came into force.

In the present case, the said direction of the Chief Engineer, the authority who appointed the arbitrator in his letter dated March 22, 2016 cannot be

construed to be an act conferring any right on the petitioner to move an application under Section 12 of the Act of 1996.

However, as per Section 13(3) of the Act of 1996 the arbitrator has to deal with the allegations made against himself by the petitioner in the said

application under Section 12 of the Act of 1996. The arbitrator is, therefore, directed to forthwith decide the said application of the petitioner under

Section 12 of the Act of 1996.

In the event the arbitrator accepts the allegations made against him by the petitioner in the application under section 12 of the Act of 1996, then the

consequence provided in section 13 shall follow. It is made clear that if the application filed by the petitioner under section 12 of the Act of 1996 is not

decided in its favour, the petitioner will be entitled to pursue his remedy under sub-sections (4) and (5) of section 13 of the Act of 1996. With the

above directions, AP No.419 of 2016 stands disposed of. There shall, however, be no order as to costs.