



(2024:HHC:4747)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Arbitration Case No.573 of 2024

Date of Decision : 08.07.2024

Kamla Devi

..... Petitioner

Versus

Land Acquisition Officer-cum-Competent Authority and another

.....Respondents

Coram:

The Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting?¹

For the petitioner : Mr. Varun Rana, Advocate.

For the respondents : Mr. Raj Kumar Negi, Additional Advocate General,
for respondent No.1/State.

Ms. Shreya Chauhan and Ms. Sneh Bhimta,
Advocates, for respondent No.2.

Bipin Chander Negi, Judge (oral)

The arbitral dispute arises out of the land acquisition in District Bilaspur, H.P. for the purpose of building (widening/ four laning etc.) maintenance, management and operation of National Highway- 21. The land has been acquired under the provisions of National Highways Act, 1956.

2. Arbitration case No. 573 of 2024 pertains to Award No. 37-2016-17 dated 25.11.2016 and structure vide supplementary Award No.37/2 dated

¹ **Whether reporters of Local Papers may be allowed to see the judgment? Yes**

22.01.2018, with respect to which the petitioner had preferred Reference Petition No. 329 of 2019. In the aforesaid reference, the Arbitrator had issued notices for 11.10.2019. The right to file reply was closed on 31.12.2021. Vide order dated 26.12.2022, it was observed that the mandate of the Arbitrator had expired. Hence, the aforesaid arbitral proceedings were kept in abeyance, till the time period for completing the arbitral proceedings, was extended under Section 29-A.

3. From a perusal of the aforesaid, it is evident that the Reference Petition against the award had been filed by the land owners about 5 years back.

4. The relevant extract of the provisions involved in the present *lis*, as amended by the Act No 33 of 2019 w.e.f 31.08.2019, are being reproduced here-in-below for a ready reference:-

“29-A. Time limit for arbitral award.—(1) *The award in matters other than international commercial arbitration be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of Section 23:*

(2).....

(3) *The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.*

(4) *If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the court has, either prior to or after the expiry of the period so specified, extended the period: Provided that*

while extending the period under this sub- section, if the court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent for each month of such delay: Provided further that where an application under sub- section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application: Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the court.

Section 23. Statements of claim and defence

(4) The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing, of their appointment.”

The sum and substance of the aforesaid provisions is that from the date the arbitrator receives notice the statement of claim and defence (pleadings) shall be completed within a period of six months there from. Further the award shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings. However, the parties may, by consent, extend the period specified for making award for a further period not exceeding six months. If the award is not made within the period specified or the extended period specified the mandate of the

arbitrator shall terminate unless the court has, either prior to or after the expiry of the period so specified, extended the period. The extension may be on the application of any of the parties .The same may be granted only for sufficient cause and on such terms and conditions as may be imposed by the court.

5. Having gone through the order sheets appended with the petitions carefully, this Court is pained to observe that the proceedings have been conducted by learned Arbitrator by observing statutory provisions as are contained in the Arbitration and Conciliation Act, 1996 more in their breach rather than in their observance.

6. This Court is of the considered view that when the law requires a particular act to be done in a particular manner, then the same is mandatorily required to be followed. In the cases at hand, the onus was upon the Arbitrator to perform the task entrusted to him within the time schedule prescribed in the statute. The delay, if any, has to be bonafide and explainable.

7. The record appended alongwith the present petitions demonstrates that the matters were adjourned by the learned Arbitrator on numerous occasions. This Court fails to understand, as to how the Arbitrator can with such a callous attitude take upon the task of deciding the arbitration proceedings knowing fully well that if the proceedings are not completed within the time schedule mentioned in the Act, then unless the same is extended by a Court of Law, the mandate of the Arbitrator shall stands terminated.

8. At this juncture, it would be appropriate to refer to the judgment of the Apex Court delivered in Cognizance for Extension of Limitation, In re, (2022) 3 SCC 117 : (2022) 1 SCC (Cri) 580 : (2022) 2 SCC (Civ) 46 : (2022) 1 SCC (L&S) 501, wherein the following direction had been issued:

“5.4. It is further clarified that the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

The benefit of exclusion of the aforesaid period specified herein above also needs to be given to the petitioner before this Hon'ble Court.

9. The Divisional Commissioner, Mandi was appointed as an Arbitrator in the cases at hand vide order dated 22.03.2012 by the Central Government, in pursuance to sub Section 5 of the National Highways Act, 1954 for the revenue District of Bilaspur, Mandi and Kullu.

10. Be that as it may, the Court is restraining from making any further observation in the case, save and except, that hence forth, if the Court finds the Arbitrator to be remiss in his duties then it shall not hesitate in invoking its powers as are enshrined in Section 29 (A) (6) of the 1996 Act to terminate the mandate of the Arbitrator de hors the fact that the

Arbitrator happens to be appointed, in terms of the aforesaid notification, issued by the Central Government under the National Highways Act, 1956.

11. The lands of the petitioners have been acquired and they are entitled to fair and just compensation, if in case, the mandate of the learned Arbitrator is allowed to be terminated on account of him having failed to complete proceedings within time great prejudice would be caused to the petitioners who had been fighting for their rightful claim for years together.

12. Consequently, in view of the above all these petitions are allowed with the directions to the learned Arbitrator to conclude arbitration proceedings on or before **08.01.2025**. Learned Arbitrator is impressed upon to make a time table, indicating therein the time schedule, in terms whereof, the parties have to move forward in the matter.

13. Petition stands disposed of, so also the pending miscellaneous applications, if any.

July 08, 2024 (KS)

**(Bipin Chander Negi)
Judge**