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**(2015) 06 GAU CK 0062**

**In the Gauhati High Court**

**Case No :** Arb. Appeal Nos. 01 (AP) to 05 (AP) of 2008

State of Arunachal Pradesh — APPELLANT

Vs

Subhash Projects and Marketing Ltd. and Others — RESPONDENT

**Date of Decision :** 25-06-2015

**Acts Referred:**
Arbitration and Conciliation Act, 1996 — Section 11(8), 12, 13, 14, 14(1)(a)
Constitution of India, 1950 — Article 226

**Citation :** (2015) 4 ARBLR 99

**Hon'ble Judges :** Indira Shah, J

**Bench :** Single Bench

**Advocate :** Ranji Thomas, AG, AP and G. Deka, Senior GA, for the Appellant; Rajesh Markanda, Advocates for the Respondent

**Final Decision :** Dismissed

## Judgement

Indira Shah, J—This set of appeals (arbitration petitions) preferred by the State of Arunachal Pradesh under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 read with Regulation 48 of the Assam Frontier (Administration of Justice) Regulations, 1945 are against the common judgment dated 09.05.2008 passed by the learned Deputy Commissioner, Papum Pare District, Yupia, Arunachal Pradesh whereby the learned Deputy Commissioner disposed of the 5 (five) petitions under Section 34 of the Arbitration and Conciliation Act, 1996 filed by the State of Arunachal Pradesh for setting aside the award passed by the respondent No. 2. I have heard Mr. Ranji Thomas, learned Advocate General, Arunachal Pradesh, assisted by Ms. G. Deka, learned Sr. Govt. Advocate for the appellant-State of Arunachal Pradesh and Mr. Rajesh Markanda, learned counsel appearing on behalf of the respondents.

2. The brief facts of the all cases are that on 26.09.1992, the Department of Power, Government of Arunachal Pradesh invited tenders for execution of 5 (five) micro hydel projects in the State of Arunachal Pradesh. Subsequently, one micro hydel project was added vide corrigendum dated 21.10.1992. Out of 6 (six)

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projects, namely, Nuranang Micro Hydel Project in the District of Tawang, Kitpi Micro Hydel Project in the District of Tawang, Siddip Micro Hydel Project in the District of East Siang now Upper Siang, Sipit Micro Hydel Project in the District of East Siang now Upper Siang, Liromoba Micro Hydel Project in the District of West Siang and Mukto Micro Hydel Project in the District of Tawang, 4 (four) projects, viz. Kitpi, Siddip, Liromoba and Sipit were centrally aided/sponsored projects through the Ministry of Non-Conventional Energy, Government of India. The details of the projects are given hereinbelow:

And the details of the above mentioned six projects on turnkey basis are as follows:

3. In Arbitration Appeal No. 5(AP) of 2008, the respondent No. 1, M/s. Subhash Projects & Marketing Limited placed their bids for turnkey execution of projects on 09.11.1992. Since the tender submitted by the respondent No. 1 was lowest and it was approved and accepted by the Work Advisory Board, letter of acceptance was issued on 17.03.1993 by the appellant-State and in terms of the letter of acceptance, the respondent No. 1 was allotted the task of construction and commission of the said projects for fixed lump sum contractual amount of Rs. 15.07 crores. According to the appellant-State, the respondent No. 1 had undertaken to execute the work on a turnkey basis on the total agreed cost. The contracts were duly executed between the appellant-State and the respondent No. 1 on 30.11.1993. The contention of the appellant-State is that the State had already paid an amount of Rs. 11,45,40,110 as on 1999, which is 75.98% of the total contract value to the respondent No. 1 without any proportionate return in terms of the work done by the contractor. As per the terms of the contract, the respondent No. 1 was required to complete the work within 29.06.1995 but on the aforesaid date, only 20% of the work was completed. Therefore, the appellant through their various communications requested the respondent No. 1 to complete the work as per the contract but instead of completing the work, the respondent No. 1 raised dispute on 26.08.1999.

4. It is pertinent to mention, here, that there is a clause in the contract that in case of any dispute arising between the parties, the same has to be referred to the sole arbitrator, i.e. Secretary of the Department. In spite of the aforesaid clause, the respondent No. 1 filed a petition before the Hon''ble Chief Justice of Gauhati High Court for appointment of arbitrator and the Hon''ble Chief Justice (Retd.) Mr. R.K. Manisena Singh was appointed as arbitrator on 16.03.2001. Thereafter, both the parties participated in the arbitral proceedings by filing their written statement, counter-claims and rejoinder to the counterclaims, amendment to written statement and submitted written arguments besides placing their oral arguments.

