
(2020) 02 UK CK 0025

In the Uttarakhand High Court

Case No : Impleadment Application No. 1400 Of 2020 In Arbitration Application No. 21 Of 2019

Zanders

APPELLANT

Vs

War Memorial Girls And Boys Hostel Society And Another

RESPONDENT

Date of Decision : 14-02-2020

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 11, 11(6), 11(6)(A), 11(8), 12(5)

Citation : (2020) 02 UK CK 0025

Hon'ble Judges : Ramesh Ranganathan, CJ

Bench : Single Bench

Advocate : Gurbani Singh, Sanjay Bhatt

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

Impleadment Application No. 1400 of 2020 :

1. The application for impleadment is not opposed by Mr. Sanjay Bhatt, learned Standing Counsel for the Union of India-respondents and is, therefore, ordered.

Arbitration Application No. 21 of 2019 :

2. This application is filed, under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short the "1996 Act"), seeking appointment of an Arbitrator.

3. Clause 174 of the agreement entered into between the parties relates to Arbitration, and stipulates that, if any dispute arises and persists between the Contractor and the Employer, the same shall be referred to the sole Arbitrator to be appointed by the competent authority i.e. the GOC Head

Quarter Uttar Bharat Area Bareilly, whose award shall be final and binding on the parties.

4. The applicant addressed letter dated 12.04.2019 informing the newly impleaded third respondent (the authority named in Clause 174 of the agreement entered into between the parties) that, by letter dated 09.03.2019, they had informed that disputes had arisen between the parties; in terms of Clause 174 of the agreement, his office was to appoint the sole arbitrator; however, with the amendment of the 1996 Act, neither could a serving officer act as an Arbitrator, nor could his office, as they were barred from acting as an Arbitrator; and, that being the situation, they proposed the names of three persons to be appointed as the sole Arbitrator so that the disputes could be adjudicated. The applicant sought the consent of the third respondent to any of them being appointed, as the sole Arbitrator, within one month.

5. As the Arbitrator was not appointed, the applicant invoked the jurisdiction of this Court by way of the present Arbitration Application which was filed on 13.06.2019. Section 12(5) of the 1996 Act, as inserted by Act 3 of 2016 w.e.f. 23.10.2015, stipulates that, notwithstanding any prior agreement to the contrary, any person, whose relationship with the parties or counsel or the subject-matter of the dispute falls under any of the categories specified in the Seventh Schedule, shall be ineligible to be appointed as an Arbitrator. The Seventh Schedule stipulates the Arbitrator's relationship with the parties or counsel and prohibits appointment of an Arbitrator who is an employee, consultant, advisor or has any other past or present business relationship with a party.

6. While it is true that the third respondent could have appointed any person as the sole Arbitrator, provided such a person does not suffer any disqualification under the Seventh Schedule, the third respondent chose not to appoint the Arbitrator even after receipt of the applicant's letter dated 12.04.2019. In *Datar Switchgears Ltd. v. Tata Finance Ltd. and another* : (2000) 8 SCC 151 the Supreme Court held that, under Section 11(6) of the 1996 Act, if one party demands the opposite party to appoint an Arbitrator and the opposite party does not make an appointment within 30 days of the demand, the right to appointment does not get automatically forfeited after expiry of 30 days; if the opposite party makes an appointment even

after 30 days of the demand, but before the first party has moved the Court under Section 11 of the 1996 Act, that would be sufficient; and only then does the right of the opposite party cease.

7. In the present case the application, seeking appointment of an Arbitrator, was made to the third respondent on 12.04.2019. The 30 days period expired on or soon after 12.05.2019. The applicant invoked the jurisdiction of this Court by way of the present Arbitration Application long thereafter on 13.06.2019 as, even by then, the third respondent had not exercised his right to appoint an Arbitrator.

8. In the light of the law declared by the Supreme Court in *Datar Switchgears Ltd. v. Tata Finance Ltd. and another* : (2000) 8 SCC 151, the third respondent can no longer exercise his right to appoint an Arbitrator, and it is for this Court to do so.

9. Since existence of an arbitration agreement is the only other question which necessitates examination, in view of Section 11(6)(A) of the 1996 Act, and I am satisfied that there exists an arbitration agreement, I consider it appropriate to appoint Mr. I.J. Malhotra, Retired District Judge, R/o Duplex House No. 3, Sahastradhara Enclave, Dehradun as an Arbitrator to resolve the disputes, between the parties, in this case.

10. The learned Arbitrator shall, in terms of Section 11(8) of the 1996 Act, furnish his disclosure in writing to this Court within 15 days from the date of receipt of a certified copy of this order. He shall, thereafter, fix his remuneration, and charges towards other expenses, in consultation with the parties to the dispute. He shall endeavour to complete the arbitral proceedings, and to pass an award with utmost expedition, preferably within six months from the date on which he enters upon a reference.

11. The Arbitration Application is, accordingly, disposed of.

No costs.