

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 22nd DAY OF JULY, 2022

BEFORE

HON'BLE MR. JUSTICE A.A. SAYED,

CHIEF JUSTICE

ARBITRATION CASE No. 75 of 2022

Between:

1. M/S. SHIMLA TOLLS &
PROJECTS PVT. LTD.
KEONTHAL COMPLEX,
KHALINI, SHIMLA-171001,
THROUGH ITS DIRECTOR
SH. PARMOD SOOD
2. M/S. P.K. CONSTRUCTION
PVT. LTD. KEONTHAL COMPLEX,
KHALINI, SHIMLA-171001,
THROUGH ITS MANAGING
DIRECTOR SH. PARMOD SOOD

.....PETITIONERS

(BY SH. TARUNJEET SINGH BHOGAL,
ADVOCATE)

AND

1. THE MUNICIPAL CORPORATION,
SHIMLA, THROUGH THE
COMMISSIONER, MC SHIMLA,
THE MALL, SHIMLA-171001.
2. THE EXECUTIVE ENGINEER-
CUM-DIRECTOR, MUNICIPAL
CORPORATION, THE MALL
SHIMLA-171001

.....RESPONDENTS

(BY MR. NARESH K. GUPTA,
ADVOCATE)

This case coming on for orders this day, the Court delivered the following:

J U D G M E N T

Disposing the petition (Arbitration Case No.63 of 2017) under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 (the Act for short), for terminating the mandate of the sole Arbitrator, an order dated 05.04.2018 was passed by this Court directing the Arbitral Tribunal comprising of the Principal Secretary (Law), Government of Himachal Pradesh as the sole Arbitrator, to complete the arbitration proceedings within a reasonable time in accordance with the provisions of the Act including Section 29 A of the Act.

2. Learned counsel for the petitioners states that the Arbitral Tribunal had entered upon Reference and the parties had filed their respective pleadings. It is submitted that the Arbitral Tribunal also caters to different other roles and performs various other administrative functions for the Government of Himachal Pradesh and in light of heavy

workload, the Arbitral Tribunal has failed to adjudicate the issues and declare the award despite the orders dated 05.04.2018 passed in Arbitration Case No.63 of 2017.

3. The present application has thus been filed by the petitioner to terminate the mandate of the Arbitrator and appoint a substitute Arbitrator to adjudicate the dispute between the parties.

4. It is noted that despite the order passed by this Court in Arbitration Case No.63 of 2017 to decide the matter in a reasonable time keeping in view Section 29A of the Act, the Arbitral Tribunal has failed to act without undue delay. There is no reply filed by the respondents and the application is not opposed. Hence a case is made out by the petitioner to appoint a substitute Arbitrator.

5. By consent of the learned counsel for the parties, the following order is passed: -

ORDER

- (i) Shri Mohammad Rafiq, former Chief Justice of High Court of Himachal Pradesh is appointed as a substitute sole Arbitrator to adjudicate the

dispute between the parties which has arisen under Agreement;

- (ii) The learned sole Arbitrator, before entering the arbitration Reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Registrar (Judicial) of this Court, to be placed on record of this application and a copy thereof be forwarded to both the parties;
- (iii) The parties shall appear before the prospective arbitrator on a date which may be mutually fixed by the learned sole Arbitrator, not later than four weeks from today;
- (iv) The fees payable to the Arbitral Tribunal shall be as prescribed in 4th Schedule appended to the Arbitration and Conciliation Act, 1996; and
- (v) Office to forward a copy of this order to the learned Arbitrator on the following address:-

“Hon’ble Mr. Justice Mohammad Rafiq,
Former Chief Justice,
High Court of Himachal Pradesh
7, Bhagat Vatika,
Civil Lines, Hawa Sadar,
Jaipur-302 006 (Rajasthan).”

- (vi) The application to stand disposed of in the above terms. No costs.

- (vii) This order be communicated by the Advocate for the respondents to the Principal Secretary (Law), Government of Himachal Pradesh.

(A.A.Sayed)
Chief Justice

July 22, 2022
(mamta)