5. During pendency of the proceeding on 11.11.2001, the learned arbitrator suggested an amicable settlement under Section 30 of the Act and the appellant expressed its no objection for awarding interim payment for completion of projects without prejudice subject to bank guarantee of equivalent amount being

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paid. Hon''ble arbitrator vide order dated 08.12.2001 allowed the application for interim award directing the appellant-State to release an amount of Rs. 2 crores 10 lakhs with an undertaking by the claimant to complete the Sipit Project within a period of 2 months. The claimant was also required to furnish a bank guarantee as a security for the interim award in favour of the appellant-State with a condition that the same can be invoked only with the prior permission/ order of the arbitral tribunal.

6. The appellant has averred that on 12.07.2002, the appellant-State sought for time to file various relevant documents which were extremely germane to proper adjudication of the proceedings and also to amend the written statement, production and discovery of the documents. The production of those documents and amendment of written statement were necessitated due to respondent No. 1 filing/urging additional pleas through rejoinder and written submissions which were originally not raised by them. The appellant-State has alleged that based on the objection of respondent No. 1, the arbitrator rejected the application and closed the hearing of the case. Thereafter, the appellant-State, on 13.08.2002, filed an application for review of the order dated 13.07.2002 passed by the arbitrator. It is further alleged by the appellant that the arbitrator linked up the order in review application with the payment of interim award while allowing the review application along with a condition that the appellant is to be confined to the pleadings and documents already on record and no new plea shall be allowed. The matter was posted on 27.09.2002 for payment of interim award failing which the application was to be disposed of on 28.09.2002.

7. On 28.09.2002, the appellant-State informed the tribunal that the payment in interim award in Case No. 3/21/99 of 2001 and Case No. 4/22/99 of 2001 has been withheld by the State as the claimant has not completed the works by 28.02.2002 as per the interim order. However, on 29.09.2002, the arbitral tribunal insisted the payment of the interim award on or before 04.10.2002, which was agreed by the appellant-State on condition that if the respondent No. 1 agrees to execute the work by arranging cement and steel, the government will have no objection to release interim payment. It is alleged that the arbitrator orally directed the appellant-State to make the payment vide cheque of Rs. 5.96 crores in the arbitrator''s own name on 04.10.2002. Thus, as per the direction of the arbitrator, the appellant-State on 05.10.2002 deposited a cheque of Rs. 5,47,45,600 in the name of Justice R.K. Manisena Singh, i.e. the arbitrator minus TDS of Rs. 12,54,400. On payment of interim award, the review application was allowed with condition that the argument of the appellant-State should be confined to the pleadings and the materials which were already on record and no further document and material shall be allowed to be placed on record. Even the TDS amount of Rs. 12,54,400 was released vide demand draft dated 27.01.2003 in compliance of the order dated 05.10.2002.

8. It is alleged by the appellant that the cheque in respect of the interim award of such huge amount was encashed by the arbitrator through his bank, Union

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Bank of India, Guwahati Main Branch and the amount was credited in his personal account in the said bank. The said branch of Union Bank of India is also the banker of respondent No. 1, M/s. Subhash Projects and Marketing Limited, Kolkata. Being aggrieved by the orders dated 13.07.2002 and 05.10.2002, the appellant filed a writ petition under Article 226 of the Constitution of India, 1950 before this court on 07.11.2002 and this court, while issuing notice, stayed all further proceedings before the arbitral tribunal. In the said writ petition, the appellant-State urged that the learned arbitrator is acting in a discriminatory and arbitrary manner. This court disposed of the writ petition on 03.02.2003 permitting the appellant-State to file 10 documents before the arbitral tribunal. The further contention of the appellant-State is that despite the payment of interim award, the respondent No. 1 did not do any work and as the validity of bank guarantee was lapsing on 28.02.2003, an application was moved before the arbitral tribunal on 24.02.2003 seeking permission of the tribunal to invoke and encash the bank guarantee.

9. The tribunal directed the respondent Nos. 1 to 5 to file a reply to the application dated 24.02.2003 filed by the State and fixed the matter on 10.03.2003, although the bank guarantee was lapsing on 28.02.2003. Thereafter, there were several adjournments and the matter was fixed for argument. Finally, argument was heard and the award was reserved. However, no order in respect of application filed by the appellant-State for invocation of bank guarantee was ever passed. Thereafter, the appellant-State in an apprehension of bias, filed an application under Section 14(1)(a) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as ''the Act'') before the learned Deputy Commissioner, Yupia, Papum Pare District for removal of the arbitrator. The learned Deputy Commissioner, Yupia, while issuing notice, stayed all further proceedings before the arbitrator. Thereafter, respondent No. 1 filed a civil writ petition before this court challenging the maintainability of the proceedings under Section 14 of the Act before the Court of Deputy Commissioner, Yupia.

