



GAHC010016982023

Page No.# 1/11



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/13/2023

MS GD ENGINEERING CONSTRUCTION
PROPRIETOR GHANSHYAM DAS DHIMAN PO HALLESWAR TEZPUR 784001

VERSUS

THE UNION OF INDIA
THROUGH THE SECRETARY MINISTRY OF DEFENCE, NEW DELHI 10

2:THE GARRISON ENGINEER
AIR FORCE
TEZPUR 784104

3:MRS NAYAN SHARMA
SOLE ARBITRATOR
96 BORTHAKUR MILL ROAD
GUWAHATI 78100

Advocate for the Petitioner : Mr.G.D. Dhiman, Petitioner in Person

Advocate for the Respondents :Mr. H. Gupta, Advocate.

Date of hearing & Judgment : **24.08.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant application under Article 227 of the Constitution of India has been filed challenging the order dated 22.3.2022 passed in T.S.(Arb.) Case No. 1 of 2019 whereby the learned District Judge, Sonitpur, Tezpur while adjudicating an application under Section 14 of the Arbitration and Conciliation Act, 1996 (for short 'the Act of 1996') exercised the powers under Section 29 A (4) of the Act of 1996 and thereby extended the time limit for publishing the Award by one year i.e. from 22.3.2023 till 22.3.2023.

2. The facts involved in the instant case is that certain disputes arose between the Petitioner and the Respondents for which this Court in exercise of the powers under Section 11 of the Act of 1996 appointed one Col. retired Manoranjan Goswami as the sole Arbitrator on 20.7.2017. Subsequent thereto, the said sole Arbitrator resigned on health ground for which this Court vide an order dated 5.2.2018 appointed the Proforma Respondent herein as the sole Arbitrator.

3. At this stage, this Court finds it relevant to observe that at that relevant point of time the applicable provision i.e. Section 29A (1) of the Act of 1996 stipulated that the award shall be made within a period of 12 months from the date the Arbitral Tribunal enters upon

the reference.

4. It is the case of the Petitioner that the Proforma Respondent herein entered into reference on 5.2.2018 and in terms with Section 29 A (1) of the Act of 1996 was required to publish the award on 4.2.2019. It is also an admitted fact that both the parties agreed for extension of the period of the arbitral proceedings by 6 months which is as per the mandate of Section 29A (3) of the Act of 1996. The said period expired on 3.8.2019.

5. Thereupon on 21.8.2019 an application was filed by the Petitioner before the learned District Judge, Sonitpur at Tezpur under Section 14 of the Act of 1996 for termination of the mandate of the appointed sole Arbitrator. At this stage, this Court finds it relevant to observe that in view of the provisions of Section 29 A (4) of the Act of 1996, the said application was not necessary to be filed inasmuch as a reading of Section 29 A (4) of the Act of 1996 stipulates that if the award is not made within the period specified in Subsection (1) or the extended period specified in Subsection (3) of Section 29A of the Act of 1996, the mandate of the Arbitrator stands terminated by operation of law unless the Court had either prior to or after the expiry of the period so specified extended the period. Be that as it may, the learned District Judge, Sonitpur, Tezpur vide the judgment and order dated 23.2.2022 i.e. almost 3 years from the date of filing of the application under Section 14 of the Act of 1996, disposed of the

said proceedings by rejecting the application under Section 14 of the Act of 1996. However, the learned District Judge, Sonitpur, Tezpur vide the impugned judgment and order suo moto exercised the powers under Section 29 A (4) of the Act of 1996 and extended the time limit by another 1 year i.e. from 22.3.2022 till 22.3.2023 for publishing of the award and with a further observation that in the event the Arbitrator (the Proforma Respondent) causes any further delay or attribute delay in publishing the award beyond the one year extended by the Court, the fees of the Arbitrator would be reduced by 5% for each month of such delay. It is against this order that the Petitioner had approached this Court under Article 227 of the Constitution.

6. The Petitioner herein is a proprietorship firm belonging to Shri Ghanshyam Das Dhiman who is Petitioner-in-Person. The Petitioner in Person submitted that the learned District Judge, Sonitpur could not have exercised the jurisdiction to extend the time limit in terms with Section 29 A (4) of the Act of 1996 as neither of the parties have filed an application seeking extension. He further submitted that the power to grant extension by the Court under Section 29 A (4) can only be done on an application of any of the parties and that too for sufficient reasons and on such terms and conditions as may be imposed by the Court. He further submitted that a perusal of the impugned order by which the time limit was extended not only suffers from lack of

jurisdiction but also goes against the very mandate and the legislative intent behind the incorporation of Section 29(A) to the Act of 1996.

