

**THE HIGH COURT OF SIKKIM : GANGTOK**

**CIVIL REVISION PETITION NO.7 OF 2004**

In the matter of an application under section 115 of the Code of Civil Procedure, 1908

and  
in the matter of

1. Union of India,  
Through the Chief Engineer,  
Military Engineering Service,  
Siliguri Zone,  
Sevoke Road,  
P.O. Salugara - 734 318,  
Jalpaiguri,  
West Bengal.
2. The Chief Engineer,  
Military Engineering Service,  
Siliguri Zone,  
Sevoke Road,  
P.O. Salugara - 734 318,  
Jalpaiguri,  
West Bengal
3. The Engineer-in-Chief,  
Army Headquarters,  
Kasmere House, DHQ,  
P.O. New Delhi - 110 011 ... **Petitioners**

**VERSUS**

Tirath Ram Oberoi,  
Government Contractor,  
Oberoi Building,  
M. G. Marg,  
Gangtok, East Sikkim. ... **Opposite Party**

For the petitioners : Karma Thinley, Additional  
Central Government Standing  
Counsel.

For the respondent : B. Sharma, Advocate.

*D. K. M.*



**PRESENT : THE HON'BLE SHRI JUSTICE R.K. PATRA, CHIEF JUSTICE.**

**Date of order : 23<sup>rd</sup> November, 2004.**

**ORDER**

**R.K. PATRA, C.J.**

This revision arises out of a proceeding initiated by the opposite party under sections 5, 8, 11 and 12 of the Arbitration Act, 1940 in the Court of District Judge (E & N), Sikkim at Gangtok vide T.S. (Arbitration) no. 2 of 2004. By the impugned order dated 31.5.2004, the learned District Judge held that a case for appointment of an independent arbitrator has been made out and accordingly directed the parties to submit a panel of names. Being aggrieved by the said order, the department has filed this revision.

2. For the work of "construction of school building of Kendriya Vidyalaya at Gangtok" an agreement was executed between the petitioners and the opposite party vide agreement no.CESZ/136-WE/12 of 85-86. During execution of the work, certain disputes and differences between the parties arose. The opposite party accordingly filed Civil Miscellaneous Case (Arbitration) no.8 of 1994 in the Court of District Judge for appointment of an arbitrator to decide 17 number of claims. During the pendency of the said case, the petitioners although appointed Brig. T. K. Mittal as the sole arbitrator it did not refer to him all the claims raised by the opposite party. The arbitrator also did not render his award

*R.K.P.*

within reasonable time. In the circumstances, the opposite party filed another case bearing suit no.16 of 1999 for appointment of another arbitrator. The learned District Judge by order dated 27.9.1999 called upon the petitioners to appoint an arbitrator and in obedience to the said order, the petitioners appointed one M. K. Chitkara, Chief Engineer as arbitrator. The appointing authority however out of 17 claims laid by the opposite party referred only 10 claims to him. The opposite party appeared before the arbitrator and submitted that all his claims have not referred to. The said arbitrator however resigned. The department as a consequence appointed one Namo Narain as the arbitrator in its letter dated 3.1.2001. The appointing authority again instead of referring all the disputes raised by the opposite party referred to the new arbitrator only 10 items. The opposite party requested the arbitrator to consider all his claims. At this time, the arbitrator informed the opposite party that he would hold the arbitration proceedings at Calcutta not at Gangtok or at Siliguri on health ground. He however, did not proceed in the matter. Finding no other alternative, the opposite party filed the present case for appointment of an independent arbitrator. During the pendency of the case, the department appointed one B. N. Roy as arbitrator on 14.10.2003. He however resigned on being informed by the counsel for the opposite party to the

RKH



effect that his appointment was during the pendency of the case.

3. Considering the manner in which the matter had been proceeding the learned District Judge by the impugned order has observed that an independent arbitrator should be appointed for resolution of the disputes.

4. There is no dispute that a vacancy has arisen and an arbitrator has to be appointed. Learned counsel for the petitioners submitted that in view of the arbitration clause no arbitrator outside the purview of the arbitration clause can be appointed and discretion should be given to the department to appoint an arbitrator in terms of the arbitration clause.

5. The question that arises for consideration is whether the learned District Judge has exercised proper discretion in deciding to appoint an independent arbitrator.

6. The facts narrated above speak for themselves. Although the department appointed four arbitrators none of them made any progress. The arbitration proceedings are required to be disposed of with utmost dispatch and urgency. The conduct of the departmental arbitrators was not encouraging. Therefore in the interest of justice and in the facts and circumstances of the case an independent arbitrator should be appointed. I therefore do not find any flaw in the impugned order.

*Pr*



7. Counsel for the petitioners declined to submit a list of persons for consideration on the plea that it is only the designated authority has jurisdiction to appoint an arbitrator. The opposite party has submitted a panel of retired District Judges for being considered for appointment as arbitrator.

8. For the reasons aforesaid, I hereby choose Shri B. R. Pradhan, former District Judge and Secretary, Law, Nam Nang, Gangtok out of the panel of names submitted by the opposite party and appoint him as arbitrator to decide all the disputes put forth by the opposite party. The petitioners are hereby directed to refer all the disputes raised by the opposite party to him for the decision. The arbitrator shall conclude the proceedings as expeditiously as possible and give the award within four months after entering on the reference. He is entitled to his fees and charges which he shall reasonably fix. Both the parties shall share the remuneration equally.

9. With the above observations and directions, this revision is disposed of. No costs.

  
( R. K. Patra )  
Chief Justice  
23.11.2004

Dictation taken  
&  
typed by me  
Dipak Saha