10. This court in WP (C) No. 9948 of 2003 allowed the writ petition directing the appellant-State to raise the issues in terms of Section 14 of the Act before the arbitrator himself and vacated the interim stay granted by the Deputy Commissioner, Yupia. It is alleged by the appellant-State that the arbitrator without giving any opportunity to the appellant to raise issues as directed the learned Single Judge and in a great hurry and haste, passed the award on the very next date, i.e. 28.05.2004. On 23.07.2004, the appellant-State filed Writ Appeals (WA) against the judgment passed in WP (C) No. 9948 of 2003 and a Division Bench of this court stayed all further proceedings. The appellant-State preferred 5 (five) petitions against the arbitral award dated 28.05.2004 before the Court of Deputy Commissioner, Yupia, Papum Pare District, Arunachal Pradesh under Section 34 of the Act for setting aside the arbitral award.

11. In the 2 (two) writ appeals filed by the appellant before the Division Bench,

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the judgment of the ''Single Judge was set aside holding that the application under Section 14 filed by the appellant-State before the Court of Deputy Commissioner, Yupia seeking a declaration that the learned arbitrator has become de jure/de facto unable to perform his function is maintainable in law and remitted the matter back to the Deputy Commissioner''s Court at Yupia being the principal civil court for further proceedings. Against the said judgment of the Division Bench, the respondent No. 1 filed the Special Leave Petition (SLP) before the Hon''ble Supreme Court, which was, however, dismissed vide order dated 13.11.2006. It is further alleged by the appellant-State that the records of the cases were kept by the arbitrator himself till 11.12.2007 although the award was passed on 28.05.2004. The Deputy Commissioner was supposed to hear two different applications under Section 14 and another application under Section 34 of the Act.

12. It is submitted by the learned counsel for the appellant-State that the learned Deputy Commissioner failed to consider the arguments urged by the appellant-State and upheld the award of the arbitral tribunal without considering the challenges raised by the appellant in their correct perspective. The learned Deputy Commissioner without disposing of the petitions filed under Section 14 of the Act, disposed of the entire applications filed under Section 34 of the Act. The allegations against the arbitral tribunal levelled by the appellant may be summed up as under:

"(1) The applications of the appellant-State before the learned arbitral tribunal for shifting of venue of the arbitration from Guwahati to Delhi was rejected by the tribunal.

(2) Another allegation of the biasness against the arbitrator was that the arbitrator permitted the respondent Nos. 1 to 5 to file additional documents but denied the similar opportunity to the appellant-State.

(3) The arbitrator linked the decision on the appellant''s review petition with the payment of interim award shows the biasness of the arbitrator.

(4) The arbitrator exhibited pecuniary bias by giving oral direction that the payment of interim award be made in his own name.

(5) The next allegation of the appellant was that the arbitrator exhibited bias by allowing bank guarantee given in lieu of interim award to lapse.

(6) The further allegation of the appellant was that the arbitrator exhibited unseemly hurry in passing the award."

It is submitted that the learned Deputy Commissioner, Yupia, failed to consider the allegation of biasness and misconduct alleged by the appellant while upholding the award passed by the arbitrator.

13. Mr. R. Markanda, learned counsel appearing on behalf of the respondent No. 1, has submitted that scope of setting aside the award is very limited. Section 34

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provides for setting aside of the award only on the ground enumerated therein; the court is not supposed to correct the errors therein. He relied upon the cases of Olympus Superstructures Pvt. Ltd. Vs. Meena Vijay Khetan and Others, AIR 1999 SC 2102 : (1999) 2 ARBLR 695 : (1999) 3 JT 514 : (1999) 3 SCALE 587 : (1999) 5 SCC 651 : (1999) 3 SCR 490 : (1999) 2 UJ 997 : (1999) AIRSCW 1831 : (1999) 5 Supreme 338 ; M. Anasuya Devi and Another Vs. M. Manik Reddy and Others, (2003) 3 ARBLR 404 : (2004) 1 CompLJ 118 : (2003) 8 JT 276 : (2003) 9 SCALE 12 : (2003) 8 SCC 565 : (2003) 4 SCR 853 Supp : (2004) 1 UJ 389 ; McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others, (2006) 2 ARBLR 498 : (2007) 3 CompLJ 213 : (2006) 11 JT 376 : (2006) 6 SCALE 220 : (2006) 11 SCC 181 : (2006) 2 SCR 409 Supp ; Fiza Developers and Inter-Trade P. Ltd. Vs. AMCI (I) Pvt. Ltd. and Another, (2010) 3 CompLJ 617 : (2009) 5 CTC 65 : (2009) 12 JT 519 : (2009) 11 SCALE 371 : (2009) 17 SCC 796 : (2009) 12 SCR 1 ; Swan Gold Mining Ltd. Vs. Hindustan Copper Ltd. ; Associate Builders Vs. Delhi Development Authority, (2015) 124 CLA 318 : (2015) 1 SCJ 42 ; Delhi Development Authority Vs. Bhardwaj Brothers, AIR 2014 Delhi 147 : (2014) 3 ARBLR 333 : (2014) 213 DLT 675 : (2014) 144 DRJ 471 ; M.R. Power Projects Vs. State of Arunachal Pradesh and Another, (2009) 4 GLR 154 : (2009) 1 GLT 28 in support of his contention.