7. Mr. H. Gupta, the learned counsel appearing on behalf of the Respondents though have fairly submitted that there was no application filed by either of the parties seeking extension of the time limit, but submitted that even without an application, the Court has the power to extend the time limit. He further submitted that the Petitioner herein was responsible for the delay in the arbitral proceedings inasmuch as the Petitioner have sought for various adjournments during the arbitral proceedings. It was also the submission of the learned counsel for the Respondents that the Respondents have also verbally sought for extension under Section 29(A) to the Act of 1996. The learned counsel for the Respondents further submitted that on a conjoint reading of Subsection (4) and Sub-section (5) of Section 29 A of the Act of 1996 would show that it is not only on an application filed by the parties but the Court has also the jurisdiction on its own to grant extension of the time limit. Mr. H. Gupta, the learned counsel appearing on behalf of the Respondents submits that the said award is yet to be published or delivered to any of the parties as is required under Section 31(5) of the Act of 1996. Taking into account that the said award have not been published, the Arbitral Proceedings cannot be said to have been terminated in terms with Section 32 of the Act of 1996.

8. I have heard the learned counsels for the parties and have also perused the materials on record.

9. Taking into account that the time limit of 6 months which was mutually agreed had admittedly expired on 03.08.2019 and the application was filed on 21.08.2019, the provisions of Section 29 A of the Act of 1996 would be applicable as existed prior to 30.08.2019 inasmuch as Section 29 A (1) and 29 A (4) of the Act of 1996 was amended only w.e.f. 30.08.2019.

10. Be that as it may, from a perusal of Section 29 A (1) of the Act of 1996, it would be seen that the time limit for passing the award was within a period of 12 months from the date the Arbitral Tribunal enters upon reference. In terms with Subsection (3) of Section 29A, the parties may, by consent, extend the period specified in Subsection (1) of Section 29A of the Act of 1996 for making the award for a further period not exceeding 6 months. From the admitted facts, the period of 6 months elapsed on 3.8.2019. Now coming to Subsection (4) of Section 29 A of the Act of 1996, it would be seen that if the award is not made within the period specified in Subsection (1) or the extended period specified in Subsection (3) of Section 29 A, the mandate of the Arbitrator (s) shall terminate by operation of law unless the Court, i.e. the Court in terms with Clause 2 (e) of the Act of 1996 extends the period either prior to the expiry of the period mentioned in Subsection (1) or Subsection (3) of Section 29 A of the

Act of 1996 or after the expiry of the period so specified. The provisos to the said Subsection (4) of Section 29 A is however not applicable to the instant case as it relates to reduction of the fees of the Arbitrator for any delay so caused; it relates to the mandate of the Arbitrator if an application is pending under Sub-section (5) of Section 29A as well as it relates to the Arbitrator being given an opportunity of being heard before the fees is reduced.

11. The crucial subsection for the purpose of deciding the instant lis is Sub-Section (5) of Section 29A of the Act of 1996 which stipulates that the extension of the period referred to in Sub-Section (4) of Section 29A may be on the application of any of the parties granted only for sufficient cause and on such terms and conditions as may be imposed by the Court. For understanding the purport of Subsection (5) of Section 29A of the Act of 1996 and the power of extension of the Court, this Court also finds it relevant to observe that the provisions of Section 29A of the Act of 1996 as originally introduced in the statute, mandated that all awards shall be made within a period of 12 months from the date on which the Arbitral Tribunal enters upon the reference. The Explanation contained in the then existing Section 29A (1) of the Act of 1996 clarified when the Arbitral Tribunal would be deemed to have entered upon the reference, namely the date on which the Arbitrator had received written notice of the appointment. The mandatory nature of the provisions of Section 29A(1) and their

application to all arbitrations conducted under the Act of 1996, domestic or international commercial was evident from the use of the word "shall". In terms with Section 29A(4) of the Act of 1996, in case the arbitral award was not rendered within 12 or 18 month period as the case may be, the mandate of the arbitrator (s) would stand terminated, unless on an application made by any of the parties, the Court extended time on sufficient cause being shown. This aspect of the matter could be also seen from the opinion rendered in the judgment of the Supreme Court in the case of **Tata Sons Pvt. Ltd. (Formerly Tata Sons Ltd.) Vs. Siva Industries and Holdings Ltd.** reported in **(2023) 5 SCC 421**. The said paragraph No. 24 of the said judgment being relevant is reproduced hereinunder :

