

(2014) 04 MEG CK 0008
In the Meghalaya High Court
Case No : Arbitration Petition No. 1 of 2013

North Eastern Electric Power Corporation Ltd.	APPELLANT
Vs	
M/s. Shrolenson Marbaniang	RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(6), 32

Citation : (2014) 04 MEG CK 0008

Hon'ble Judges : Prafulla C. Pant, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, CJ.

1. By means of this arbitration petition preferred u/s 11(6) of Arbitration and Conciliation Act, 1996, the petitioner has sought appointment of another arbitrator in place of arbitrator Capt. Pradip Kumar (respondent No. 2) appointed by the Hon'ble Chief Justice, Gauhati High Court vide order dated 19.02.2002 passed in Arbitration Petition (R) No. 1 of 2002. Heard learned counsel for the parties and perused the papers on the record.

2. Brief facts of the case are that in terms of Agreement dated 05.05.1995 entered between the petitioner North Eastern Electric Power Corporation Ltd. (for short NEEPCO) and respondent No. 1 M/s. Shrolenson Marbaniang, construction work of Dikrong Power House was to be executed in Arunachal Pradesh. After a dispute arose in respect of some claims made by the respondent No. 1 (i.e. the contractor), invoking arbitration clause, he filed Arbitration Petition (R) No. 1 of 2002 before the Hon'ble Chief Justice, Gauhati High Court. Which was disposed of vide order dated 19.02.2002, whereby, Capt. Pradip Kumar of Oil India Ltd., Duliajan (present respondent No. 2) whose name figured in the list of panel of arbitrators maintained by the Indian Council of Arbitrators, was appointed as an arbitrator on behalf of NEEPCO (present petitioner). Another arbitrator,

nominated by present respondent No. 1 (contractor) was one Shri Bulan Ch. Borgohain of Guwahati. It appears that they appointed one Dr. Sarad Ch. Dutta as Presiding Arbitrator. The Tribunal passed final award on 01.10.2007. Said award was challenged by the present petitioner (NEEPCO) before the Principal Civil Court/Addl. Deputy Commissioner, Shillong by filing Arbitration Case No. 3(T) 2007 and the Court set aside the award dated 01.10.2007 on 27.08.2010. Against the said order of the Principal Civil Court, Arbitration Appeal No. 1 of 2008 was filed by the present respondent No. 1 (contractor), before the Gauhati High Court, and the same was disposed of vide order dated 16.06.2011 and the appellate court declined to interfere with the order passed by the Principal Civil Court. However, the contractor was allowed to appoint substituted arbitrator in place of Bulan Ch. Borgohain (as he was found to be an ex-employee of the contractor/appellant and on said ground, the award was set aside). Consequently, present respondent No. 1/contractor has nominated Shri Kaida Najjar, Retired Chief Engineer (PWD), Shillong. It is pertinent to mention here that admittedly Special Leave to Appeal filed against the order dated 16.06.2011 passed in the Arbitration Appeal No. 1 of 2011 has been dismissed by the Apex Court in limine on 12.03.2012.

3. The present petitioner (NEEPCO) has moved this application for change of his Arbitrator i.e. Capt. Pradip Kumar earlier appointed by Hon'ble Chief Justice, Gauhati High Court. The ground taken in the present petition is that Capt. Pradip Kumar became functus officio after he delivered the award as such appointment of another person is sought to be made as an Arbitrator on behalf of the present petitioner (NEEPCO).

4. In this connection, attention of this Court is drawn to Sub-Section (1) of Section 32 of Arbitration and Conciliation Act, 1996 which reads as under:

Termination of proceedings-(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

But in the opinion of this Court, since the final award dated 01.10.2007 has been set aside, as such the position stands restored as it stood prior to the award was given. Since there were allegations against the Arbitrator nominated by the present respondent No. 1 (contractor) that he has been an employee of said party and on that ground award was set aside, the respondent No. 1 (contractor) was allowed by the appellate court to substitute Arbitrator nominated by him earlier. But the same does not apply to the present petitioner (NEEPCO).

5. Learned counsel for the petitioner expressed apprehension that since Capt. Pradip Kumar was also signatory to the award set aside, as such new Arbitrator be appointed. But there is no such ground available to the petitioner (NEEPCO) under Arbitration and Conciliation Act, 1996 for the change of Arbitrator. Under the Scheme of Appointment of Arbitrators by the Chief Justice of High Court of Meghalaya, 2013, Paragraph 8 provides that if the Chief Justice, on receipt of a

complaint from either party to the arbitration agreement or otherwise, is of opinion that the person or institution designated by him has neglected or refused to act or is incapable of acting, he may withdraw the authority given by him to such person or institution and either deal with the request himself or designate another person or institution for that purpose.

6. None of the above conditions for change of Arbitrator exists in the present case. As such, the prayer made by the petitioner (NEEPCO) cannot be allowed. It is relevant to mention here that in the present case, it is admitted by the parties that earlier Presiding Arbitrator (Dr. Dutta) who signed the arbitral award (since set aside) has already resigned and in his place later Justice Lamare (retired) and subsequently, Justice Rajkhowa (retired) were substituted who have died. In these circumstances, respondent No. 2 (Capt. Pradip Kumar) and the substituted arbitrator Shri Kaida Najiar, retired Chief Engineer (PWD), Shillong are required to nominate a new Presiding Arbitrator. With the above observations, this arbitration petition for change of arbitrator, is dismissed.