14. It is further submitted by the learned counsel for the respondent No. 1 that the learned arbitrator was appointed with the consent of the parties and the appellant-State did not allege bias against the arbitrator either in their written statement or counter-claims or rejoinder to the counter-claims or in the amendment to the written statement or written arguments submitted by them. No application under Sections 12 and 13 of the Act alleging bias was ever filed by the appellant-State before the learned arbitrator. 5 (five) cases were heard and hearing was concluded with the consent of the parties from March 2001, when the arbitrator was appointed till August 2003. When the proceedings were closed in five matters, the appellant did not allege bias against the arbitrator. It is submitted that it is not every suspicion felt by a party which must lead to the conclusion that the authority hearing the proceedings is biased.

15. In the cited case of International Airports Authority of India Vs. K.D. Bali and Anr, AIR 1988 SC 1099 : (1988) 1 ARBLR 408 : (1988) 2 JT 1 : (1988) 1 SCALE 631 : (1988) 2 SCC 360 : (1988) 3 SCR 370 : (1988) 1 UJ 729 , it has been observed by the Apex Court in paras 6 and 13, as under (at pages 413, 415 and 416 of Arb. LR):

"6. In the words of Lord O'' Brien," LCJ there must be a real likelihood of bias. It is well settled that there must be a real likelihood of bias and not mere suspicion of bias before the proceedings can be quashed on the ground that the person conducting the proceedings is disqualified by interest. See in this connection Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others, AIR 1959 SC 1376 : (1960) 1 SCR 580 and Mineral Development Ltd. Vs. The State of Bihar and Another, AIR 1960 SC 468 : (1960) 2 SCR 609 . Recently, this court

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in a slightly different context in Ranjit Thakur Vs. Union of India (UOI) and Others, AIR 1987 SC 2386 : (1988) CriLJ 158 : (1987) 4 JT 93 : (1988) 1 LLJ 256 : (1987) 2 SCALE 773 : (1987) 4 SCC 611 : (1988) 1 SCR 512 : (1989) 1 SLJ 109 had occasion to consider the test of bias of the judge. But there must be reasonableness of the apprehension of bias in the mind of the party. The purity of administration requires that the party to the proceedings should not have apprehension that the authority is biased and is likely to decide against the party. But we agree with the learned judge of the High Court that it is equally true that it is not every suspicion felt by a party which must lead to the conclusion that the authority hearing the proceedings is biased. The apprehension must be judged from a healthy, reasonable and average point of view and not on mere apprehension of any whimsical person. While on this point we reiterate that learned counsel appearing for the petitioner in his submissions made a strong plea that his client was hurt and had apprehension because the arbitrator being the appointee of his client was not acceding to the request of his client which the petitioner considered to be reasonable. We have heard this submission with certain amount of discomfiture because it cannot be and we hope it should never be (that) in a judicial or a quasi-judicial proceeding a party who is a party to the appointment could seek the removal of an appointed authority or arbitrator on the ground that appointee being his nominee had not acceded to his prayer about the conduct of the proceeding. It will be a sad day in the administration of justice if such be the state of law. Fortunately, it is not so. Vague suspicions of whimsical, capricious and unreasonable people are not our standard to regulate our vision. It is the reasonableness and the apprehension of an average honest man that must be taken note of. In the aforesaid light, if the alleged grounds of apprehension of bias are examined, we find no substance in them. It may be mentioned that the arbitrator was appointed by the Chief Engineer of the petitioner, who is in the service of the petitioner.