"24. The provisions of [Section 29A](#), as originally introduced into the statute, mandated that all awards shall be made within a period of twelve months from the date on which the arbitral tribunal enters upon the reference. The explanation clarified when the arbitral tribunal would be deemed to have entered upon the reference, namely, the date on which the arbitrator has received written notice of the appointment. The mandatory nature of the provisions of [Section 29A\(1\)](#) and their application to all arbitrations conducted under the Act, domestic or international commercial, was evident from the use of the word "shall". In terms of [Section 29A\(4\)](#), in case the arbitral award was not rendered within the twelve or eighteen month period as the case may be, the mandate of the arbitrator(s) would stand terminated, unless on an application made by any of the parties, the court extended time on sufficient cause being shown."

12. Be that as it may, from a reading of Section 29A of the Act of 1996 as it stood prior to 30.08.2019 read with paragraph 24 of the judgment in the case of Tata Sons (P) Ltd. (supra), the legislative

intent in prescribing the time limit is clear and unambiguous that the award has to be passed within a period of 12 months from the date on which the Arbitral Tribunal enters upon the reference. Subsection (3) of Section 29A gives the liberty to the parties to mutually agree for an extension of the time limit within 6 months. By operation of law in view of Sub-section (4) of Section 29A of the Act of 1996, the mandate of the Arbitrator stands automatically terminated unless extended by the Court prior or after the expiry of the period as specified in Subsection (1) and Subsection (3) of Section 29A of the Act of 1996. In view of the clear and unambiguous language employed in Section 29A of the Act of 1996, it is the opinion of this Court that such extension can be given by the Court only on the basis of an application filed by any of the parties and not otherwise and that too for sufficient reasons and by imposing terms and conditions.

13. In the backdrop of the above, in the instant case, it would be seen that the learned District Judge most erroneously and shockingly on an application under Section 14 of the Act of 1996 for termination of the mandate of the Arbitrator exercised the power under Section 29 A (4) of the Act of 1996, that too, even without assigning any reasons as to why such extension had to be granted. This Court is further surprised to take note of that the learned District Judge had gone to the extent of granting an extension by one year, that too, when the legislative intent under Section 29A(1) of the Act of 1996 is to

culminate the entire Arbitration Proceedings within 12 months. This Court however would like to clarify that in certain arbitrations, it may not be possible to complete the arbitration within 12 months or even within the extended 6 months and as such power have been vested in the Court to extend the period prior to expiry or even after expiry of the period. Taking into account that arbitration is a mode to resolve the dispute by private remedy, the parties or a party to a proceedings has to approach the Court seeking extension. This Court further observes that extension can be granted for sufficient reasons and not merely on an asking else the legislative intent behind Section 29A of the Act of 1996 would be defeated.

14. At this stage, this Court further finds it relevant to refer the provisions of Section 5 of the Act of 1996 which categorically mentions that in matters governed by Part I of the Arbitration and Conciliation Act, 1996, no judicial authority shall intervene except where so provided in Part I. Applying and reading Section 5 with Section 29A of the Act of 1996, the Judicial Authority or for that matter the Court under Clause 2(e) of the Act of 1996 can intervene by extending the period only when any of the parties to the Arbitration Proceedings approach the Court seeking extension and not otherwise.

15. The impugned judgment dated 22.03.2022 however is completely contrary to the scheme as well as the provisions of the Act



of 1996 as discussed above for which the impugned judgment and order is set aside and quashed leaving the parties herein to approach the appropriate forum in terms with the Act of 1996. It is further observed that in view of the setting aside of the judgment and order dated 22.03.2022 passed in T.S. (Arb.) Case No. 1/2019, anything done by the Arbitrator in the Arbitration Proceedings pursuant to 04.08.2019 would be without jurisdiction and authority of law.

16. With the observations and directions, the instant writ petition stands allowed.

JUDGE

Comparing Assistant