

Neutral Citation No. - 2024:AHC-LKO:17691**Court No. - 8**

Case :- CIVIL MISC REVIEW APPLICATION DEFECTIVE No. - 16 of 2024

Applicant :- The Public Works Department Thru. Chief Engineer

Opposite Party :- Pnc Infratech Limited Thru. Authorized Signatory

Counsel for Applicant :- Varun Pandey

Counsel for Opposite Party :- Lakshyadeep Srivastava

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Hon'ble Jaspreet Singh,J.

1. Heard Shri S.B. Pandey, learned Senior Advocate and Deputy Solicitor General of India assisted by Shri Deepanshu Das and Shri Varun Pandey, learned counsel for the review-petitioner and Shri Shishir Jain along with Shri Lakshyadeep Srivastava and Shri Anurag Abhishek, learned counsel for the respondent.

2. The instant review-application has been preferred by the Public Works Department, Government of U.P., who was the respondent in the petition preferred under Section 11(4)(6) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') by the PNC Infratech Limited, whereby this Court after hearing the parties by means of the order dated 28.08.2023 had proposed the name of Hon'ble Mr. Justice Krishna Murari (Retd.) Judge of the Supreme Court of India to act as an Arbitrator on behalf of Public Works Department.

3. The instant review application is also accompanied by an application seeking condonation of delay.

4. Shri Shishir Jain, learned counsel appearing for the PNC Infratech Limited, who was the original petitioner in Arbitration Case No.58/2022 has candidly submitted that he has no objection in case the delay is

condoned. However, he submits that the matter be heard expeditiously as the arbitration tribunal has been constituted and the pendency of the review petition may hamper the proceedings before the Tribunal.

5. Considering the aforesaid, the delay in filing the review application is hereby condoned and thereafter the Court has proceeded to hear the learned counsel for the parties on the present review application.

6. Learned Senior Counsel appearing for the review petitioner has submitted that certain provisions of the National Highways Act, 1956 have not been taken note of inasmuch as the effect of the said section would be that the rights and obligations of the petitioner would stand transferred to the National Highways Authority of India and in absence of the said party to the petition before this Court, which would affect the merit of claims before the Tribunal, hence, the order impugned deserves to be reviewed.

7. It is also urged that in terms of the National Highways Authority of India Act, 1988 upon the issuance of the notification, the highway vests with the National Highways Authority of India and all rights and liabilities also stand transferred. In the aforesaid backdrop where all the rights and liabilities and obligations have been transferred to the National Highways Authority of India, the Public Works Department i.e. review petitioner has absolutely no role and accordingly no Arbitrator could have been appointed on behalf of the Public Works Department rather any claim of the PNC Infratech Limited can only be against the National Highways Authority of India and thus, the Arbitrator if appointed would be on behalf of the National Highways Authority of India and not on behalf of the Public Works Department, Government of U.P.

8. It is further urged that for the said reason, the petition under Section 11(4)(6) of the Act of 1996 was bad for non-joinder of necessary parties and in this light the order dated 28.08.2023 deserves to be reviewed.

9. Shri Shishir Jain, learned counsel for the PNC Infratech Limited has submitted that without prejudice to his submissions regarding maintainability of review application, the issue in question as raised was already considered and decided by this Court and thus in garb of the instant review, the review petitioner is seeking re-hearing of the petition which is not permissible.

10. It has further been submitted that even the arbitral Tribunal comprising of Hon'ble Mr. Justice Amitava Roy (Retd.) Judge of the Supreme Court, Hon'ble Mr. Justice Deepak Mishra (Retd.), Chief Justice of India and Hon'ble Mr. Justice Krishna Murari (Retd.) Judge of the Supreme Court in its procedural order dated 17.10.2023 had already provided the review petitioner with liberty to file necessary pleadings and documents before the Tribunal so that the Tribunal can appreciate and adjudicate the issue being raised by the review petitioner, who are the respondents before the Tribunal.