13. We are in agreement with the learned judge of the High Court expressing unhappiness as to the manner in which attempts had been made to delay the proceeding. There is a great deal of legitimate protest at the delay in judicial and quasi-judicial proceeding. As a matter of fact delay in litigation in courts has reached such proportion that people are losing faith in the adjudicatory process. Having given our anxious consideration to the grounds alleged in this application, we find no ground to conclude that there could be any ground for reasonable apprehension in the mind of the petitioner for revocation of the authority of the arbitrator appointed by the petitioner itself. While indorsing and fully maintaining the integrity of the principle "Justice should not only be done, but should manifestly be seen to be done", it is important to remember that the principle should not be led to the erroneous impression that justice should appear to be done than it should in fact be done. See the observations of Slade, J. in R. v. Camborne Justices Ex Parte Pearce, (1954) 2 All ER 850. We are satisfied from the facts mentioned hereinbefore that there is no reasonable ground of any suspicion in the mind of the reasonable man of bias of the arbitrator. Instances of

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cases where bias can be found are given in Commercial Arbitration by Mustill and Boyd, 1982 Edn. The conduct of the present arbitrator does not fall within the examples given and the principles enunciated therein."

16. In reply to the first allegation of the appellant against the arbitrator in respect of non-shifting of venue of arbitration from Guwahati to Delhi, the learned counsel for the respondent No. 1 has submitted that the reason given by the appellant for seeking shifting of venue from Guwahati to Delhi was the convenience of the Delhi based senior advocate, the learned arbitrator has given valid reason for not shifting the venue, the rejection of application of the appellant cannot be termed as act of bias.

17. With regard to the second allegation of the appellant-State that the arbitrator permitted the respondent No. 1 to file additional documents and denied the similar opportunity to the appellant, it is submitted by the learned counsel for the respondent No. 1 that the application filed by the appellant on 12.07.2002 was not a mere application for filing of the additional documents, in fact, it was their 8th request for adjournment of hearing. The reason for rejection of the appellant''s application seeking adjournment therein was clearly recorded by the learned arbitrator in the order dated 13.07.2002. Moreover, in the subsequent application filed by the appellant, it was admitted that the adjournment was sought since a Delhi based lawyer could not come to Guwahati to plead the case. Further, the appellant were later allowed by this court to submit 10 additional documents and, thus, this objection is now no longer available to them.

18. So far as the allegation against the arbitrator that he linked the decision on the appellant''s review petition with payment of interim award is concerned, it is submitted that the learned arbitrator did not at any point of time link the matter of payment of interim award with allowing the review petition, it was, in fact, respondent No. 1, who linked the two issues and not the learned arbitrator. The arbitrator under the Act was not empowered to review its own order and, therefore, he allowed the review petition when the respondent No. 1 conceded that review application may be considered if the interim award is paid.

19. It is submitted by the learned counsel for the respondent No. 1 that the allegation of the appellant that arbitrator exhibited pecuniary bias by giving oral direction that the payment of interim award to be made in his name is a blatant lie. The decision to make payment of interim award in the name of the learned arbitrator and not respondent No. 1 was a decision taken by the appellant themselves at their own end and for their known reason, the allegation regarding so-called oral direction given by the learned arbitrator to deposit the money in his name is a completely new allegation, which was not made even in the application filed under Section 34 of the Act. The fact that the said amount was meant for respondent No. 1 is evident from the order dated 05.10.2002. Further, respondent No. 1 intimated to the appellant that they have received the money on 21.12.2002. Even the cost awarded in favour of the counsel of the respondent No. 1 was deposited by the appellant by a cheque drawn in the name of the

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arbitrator. It is submitted by the learned counsel that the appellant having themselves deposited the cheque in the name of the learned arbitrator and being aware of the fact that he duly passed the same to respondent No. 1 in terms of the interim award, it is totally mala fide on the part of the appellant now to allege wrongdoing on the part of the arbitrator on this score.

20. So far as the next contention of the appellant against the arbitrator that the arbitrator did not allow the appellant to encash the bank guarantee, the appellant''s application before the arbitrator for encashment of bank guarantee was misconceived. Another allegation against the arbitrator is that the arbitrator exhibited unseemly hurry in passing the award. It is submitted by the learned counsel for the respondent No. 1 that the reason for passing the award immediately upon the decision of the learned Single Judge has been spelt out by the learned arbitrator in the last paragraph of his final award, wherein it is stated that the cases were closed for making of award in May/August 2003. Thereafter, the arbitrator had merely 5 (five) months to make the award till November 2003.

