



2025:DHC:3234



\$~84

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 24<sup>th</sup> April, 2025*

+ O.M.P.(MISC.)(COMM.) 291/2025

**POWER GRID CORPORATION OF INDIA LIMITED**

.....Petitioner

Through: Mr. S.B. Upadhyay, Senior Advocate  
with Mr. Pranay Kishore Mishra and Mr. B.K.  
Pandey, Advocates.

versus

**SPML INFRA LIMITED**

.....Respondent

Through: Mr. Aayush Agarwala and Mr. Rahul  
Kumar Yadav, Advocates.

**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This petition is filed on behalf of the Petitioner under Section 29A(4) and (5) of Arbitration and Conciliation Act, 1996 ('1996 Act') seeking extension of mandate of learned Arbitral Tribunal by a period of 09 months.
2. Pursuant to disputes having arisen between the Petitioner and the Respondent with respect to Rural Electrification Works in Kaimur District of Bihar under the Government of India run Rajiv Gandhi Gramin Vidyutikaran Yojana, a three-member Arbitral Tribunal was constituted with Mr. Justice Deepak Verma as the Presiding Arbitrator. In the preliminary hearing held on 02.08.2018, it was decided that fee of the Arbitral Tribunal shall be in accordance with Fourth Schedule of the 1996 Act along with 10% additional fee for the Presiding Arbitrator for administrative expenses to be



borne by both parties. Mandate of the Arbitral Tribunal was extended by this Court vide order dated 06.01.2020 by a period of one year w.e.f. 17.12.2019 in OMP(MISC)(COMM) 546/2019, followed by further extensions from time to time.

3. As per the narrative, the Arbitral Tribunal vide order dated 28.10.2022 directed both parties to pay a further fee of Rs.15 lacs to each member of the Arbitral Tribunal and additional 10% to the Presiding Officer. Aggrieved with this, Respondent/SPML Infra Limited (SPML) filed a petition being OMP(MISC)(COMM) 94/2023 under Section 29A(1) read with (3) seeking substitution of the Arbitral Tribunal and extension of the mandate on the ground of unilateral enhancement of fees. This petition was partially allowed vide order dated 27.03.2023 extending the mandate by 12 months from 28.11.2022 with liberty to SPML to raise the dispute with respect to fee enhancement before the Arbitral Tribunal and file a fresh petition if aggrieved with the decision. Pursuant to the liberty granted, SPML filed an application before the Arbitral Tribunal for withdrawal of order dated 28.10.2022 with a plea to continue the proceedings as per Fourth Schedule which was dismissed on 01.06.2023 with costs.

4. Against the said order, SPML filed OMP(MISC)(COMM) 286/2023 under Section 29A(6) of the 1996 Act seeking substitution of the Arbitral Tribunal amongst other reliefs as also setting aside orders dated 28.10.2022 and 01.06.2023 passed by the Arbitral Tribunal. SPML also filed OMP(T)(COMM) 79/2023 under Section 14(1)(a) of 1996 Act seeking substitution. By common order dated 31.08.2023, arbitral proceedings were stayed and by common judgment dated 27.11.2024, both petitions were disposed of extending the mandate of the Arbitral Tribunal upto 30.03.2025



and setting aside order dated 28.10.2022 unilaterally enhancing the fee and directing that the Arbitral Tribunal may continue with the fees as originally decided in the preliminary hearing. Parties were given liberty to approach the Court in case the Arbitral Tribunal chose not to continue the proceedings on the earlier fees. Court also observed that SPML had not made any submission with regard to bias or ineligibility and in any event, the issue of ineligibility is to be first raised before the Arbitral Tribunal.

5. It is averred in the petition that Arbitral Tribunal decided to continue with the proceedings and fixed the next date on 09.01.2025 and with the consent of the parties, six dates were fixed for rejoinder arguments. On request of counsel for SPML, the three dates fixed were cancelled on 01.03.2025 and thereafter SPML filed an application on 20.03.2025 under Sections 12 and 13 of the 1996 Act challenging the jurisdiction of the Arbitral Tribunal on ground of 'justifiable doubt', which was dismissed by the Arbitral Tribunal after hearing the parties vide order dated 27.03.2025. Since the mandate of the Arbitral Tribunal was to expire on 30.03.2025, Petitioner/Power Grid Corporation of India Limited (Power Grid) filed this petition for extension of the mandate.

6. Reply has been filed on behalf of SPML in which there is largely a reference to the history of the previous litigation and another petition filed by SPML being OMP(T)(COMM) 136/2024 under Sections 14(1)(a) and 15 of the 1996 Act in respect of another arbitral proceedings pertaining to disputes between the same parties in relation to Rural Electrification Works in Rohtas District of Bihar (Rohtas Project), which are being adjudicated by the same Arbitral Tribunal as in the present case. It is stated that in the said petition, SPML has sought substitution of the Presiding Arbitrator on ground



of bias predicating its case on the order dated 01.06.2023 passed in the Kaimur Project i.e. the arbitral proceedings in the present petition. When the reply was filed, the order was reserved for pronouncement. It is further stated in the reply that after so much litigation pertaining to apprehension of bias against the Arbitral Tribunal and also on account of filing applications under Sections 12 and 13 of the 1996 Act, there is little chance that the Arbitral Tribunal will be impartial in deciding the disputes and thus there is a reasonable apprehension of bias.

