
(2023) 03 SIK CK 0024

In the Sikkim High Court

Case No : Arbitration Appeal No. 01 Of 2020

Sikkim Power Development Corporation & Anr.

APPELLANT

Vs

M/S Amalgamated Transpower (India) Ltd.

RESPONDENT

Date of Decision : 20-03-2023

Acts Referred:

Citation : (2023) 03 SIK CK 0024

Hon'ble Judges : Biswanath Somadder, CJ; Bhaskar Raj Pradhan, J

Bench : Division Bench

Advocate : Tamanna Chhetri, Tenzing Thinlay Lepcha, Tanish Ganeriwala,
Vishwajeet Tyagi, Rachana Rai

Judgement

Biswanath Somadder, CJ

On 15th March, 2023, when the instant matter was taken up for further consideration, this Court had passed the following orders:-

" When the matter is taken up for further consideration at 02.00 p.m. and it is now the turn of the respondent to reply to the submissions advanced on behalf of the appellants, learned counsel appearing for the respondent submits that he does not have his brief and as such, not ready and seeks time.

To say the least, we are a bit shocked and surprised by such submission made on behalf of the respondent at this belated stage for the simple reason that we had made it clear on 27th February, 2023 — in presence of both parties — for both appeals (being Arb. A. No.01/2020 and Arb. A. No.01/2021) to be heard on a day to day basis, beginning 10th March, 2023, in view of the order dated 14th October, 2022, passed by the Hon'ble Supreme Court wherein there was a specific direction upon this High Court to dispose of both the appeals within a certain timeframe, which still stands and is required to be complied with. Thereafter, the matter was heard on subsequent dates, i.e., on 10th March, 2023; 13th March, 2023 and 14th March, 2023. During all these days, the respondent was all along represented through learned advocate(s). We, however,

notice that the learned counsel for the respondent — who is addressing us today — entered appearance for the first time, yesterday. Seeking of adjournment at this belated stage is palpably unfair, not in the interest of administration of justice and is required to be frowned upon. Ideally, in the facts and circumstances of the instant case, no adjournment should be granted. However, purely following the spirit of *audi alteram partem*, we adjourn the matter till 02.00 p.m. tomorrow, while making it clear that no further prayer for adjournment shall be entertained under any circumstances. ”

The aforesaid order was passed in the presence of lawyers for the parties, which included Mr. Biswabrata Basu Mallick and Ms. Rachana Rai, as Advocates appearing for M/s Amalgamated Transpower (India) Ltd. Subsequently, the matter was taken up for consideration on the very next day, i.e., on 16th March, 2023. On that day, after having heard the learned Advocates for the parties, this matter was adjourned till today, i.e., 20th March, 2023, at 02:00 p.m. for further consideration. This order was also passed in the presence of the learned Advocates for the parties, which, on that date, also included Mr. Soumya Chakraborty, a Senior Advocate — who appeared for the first time — with Mr. Biswabrata Basu Mallick, Ms. Rachana Rai and Mr. Somipam MC, as Advocates representing M/s Amalgamated Transpower (India) Ltd. On that date, this Court was given to understand by the learned Senior Advocate that today (20th March, 2023), he will resume his submissions.

Today, when the two arbitration appeals (being Arb. A. No.01 of 2020 and Arb. A. No.01 of 2021) are taken up for consideration, the learned Senior Advocate is not present in the Court. In his place, Ms. Rachana Rai, the learned Advocate-on-Record of M/s Amalgamated Transpower (India) Ltd., appears and submits that she wishes to withdraw from both the appeals in the absence of any instruction from her client. In this regard, she submits that her client has not given her all the papers from “Day One” and, as such, she is unable to plead the case on behalf of her client, namely, M/s Amalgamated Transpower (India) Ltd. She has also cited several other reasons for which she is unable to continue as the Advocate-on-Record of M/s Amalgamated Transpower (India) Ltd.