21. In the cited case of N.K. Bajpai Vs. Union of India (UOI) and Another, AIR 2012 SC 1310 : (2012) 2 CTC 449 : (2012) 190 ECR 159 : (2012) 3 RCR(Civil) 459 : (2012) 3 SCALE 452 : (2012) 4 SCC 653 : (2012) AIRSCW 1974 : (2012) 2 Supreme 417 , the Apex Court has observed as under:

"46. Under the English Law, the genesis of bias has been described as the perception that the court is free from bias, that it is objectively impartial stems from the overworked aphorism of Lord Hewart, C.J. in R. v. Sussex JJ, ex p McCarthy, (1924) 1 KB 256, KB at p. 259, wherein he said:

''.... it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.''

However, later the courts there felt that too heavy a reliance upon the Hewart''s aphorism in instances of alleged bias produces the danger that the appearance of bias or injustice becomes more important than the absence of actual bias, the doing of justice itself. It is, therefore, of importance that perceived bias is not too readily inferred, such as to negate the doing of justice.

47. In Porter v. Magill, (2002) 2 AC 357 the House of Lords finally decided the proper test for finding perceived or apparent bias, after judicial debate for over two decades, which displayed the welcome interplay of judicial pronouncements within the jurisdictions of the English Common Law, Scotland and Strasbourg jurisprudence. The test is now whether the fair-minded observer, having considered the facts, would consider that there was a reasonable possibility that the tribunal was biased. [See Sir Louis Bom, QC, "Bias Malfunction in Judicial Decision Making".]

48.....Bias must be shown to be present. Probability of bias, possibility of bias and reasonable suspicion that bias might have affected the decision are terms of

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different connotations. They broadly fall under two categories, i.e. suspicion of bias and likelihood of bias. Likelihood of bias would be the possibility of bias and bias which can be shown to be present, while suspicion of bias would be the probability or reasonable suspicion of bias. The former lead to vitiation of action, while the latter could hardly be the foundation for further examination of action with reference to the facts and circumstances of a given case. The correct test would be to examine whether there appears to be a real danger of bias or whether there is only a probability or even a preponderance of probability of such bias, in the circumstances of a given case. If it falls in the prior category, the decision would attract judicial chastisement but if it falls in the latter, it would hardly affect the decision, much less adversely."

22. Bias is a preconceived opinion or predisposition to decide a case or an issue in a particular manner. It is essentially a condition of mind, which at times eludes an actual proof thereof. Bias may possibly be determined by evaluating facts and circumstances of the case or by applying the test of real likelihood of bias or reasonable suspicion of bias.

23. Here, in these cases, contract for 6 (six) projects totalling cost of Rs. 105.31 crores for generation of 19 MW of powers was between the appellant and the respondent No. 1. The appellant-State had already paid an amount of Rs. 65.39 crores, which includes the amount of Rs. 5.60 crores paid in compliance of an interim award by the arbitral tribunal. Thus, the appellant had already paid 62.09% of the total contract value to the respondent No. 1. Out of six projects, five stands terminated. When the dispute was raised by the respondent No. 1, arbitrator was appointed by the Hon''ble Chief Justice of this court with the consent of both the parties. The statement of claim was filed by the respondent No. 1 along with an application for interim award. The learned arbitral tribunal allowed the application for interim award on 08.12.2001 directing the appellant-State to release an amount of Rs. 2.10 crores with an undertaking by the respondent No. 1 to complete the Sipit Project within 2 months. Similar interim award was also passed in the proceedings pursuant to Siddip Micro Hydel Project for payment of Rs. 3.5 crores.

24. Since respondent No. 1 failed to complete the work within the stipulated time period as directed by the tribunal, the appellant withheld payment of the interim award as it was subject to completion of the work within 2 months. However, the tribunal insisted the payment of interim award on or before 04.10.2002. The review application filed by the appellant was allowed only on payment of the interim award, that too, in the name of arbitrator, although, there is no order directing the appellant to pay the interim award in the name of the sole arbitrator. It is alleged that the payment of interim award was deposited in his name on express oral direction of the arbitrator. The fact remains that the payment of interim award cheque was encashed by the arbitrator through his bank account in the Union Bank of India, Guwahati Main Branch and the amount was credited in his personal bank account in the said bank. There is no denial of

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the fact that the said branch of the Union Bank of India is also the banker of the respondent No. 1.

25. When the application under Section 14 of the Act filed before the Deputy Commissioner, Yupia for declaration that the arbitrator has become de jure and de facto unable to perform his function was pending, the proceeding before the arbitrator was stayed. Although, the order of the Deputy Commissioner was challenged by the respondent No. 1 and learned Single Judge of this court vacated the interim order of stay of proceeding before the arbitral tribunal passed by the learned Deputy Commissioner, Yupia on 26.05.2004. The learned arbitral tribunal immediately passed the award on 28.05.2004 just 2 days after the vacation of the stay order passed by this court.