7. Learned counsel for SPML essentially submits that on account of the unilateral enhancement of fees by the Arbitral Tribunal and also on account of bias, the Arbitral Tribunal be substituted and thereafter, the mandate be extended. The argument is that SPML does not expect impartial and independent or a fair decision from the Arbitral Tribunal after so much of litigation and acrimony. In response to the Court's question on outcome of OMP(T)(COMM) 136/2024, learned counsel submits that the judgment has been pronounced on 17.04.2025 deciding OMP(MISC)(COMM) 564/2023 filed by Power Grid for extension of mandate of the Arbitral Tribunal and OMP(T)(COMM) 136/2024 filed by SPML seeking substitution of the Presiding Arbitrator of the Arbitral Tribunal and hands over a copy of the judgment.

8. Mr. S.B. Upadhyay, learned Senior Counsel for Power Grid submits that there is no merit in the contentions of SPML as there is nothing remiss in the conduct of the arbitral proceedings. It is urged that insofar as the allegations of bias are concerned, SPML had filed an application under Sections 12 and 13 of the 1996 Act which has been dismissed on 27.03.2025 and SPML may take recourse to appropriate proceedings at the appropriate



stage but on ground of bias cannot oppose the extension of mandate. Insofar as unilateral enhancement of fees is concerned, learned Senior Counsel submits that this issue stands foreclosed by judgment dated 27.11.2024 passed by the Co-ordinate Bench in OMP(MISC)(COMM) 286/2023 and OMP(T)(COMM) 79/2023, directing the Arbitral Tribunal to continue the proceedings on the fee decided originally in the preliminary hearing held on 02.08.2018 i.e. as per the Fourth Schedule of the 1996 Act and SPML cannot agitate this issue again and again to stall the proceedings.

9. Heard learned Senior Counsel for the Petitioner and learned counsel for the Respondent.

10. There is a chequered history of litigation between Power Grid and SPML repeatedly on question of extension of mandate of the Arbitral Tribunal and substitution of the Presiding Officer of the Arbitral Tribunal, both in respect of arbitral proceedings pertaining to Kaimur Project and Rohtas Project. Insofar as Kaimur Project is concerned, SPML had earlier filed OMP(MISC)(COMM) 286/2023 under Section 29A(6) of the 1996 Act seeking substitution of the Arbitral Tribunal on the ground of unilateral enhancement of fees and OMP(T)(COMM) 79/2023 under Sections 14 and 15 of the 1996 Act seeking substitution on two-fold grounds i.e. reasonable apprehension of bias in view of order dated 01.06.2023 by the Arbitral Tribunal rejecting the prayer of SPML to conduct proceedings as per original fee schedule and unilateral enhancement of fee. By a detailed judgment passed by this Court on 27.11.2024, both the petitions were disposed of and the findings and the conclusions rendered are important for this case. Court extended the mandate of the Arbitral Tribunal upto 30.03.2025 with a further direction that the Arbitral Tribunal will continue



the proceedings with the fees as originally decided in the preliminary hearing held on 02.08.2018 i.e. as per Fourth Schedule. Liberty was granted to the parties to approach the Court if the Arbitral Tribunal chose not to continue with the proceedings on the earlier decided fees. Therefore, it is clear from the said judgment that the Arbitral Tribunal is under a mandate to continue on the earlier fees and there can be no grievance on this score by SPML. In fact, it is not even the case of SPML in reply to this petition that subsequent to the judgment, Arbitral Tribunal has enhanced the fee.

11. It would be pertinent to mention that same issues were raised by SPML in respect of arbitral proceedings conducted by the same Arbitral Tribunal with respect to the Rohtas Project. SPML filed a petition for substitution of the Presiding Arbitrator being OMP(T)(COMM) 136/2024 and Power Grid filed OMP(MISC)(COMM) 564/2023 for extension of the mandate. Both these petitions have been decided by a common judgment pronounced on 17.04.2025 and the Court taking note of the judgment dated 27.11.2024, as also the judgments of the Supreme Court on the issue held that apprehension of bias cannot serve as a ground to assert *de jure* inability of the Presiding Arbitrator to invoke Section 14 of the 1996 Act seeking substitution of the Presiding Arbitrator or reconstitution of the Arbitral Tribunal and dismissed the petition filed by SPML for substitution of the Presiding Arbitrator and extended the mandate of the Arbitral Tribunal.

12. In my view, Power Grid is right in its contention that ground of enhancement of fee cannot be raised at this stage by SPML to seek substitution of the Presiding Arbitrator in light of the judgment dated 27.11.2024, after which there has been no enhancement in the fee. The ground of bias is essentially predicated on the fact that SPML has been



2025:DHC:3234



litigating seeking substitution of the Arbitral Tribunal or contesting the enhancement of fee. This very issue was urged by SPML in the earlier round, which finds mention in paragraph 39 of judgment dated 27.11.2024 but was negated by the Court relying on judgment of the Supreme Court in ***Chennai Metro Rail Limited, Administrative Building v. Transtonnelstroy Afcons (JV) and Another, (2024) 6 SCC 211***. Additionally, in the reply filed by SPML, no other ground is pleaded which points to the Presiding Officer of the Arbitral Tribunal being *de jure* or *de facto* ineligible to continue arbitration proceedings. Application filed by SPML under Sections 12 and 13 of the 1996 Act has been dismissed by the Arbitral Tribunal and the same cannot be agitated indirectly in the defence to the present petition.

13. For all the aforesaid reasons, this petition is allowed. Mandate of the Arbitral Tribunal is extended by a period of 09 months from 24.04.2025 and the period between 31.03.2025 to 23.04.2025 is regularised.

14. Petition stands disposed of in the aforesaid terms.

**JYOTI SINGH, J**

**APRIL 24, 2025**

*S.Sharma/shivam*