

# IN THE HIGH COURT OF MEGHALAYA

## CRP No. 4 of 2014

M/s Patel Engineering Company Ltd.  
A Company incorporated under the provisions of the  
Indian Companies Act, 1913 and having its  
Registered office situated at Patel Estate Road,  
Jogeswari (West), Mumbai- 400 102,  
Represented by Prasenjit Majumdar,  
R/o Kameng H.E. Project Vill Bichum,  
P.O. Bomdila District,  
West Kameng, Arunachal Pradesh.

.....**Petitioner**

- **Vrs** -

1. The State of Meghalaya,  
represented by the  
Commissioner & Secretary to the Government of Meghalaya,  
Shillong- 793 001.
2. The Chief Engineer, (PHE),  
Meghalaya, Shillong- 793001
3. The Executive Engineer,  
GSW Scheme, Division No. 2,  
Public Health Engineering Department,  
Government of Meghalaya, Mawphlang,  
Meghalaya.
4. The Director,  
Central Water Commission, Room No. 803 (S),  
Sewa Bhavan, R.K. Puram,  
New Delhi- 110 066
5. The Chairman,  
Central Water Commission,  
Sewa Bhawan, R.K. Puram,  
New Delhi – 110 066.

..... **Respondents**

## CRP No. 5 of 2014

M/s Patel Engineering Company Ltd.  
A Company incorporated under the provisions of the  
Indian Companies Act, 1913 and having its  
Registered office situated at Patel Estate Road,  
Jogeswari (West), Mumbai- 400 102,  
Represented by Prasenjit Majumdar,  
R/o Kameng H.E. Project Vill Bichum,  
P.O. Bomdila District,  
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New Delhi – 110 066.

**..... Respondents**

**BEFORE  
THE HON'BLE MR JUSTICE SR SEN**

Advocates for the Petitioners	:	Mr A Saraf Mr. K Choudhury
Advocates for the Respondents	:	Mr. MF Qureshi Mr. R Debnath
Date of Hearing	:	29.05.2014
Date of Judgment and Order	:	29.05.2014

**JUDGMENT AND ORDER (Oral)**

CRP No. No. 4 of 2014 and CRP No. 5 of 2014 are similar in nature and both the cases have been taken into consideration for disposal by way of this common Judgment & Order.

2. The petition in CRP No. 4 of 2014 is directed against the impugned Judgment & Order dated 27.01.14 passed in Case No. FTC (s) Arbitration Case No. 4 (H) 2012 and the petition in CRP No. 5 of 2014 is directed against the impugned Judgment & Order dated 27.01.14 passed in Case No. FTC (s) Arbitration Case No. 5 (H) 2012.

3. The petitioner's case in nut shell is that "the petitioner by way of invoking the jurisdiction of this Hon'ble Court under Article-227 of the Constitution of India is challenging the Judgment & Order dated 27.01.14 passed by the Addl. District & Session Judge, Shillong whereby the learned

Court below has dismissed the application filed under Section-14 (2) of the Arbitration and Conciliation Act, 1996 by the petitioner to terminate the mandate of the presiding Arbitrator appointed by the Hon'ble Chief Justice of the Hon'ble High Court due to his continuous absence on the ground that the Court below has no jurisdiction to terminate the Arbitrator as the said Arbitrator was appointed by the Hon'ble Chief Justice of the Gauhati High Court and as such power remains only in the hand of the Hon'ble Chief Justice to terminate the Arbitrator. Being aggrieved with such a finding of the learned Court below, the petitioner has filed this instant Revision Petition on the ground that as per Section 14(2) read along with Section-2(e) of the Arbitration and Conciliation Act, 1996 in case of any dispute with regard to termination of mandate of arbitrator, the aggrieved party has to apply to the Principal Civil Court of Original Jurisdiction and as such, the petitioner had rightly filed the application and dismissal of the same was illegal and arbitrary."

