



Serial No. 02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Arb. P. No. 2 of 2024

Date of Decision: 23.04.2024

BSCPL Infrastructure Limited
Office at 8-2-502/1/A, JIVI Towers,
Road No. 7, Banjara Hills, Hyderabad
Telangana- 500034, represented by
Shri D. Srinivasa Rao,
S/o (L) Dharamukkala, S. Narayana
R/o House No. 419, 1st Floor, Sector 31,
Gurgoan, Haryana-122001

- Versus -

The Addl. Chief Engineer, PWD (Roads),
Western Zone, Meghalaya-794001

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Mr. K. Ch. Gautam, Adv.

For the Respondent(s) : Mr. A.S. Pandey, Adv. with
Mr. A.H. Kharwanlang, Addl. Sr. GA
Mr. J.N. Rynjah, GA

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No



JUDGMENT AND ORDER (ORAL)

1. This is an application under Section 29A (4) of the Arbitration and Conciliation Act, 1996, praying for extension of time for completing the proceedings by a period of 1(one) year with effect from 04.04.2024.

2. The brief facts are that the petitioner had earlier approached this Court with an application under Section 11(4) & (6) of the Act for appointment of Arbitrators, and the same was registered as Arb. P. No. 1 of 2021. The matter was then disposed of by an order dated 17.03.2022, directing the nominees appointed by the petitioner and the respondent to decide on the presiding arbitrator. It appears that though the hearings were held on 21.04.2022, and thereafter, the same could not be completed within the time provided and the mandate was then extended by the Arbitral Tribunal, for another 6(six) months with the consent of the parties till 04.04.2024.

3. Mr. K. Ch. Gautam, learned counsel for the petitioner submits that though the Arbitral Tribunal had extended the time by 6(six) months, the proceedings could not be completed within the



said extended period, and presently the matter is at the stage of final arguments, and the next date is fixed on 15.07.2024 and 16.07.2024. He therefore, prays that orders be passed under Section 29A (4) for extending the mandate of the Tribunal.

4. Mr. A.S. Pandey, learned counsel for the respondent submits that though there are no objections with regard to the extension of the mandate of the Arbitral Tribunal by this Court, the only point to be considered is whether this Court had in fact appointed the Arbitrators under Section 11 (6) of the Act, to make the order passed in *CRP No. 2 of 2024* in the case of *Chief Engineer (NH) PWD (Roads) vs. M/s BSC&C and C JV*, applicable to the facts of the present case.

5. Heard the learned counsels for the parties.

6. As submitted by the learned counsel for the petitioner that this Court in the order dated 22.04.2024 passed in *CRP No. 2 of 2024*, in the case of *Chief Engineer (NH) PWD (Roads) vs. M/s BSC&C and C JV* had observed that with regard to the expression of ‘Court’ used in Section 2(1)(e), the same may be interpreted by making use of the expression “*unless the context otherwise requires*”. Paragraphs 16, 17, 18 & 19 thereof, which are relevant are reproduced hereinbelow:-



“16. Thus, it is seen that the term ‘Court’ used in Section 29A (4), as the definitive clause has provided in Section 2(1), is to be interpreted by making use of the expression “unless the context otherwise requires”. The phrase “unless the context otherwise requires” in the view of this Court, is a provision in Section 2, intended by the legislature to allow for flexibility in interpretation and indicates that the definitions given therein, should be understood in accordance with the surrounding context, or specific circumstances, rather than strictly adhering to a literal interpretation. This provision hence, enables courts to consider the broader context, including the intent of the legislature, in determining the applicable meaning of the provisions at hand. In essence, it grants discretion to interpret the provision in a manner that best aligns with the overall purpose and objectives of the statute.

17. Though it is correct that the power under Section 11(6) of the Act, specifically vests the powers of appointment of arbitrator in the case of domestic arbitration upon the High Court, this jurisdiction also is limited, as once an arbitrator is nominated, the High Court does not retain jurisdiction. However, as noted in various judgments, if the power under Section 29A is to be exercised by the Principal Civil Court, though it may be competent to extend the mandate, an anomalous situation would arise, if there is a question of substitution, as it may result in an arbitrator appointed by the High Court being substituted by the Principal Civil Court, which would then militate against the stipulation of Section 11(6) of the Act.

18. A contextual interpretation of the term ‘Court’ as given in the Act, will therefore involve analyzing the facts of the case, the legislative intent to understand its purpose and its application, whereas textual interpretation on the other hand, focuses solely on the language of the provision itself. Balancing both approaches therefore, will ensure the comprehensive



application of the provisions’ meaning and intent, taking into account both its context and textual structure to apply it effectively, to fit into the scheme of the Act. As such, in the considered view of this Court, Section 2(1)(e) allows the interpretation of the term ‘Court’ to be read, keeping the object of the statute intact, and the same should not result in defeating the purpose, for which the provision i.e. Section 29A was inserted.

*19. In the backdrop of the discussions herein above, coming to the case in hand, the decision rendered in **Magnum Opus IT consulting Private Limited vs. Artcad Systems, Through its Proprietor Vinay Digambar Shende (2022) SCC OnLine Bom 2861: (2023) 1 Arb LR 441**, which has been relied upon by the respondents, however comes to their aid, as the arbitrators in the present case were not appointed under Section 11 by the High Court. As such, by applying this judgment, a distinction can be drawn to hold that, if the appointment of the arbitrator is not by the High Court under Section 11, the Principal Civil Court of original jurisdiction in this case, the Commercial Court at Shillong, East Khasi Hills will have the power to entertain an application under Section 29A for extension of the term, as no anomalous situation would arise therefrom. As such, by making use of the expression of Section 2 of the Act “unless the context otherwise requires” the textual interpretation will be in tune with the contextual one.”*

7. With regard to the submissions made by Mr. A.S. Pandey, the learned counsel for the respondent that there was no effective appointment by the High Court of an Arbitrator under Section 11(6), on a perusal of the order dated 17.03.2022 passed in Arb. P. No. 1 of 2021, it is observed therein that certain directions



had been issued with regard to the nomination and appointment of an Arbitrator by the parties.

8. In this view of the matter, as the High Court had passed orders in an Section 11(6) application, namely (*Arb. P. No. 1 of 2021* in the case of *BSCPL Infrastructure Ltd. vs. The Addl. Chief Engineer, P.W.D. (Roads), Western Zone*), this Court will have the jurisdiction to pass orders for extension of the mandate of the Arbitral Tribunal, under Section 29 A (4) of the Arbitration and Conciliation Act, 1996.

9. Accordingly, this petition is disposed of with a direction that Arbitral Tribunal's term shall be extended for a further period of 1(one) year, with effect from 04.04.2024.

JUDGE

Meghalaya
23.04.2024
"V. Lyndem-PS"