26. A Division Bench of this court in WA No. 264 and WA No. 265 of 2004, whereby the judgment passed by the learned Single Judge, in WP(C) Nos. 9948, 9949, 9950, 9951, 9952, 9953 of 2003 and WP(C) No. 609 of 2004 was challenged, in para 29 of the common judgment passed in WA No. 264 and WA No. 265, has observed as under:

"The quintessence of an arbitral procedure is fairness and of course expedition. Impartiality is an essential attribute of fairness. It is, therefore, not enough to provide just any arbitration, not even a speedy arbitration but also an impartial one. The promise of a fair and just award in future ought not to be the only assurance. The certitude of a fair and impartial arbitration is of utmost significance. The pristine rule of adjudicative ethics rests on the premise that the arbitral tribunal permitted by the law to try cases and controversies must not only be unbiased but also must avoid even the appearance of bias. An arbitrator is an arbiter of disputes and differences between the parties concurring in his appointment. His installation as the judge of their cause is not by any institutional fiat. He earns the prerogative of conducting the proceedings by the confidence he commands. Fairness, impartiality, independence and neutrality are, therefore, the indispensable qualities of an arbitrator. It is, therefore, that while making an appointment under Section 11(8), the Chief Justice of the High Court or any person or institution designated by him is statutorily required to have due regard to the considerations to affirm the appointment of an independent and impartial arbitrator recognising the cardinality of the said essentials."

27. In the case of Metropolitan Properties Co. (FCG) Ltd. v. Lannon, (1969) I QB 577, it has been observed as under:

".... In considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the Chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression, which would be given to other people. Even if he was as impartial as could be, nevertheless if

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right minded person would think that in the circumstances, there was a real likelihood of bias on the part, then he should not sit."

28. In Russell on Arbitration, 22nd Edition, it is contended as under:

"A distinction is made between actual bias and apparent bias. Actual bias is rarely established, but clearly provides grounds for removal. More often there is a suspicion of bias which has been variously described as apparent or unconscious or imputed bias. In such majority of cases, it is often emphasized that the challenger does not go so far as to suggest that arbitrator is actually biased, rather that some form of objective apprehension of bias exists.

Pecuniary interest-There is an automatic disqualification for an arbitrator who has a direct pecuniary interest in one of the parties or is otherwise so closely connected with the party that it can truly be said to be a judge in his own cause."

29. In the case of Ranjit Thakur Vs. Union of India (UOI) and Others, AIR 1987 SC 2386 : (1988) CriLJ 158 : (1987) 4 JT 93 : (1988) 1 LLJ 256 : (1987) 2 SCALE 773 : (1987) 4 SCC 611 : (1988) 1 SCR 512 : (1989) 1 SLJ 109 it has been observed in paras 15, 16 and 17 as under:

"15. The second limb of the contention is as to the effect of the alleged bias on the part of respondent No. 4. The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and is whether respondent No. 4 was likely to be disposed to decide the matter only in a particular way.

16. It is the essence of a judgment that it is made after due observance of the judicial process; that the court or tribunal passing it observes, at least the minimal requirements of natural justice, is composed of impartial persons acting fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality is a nullity and the trial "coram non judice".

17. As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the judge is not to look at his own mind and ask himself, however, honestly, "Am I biased" but to look at the mind of the party before him."

30. In the case of Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others, AIR 1959 SC 1376 : (1960) 1 SCR 580 , it has been observed in para 6 as under:

".... the relevant principles governing the "doctrine of bias". The principles governing the "doctrine of bias" vis-?-vis judicial tribunals are well settled and they are-(i) no man shall be a judge in his own cause; (ii) justice should not only be done but seem to be done. Two maxims yield the result that if a member of a judicial body is "subject to a bias (whether financial or other) in favour of, or against any party to a dispute, or is in such a position that a bias must be assumed to exist, he ought not to take port in the decision or sit on the tribunal;

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and that "any direct pecuniary interest, however small, in the subject matter of inquiry will disqualify a judge, and any interest, though not pecuniary, will have the same effect, if it be sufficiently substantial to create a reasonable suspicion of bias". The said principles are equally applicable to authorities, though they are not courts of justice or judicial tribunals, who have to act judicially in deciding the rights of others, i.e. authorities who are empowered to discharge quasi-judicial functions...."

31. Here, in this case, the petition under Section 14 of the Act was filed before the principal civil court, i.e. Deputy Commissioner, wherein the allegation of bias was made against the tribunal. The order of the Deputy Commissioner as well as his jurisdiction to entertain the petition was challenged in the High Court and as soon as the order of the Deputy Commissioner was set aside by the learned Single Judge, the award was passed by the arbitral tribunal within 2 days.