11. It is urged that instead of filing the aforesaid documents and pleadings before the Tribunal, the review petitioner has approached this Court raising the said issue which can very well be considered by the Tribunal in exercise of powers under Section 16 of the Act of 1996. It is thus urged that the aforesaid review petition is not maintainable and deserves to be dismissed.

12. Having considered the respective submissions of the learned counsel for the parties and from the perusal of the material on record, it reflects that this Court after hearing the parties by means of the order dated 26.09.2023 had appointed Hon'ble Mr. Justice Krishna Murari (Retd.) Judge of the Supreme Court of India to Act as a nominee Arbitrator for the Public Works Department. While passing of the said order, this Court on 28.08.2023 had dealt with the various submissions and came to the conclusion that the matter before the Court was a fit case to appoint an Arbitrator on behalf of the Public Works Department.

13. This Court also had noticed the submissions of respective parties including the stand of the learned standing counsel representing the Public Works Department that the disputes are not covered by the Disputes Resolution Mechanism rather it was the obligation of the National Highways Authority of India to appoint the nominee Arbitrator and while dealing with it, this Court had considered the letter issued by the National Highways Authority of India dated 04.04.2022 wherein it was stated that since the disputes were relating to the parties was referable to the construction stage, hence, the National Highways Authority of India does not wish to interfere at this stage. The effect of the said letter is quite evident and even though the Public Works Department had required the National Highways Authority of India to come on the forefront yet by the said letter it remained passive.

14. It is not disputed that the claim raised by the respondents herein, who were the petitioners in the Arbitration Case No.58/2022 had raised claims relating to the construction stage. Another fact which is not in dispute is

that the principal agreement in between the parties was signed by the Public Works Department and PNC Infratech Limited. Even the tripartite agreement dated 10.05.2019 was signed by the Public Works Department, the National Highways Authority of India and PNC Infratech Limited and the impact of the said agreement and how it was affects the merits is something for the arbitral Tribunal to consider and decide the said issue and whether the claims of PNC Infratech Limited in absence of the National Highways Authority of India will be bad for want of necessary parties and against whom the claims can be mentioned is also an issue which can be dealt with by the arbitral Tribunal.

15. Learned Senior counsel for the review petitioner does not dispute the fact that the arbitral Tribunal in its proceeding dated 17.10.2023 has already given liberty to the review petitioner to file their pleadings and documents to raise its objections and that the Tribunal would adjudicate the controversy.

16. The impact of Section 62 of the Contract Act, the impact of tripartite agreement dated 10.05.2019 and whether the disputes relate to construction stage and or the effect of Section 12 of the National Highways Authority of India Act, 1988 can be considered by the Tribunal appropriately in terms of Section 16 of the Act of 1996.

17. Needless to say that this Court in exercise of powers under Section 11(4)(6) of the Act of 1996 has only to prima-facie examine the case of the parties to arrive at a prima-facie satisfaction that the parties before the High Court (i) have approached the correct Court for getting an arbitrator appointed, (ii) the arbitration clause subsist between the parties and the

disputes are covered by the said clause. Once the aforesaid satisfaction is formed, the Court is required to relegate to the parties to Tribunal. The same has been done by this Court by the order dated 28.08.2023 which culminated in the final order dated 26.09.2023.

18. It is equally true that the scope of the review jurisdiction is narrow and limited to ascertain an error apparent on the face of the record. Any error which is sought to be substantiated by lengthy arguments cannot be a ground for reviewing the order. [See **Ram Sahu and others Vs. Vinod Kumar Rawat and others reported in 2020 SCC Online SC 896**].

19. In the aforesaid facts and circumstances, this Court does not find that there is any error apparent on the face of the record to persuade this Court to entertain the aforesaid review petition which is accordingly dismissed. Needless to repeat that it shall be open for the review petitioner to raise all their objections before the Tribunal, who shall consider the same in accordance with law.

20. With the aforesaid, the review application is dismissed. Costs are made easy.

Order Date :- 20.02.2024
Rakesh/-