4. Mr. A Saraf, the learned senior counsel assisted by Mr. K Choudhury, the learned counsel appeared for on behalf of the petitioner submits that, the appointed arbitrator has not taken any initiative in arbitration proceedings for a long time in spite of several requests and reminders. Hence a petition was moved before Learned District Judge, Shillong and the same was endorsed to the Addl. District Judge who vide order dated 27.01.14 rejected the termination of arbitrator appointed by the then Chief Justice of the Gauhati High Court. Being aggrieved by the said order, these instant petitions are moved before this Court.

5. Mr. A Saraf, the learned senior counsel has also drawn my attention to Section-14 of the Arbitration and Conciliation Act, 1996 which is reproduced herein below :

***"Failure or impossibility to act –***

***(1) The mandate of the an arbitrator shall terminate if –***

***(a) He becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay ; and***

***(b) He withdraws from his office or the parties agree to the termination of his mandate.***

***(2) If a controversy remains concerning any of the grounds referred to in clause (a) of such-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.***

***(3) If, under this section or sub-section (3) of Section-13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of Section-12.”***

6. On perusal of Section-14 of said Act referred to above, it is understood that, whenever there is any undue delay by the arbitrator and when there is no settlement between the parties, either of the party can move before the Court to decide termination of mandate of arbitrator. The learned senior counsel further argued that, “Court” as defined in the Arbitration Act is the Principal District Judge of the district concerned.

7. On the other hand, Mr. R Debnath, the learned counsel appeared for on behalf of the respondent Nos. 5 & 6 and Mr. MF Qureshi, the learned counsel appeared for respondent Nos. 1, 2 & 3 submitted that since the appointment of the arbitrator was made by the Hon’ble Chief Justice of the High Court, therefore, the District Court has no power to interfere with.

8. After hearing the submissions advanced by the learned counsel and on perusal of the Section-14 of the Arbitrator and Conciliation Act, 1996, it is clearly understood that, whenever after appointment of an arbitrator, if there is any laxity or undue delay of the proceeding, either of the party may approach the Court for termination of the mandate of the arbitrator.

9. Now, going back to the Section-2(e) of the Arbitrator and Conciliation Act, 1996 which is reproduced herein below :

***“Definitions –***

***(e) “Court” means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.”***

10. On bare perusal of the definition “Court” as enumerated in the said Act referred to above, it is clear that Court means Principal Civil Court of

original jurisdiction in a district includes High Court in exercise of its ordinary original civil jurisdiction to decide the question. On plain reading of the definition “Court” as referred to in the Arbitrator and Conciliation Act, 1996, it is undoubtedly clear that, it is either the Principal District Judge of the district or High Court with Original Civil Jurisdiction.

11. If it is so, legislature has given emphasis on the word Original Civil Jurisdiction.

12. Undoubtedly, High Court of Meghalaya is not a Charter Court nor having Original Civil Jurisdiction like the Bombay High Court, Calcutta High Court or Madras High Court. Since this High Court has no Original Civil Jurisdiction, in my view the matter is not necessary to be place before this High Court or before the Hon’ble Chief Justice. Though, it is a fact that the Hon’ble Chief Justice has initially appointed the arbitrator, therefore, in my considered view, in our state or Courts under the control of the Meghalaya High Court, it is the Principal District Judge to decide termination of mandate of arbitrator.

13. Therefore, for the reasons as discussed above, the matter is remanded back to the District Judge, East Khasi Hills, Shillong with a direction to decide the matter basis on the petition filed by the petitioner after hearing both the parties in accordance with law.

14. Accordingly, both the impugned orders dated 27.01.14 passed in Case No. FTC (s) Arbitration Case No. 4 (H) 2012 and in Case No. FTC (s) Arbitration Case No. 5 (H) 2012 are hereby set aside and the matter stands disposed of.

15. No order as to cost.

**JUDGE**

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