32. As regards the pecuniary bias, the learned court below has observed in paras 44 and 45 of the judgment as under:

"44. The order dated 05.10.2002 (Annexure L, P. 246 of Petition No. 11/2004) shows that when the Advocate General of the State of Arunachal Pradesh deposited the cheques in the name of the arbitrator, the representative of respondent No. 1 who was present in the proceedings protested and stated that " Rs. 12,54,400 has been deducted as income tax although the claimant company is exempted from payment of income tax vide Order No. ...". This shows that the parties were aware that the money was meant for respondent No. 1. An acknowledgement of receipt of the said money was made by respondent No. 1 in its letter dated 20.12.2002 (Annexure R-10 with reply to the Petition No. 11/2004) in the following terms: "....DoP finally released the payment by issuing a cheque of Rs. 5,47,45,600 in the name of the hon''ble arbitrator on 05.10.2002. We ultimately received the said payment on 21.10.2002. Kindly arrange to release the balance payment of Rs. 12,54,400 without any further delay.

45. From the above, it is evident that respondent No. 2 ordered on 08.12.2001 that the amount be released to respondent No. 1. He did not at any point of time direct the petitioner to pay the said amount in his name. Order dated 05.10.2002 shows that the money was to ultimately accrue to respondent No. 1. The letter of respondent No. 1, dated 20.12.2002 reveals that they received the "said payment", from respondent No. 2. On these facts, no evidence exists to hold that the arbitrator either directed the petitioner to deposit the money in his name, nor is there any evidence that he had any pecuniary bias in the subject matter of the arbitration. I, therefore, hold that no grounds whatsoever have been made out to allege that the arbitrator was biased or that he had a pecuniary interest in the awards."

33. It is evident from the record that the interim award was paid vide cheque in the name of the arbitrator. The arbitrator accepted the cheque in his own name.

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The said interim award was to be paid to the respondent No. 1. The State-appellant without any written direction from the arbitrator issued the cheque in the personal name of the arbitrator. While filing application under Section 14 of the Act, there was no allegation of pecuniary bias against the arbitrator on this count. This plea was orally argued before the court below and this plea was for the first time raised challenging the judgment passed by the Single Judge of this court before the Division Bench. The fact also remained that the respondent No. 1 had acknowledged the receipt of the payment of interim award by issuing proper receipt. This issue of pecuniary bias was not even raised before the Single Bench by the appellant-State.

34. The allegation of bias against the arbitrator was in respect of passing of the interim award and from preventing the Government of Arunachal Pradesh, i.e. the appellant from invoking the bank guarantee without leave of the arbitrator and for rejecting the prayer of the petitioner, the appellant to admit certain documents. Therefore, till filing of the petition under Section 14 of the Act, the appellant had no apprehension of pecuniary bias of the arbitrator accepting the cheque in respect of the interim award in his own name. However, the learned Deputy Commissioner, while dealing with this issue, raised orally by the appellant-State, has rightly observed that the parties were aware that the money (payment of interim award) was meant for respondent No. 1, the respondent No. 1 acknowledged the receipt of the said money vide its letter dated 20.12.2002 and there was no such direction by the arbitrator to deposit the money in his own name nor there is any evidence that he had pecuniary bias in subject matter of the arbitration.

35. As regards the encashment of bank guarantee by the appellant, bank guarantee itself was amended, which shows that the respondent No. 1 was liable to pay bank guarantee amount, if it was served a written claim or demand. Despite the deliberate amendment of the bank guarantee, the appellant approached the arbitrator seeking direction for encashment of bank guarantee although the jurisdiction of the arbitrator was ousted by the subsequent amendment of the bank guarantee. The allegation of the appellant-State was that the arbitrator exhibited bias by pronouncing the award within 2 days with effect from the judgment passed by the learned Single Judge. In the award passed by the arbitrator, it has been contended that he intended to make, the award along with other 4 cases between the same parties, which are almost similar or identical to the present cases. When all the awards were almost ready, further proceedings of all the cases were stayed and, therefore, no award could be made and when the stay order of Deputy Commissioner was vacated on 26.05.2004, the award was made on 28.05.2004.

36. The facts narrated above clearly show that no case of pecuniary bias on the part of the arbitrator was made before the lower court while application under Section 14 of the Act was filed. The lower court has elaborately considered all the allegations and arguments placed before it and rightly came to the conclusion

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that the award passed by the arbitrator cannot be set aside. The judgment passed by the lower court does not suffer from any infirmity justifying interference of this court. These arbitration appeals are accordingly dismissed with no order as to costs.

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