At this juncture, we asked her to file a detailed affidavit before this Court — latest by tomorrow — giving all the reasons as to why she has decided to withdraw from the two appeals, particularly when hearing of both the matters are being carried out on a day to day basis, pursuant to the order of the Hon’ble Supreme Court dated 14th October, 2022, and moreover, since there has been substantial progress in hearing of the two appeals inasmuch as Sikkim Power Development Corporation Ltd.’s learned senior counsel has already completed his submissions and now it is M/s Amalgamated Transpower (India) Ltd.’s turn to reply. We also asked her as to whether she has informed her client with regard to further course of action which her client will be required to adopt to enable this Court to conclude hearing of both the appeals well within the timeframe specified by the Hon’ble Supreme Court. In this regard, she submits that she had spoken

to her client once in the morning when her client had informed her that he will come and personally address the Court today at 02:00 p.m.

From the record, it appears that apart from Ms. Rachana Rai's, there are other vakalatnamas in the file, namely that of Mr. Prateek K. Chadha, Mr. Ranjit Prasad, Ms. K.D. Bhutia and Mr. Ateendra Raj Bagdas, as Advocates-on-Record of M/s Amalgamated Transpower (India) Ltd., in respect of Arbitration Appeal No.01 of 2020. Insofar as Arbitration Appeal No. 01 of 2021 is concerned, the names of Ms. Rachana Rai and Mr. Prateek K. Chadha appear as Advocates-on-Record of M/s Amalgamated Transpower (India) Ltd.

As Ms. Rachana Rai submits that her client wishes to argue the matter, no objection is required not only from Ms. Rachana Rai but also from all other Advocates-on-Record representing M/s Amalgamated Transpower (India) Ltd. That apart and in any event, we cannot allow Ms. Rachana Rai's "client" to argue without an affidavit of competency and a resolution from the Board of Directors of the Company empowering him to represent the interest of the Company, namely, M/s Amalgamated Transpower (India) Ltd., since it is not "an individual" but actually "a limited company".

We also asked her — at around 02:45 p.m. — to call up her "client" in order to find out whether at all he was coming to the Court, since forty-five (45) minutes had already elapsed after 02:00 p.m. and there was no sign of him. After having spoken to her client over phone, she now submits that her client is about to reach the High Court, shortly.

In such circumstances, we are constrained to rise and come back at 03:30 p.m. to take up this matter.

LATER: (AT 03:30 P.M.)

Mr. Prasanna Kumar Das [describing himself as the Chief Executive Officer of M/s Amalgamated Transpower (India) Ltd.] appears and says that he represents the interest of M/s Amalgamated Transpower (India) Ltd., being the respondent in the present appeal (and the appellant in Arb. A. No.01 of 2021). He further informs this Court that he will conclude his submissions within a period of three (3) days. However, he is unable to produce any affidavit of competency and a valid resolution from the Board of Directors of the Company empowering him to address this Court on behalf of the Company, i.e., M/s Amalgamated Transpower (India) Ltd.

Since we are running against time, especially in view of the order of the Hon'ble Supreme Court dated 14th October, 2022, we grant him liberty to address this Court from tomorrow at 02:00 p.m. — in person — subject to the following conditions:-

(i) Within three days, he will have to produce "no objection vakalatnamas" from all those advocates whose vakalatnamas are on record, representing M/s Amalgamated Transpower (India) Ltd., namely, Mr. Prateek K. Chadha, Mr. Ranjit

Prasad, Ms. K.D. Bhutia and Mr. Ateendra Raj Bagdas.

(ii) So far as Ms. Rachana Rai, Advocate is concerned, her withdrawal from the two appeals will be governed in terms of the direction passed earlier. In addition, her "no objection vakalatnama" is also required to be produced by him within three days.

(iii) He is required to produce an affidavit of competency as well as a valid resolution from the Board of Directors of the Company empowering him to represent the interest of M/s Amalgamated Transpower (India) Ltd., before this Court, within a period of three days.