

**IN THE COURT OF THE DISTRICT JUDGE, KHURDA  
AT BHUBANESWAR.**

Present :

**Dr. D.P. Choudhury,**  
District Judge, Khurda  
at Bhubaneswar.

*Dated, Bhubaneswar the 27<sup>th</sup> June'14.*

**Arb. (P) No. 189 of 2014.**

(U/ss. 14 & 15 of the Arbitration and Conciliation Act, 1996)

1. Jaycee Housing Private Ltd., Branch Office, At – Jharpara, Cuttack Road, Bhubaneswar-6, Dist. - Khordha, represented by Gautam Budhraj, aged about 47 years, Son of Late Jagdish Chandra Budhraj, having its Registered Office At – 14, L.S.C. Madangir, Puspa Vihar, New Delhi-62.
2. Konark Auto Spring leaf, represented by its Power of Attorney Holder Gautam Budhraj, aged about 47 years, Son of Late Jagdish Chandra Budhraj, At – Jharpara, Cuttack Road, Bhubaneswar-6, Dist. - Khordha.
3. Mr. Nihal Chandra & Sons, represented by its Power of Attorney Holder Gautam Budhraj, aged about 47 years, Son of Late Jagdish Chandra Budhraj, At – Jharpara, Cuttack Road, Bhubaneswar-6, Dist. - Khordha.
4. Mr. Harish Chandra Budhraj, aged about 72 years, Son of Late Nihal Chandra Budhraj, represented by its Power of Attorney Holder Gautam Budhraj, aged about 47 years, Son of Late Jagdish Chandra Budhraj, residing At – Jharpara, Cuttack Road, Bhubaneswar-6, Dist. - Khordha.

... **Petitioners.**

***- Versus -***

1. Sh: Ajit Coomar Roy, Retd. Engineer-in-Chief, Sole Arbitrator, residing At – 10153, Nayapali, Anand Vihar, Bhubaneswar – 751 012, Dist. - Khordha.

2. Neelachal Buildtech & Resorts Pvt. Ltd., a Company incorporated under the Companies Act, 1956, represented by one of its Director Rajesh Kumar Moda, aged about 42 years, Son of Late M.L. Moda, having its office at Plot No.542, Sahid Nagar, Bhubaneswar – 751 007, Dist. - Khordha.
3. Keshari Estates Pvt. Ltd., an existing Company incorporated under the Companies Act, 1956, represented by its Managing Director Sri Ajaya Kumar Choudhury, aged about 52 years, Son of Late Jagganath Choudhury, having its registered office at 98, Kharavela Nagar, Keshari Talkies Compound, Bhubaneswar – 751 001, Dist. - Khordha.

... **Respondents.**

**Counsel :**

For Petitioners	--	Mr. A. Pal & Associates.
For Res. No.1	--	None (Set ex parte).
For Res. No.2	--	Mr. S. Misra & Associates.
For Res. No.3	--	Mr. A. Baug & Associates.

Date of argument : 20.06.2014.

Date of judgment : 27.06.2014.

## **J U D G M E N T**

This is an application under sections 14 and 15 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”) filed by the petitioners praying to terminate the mandate of the sole Arbitrator and to substitute an independent and impartial person in Arbitral Proceeding No.02 of 2013.

2. Factual matrix leading to the case of the petitioners is that the petitioners are absolute owners of plots of land at Bhubaneswar with an area of Ac.5.266 decimals where respondent No.2 is a developer / promoter. There was an

agreement between petitioners and respondent No.2 on 10.09.2002 for development and construction of building over the land of the petitioners. The petitioners also executed a General Power of Attorney on 04.10.2002 in favour of respondent No.2 to deal with the said property for development and construction of building thereon. In pursuance of the terms and conditions of the said agreement, respondent No.2 paid Rs.70,00,000/- to the owners as against Rs.40,00,000/- towards security deposit. When the petitioners found that the work was delayed, they revoked the General Power of Attorney dated 04.10.2002 and entered into a Memorandum of Understanding with respondent No.3 for construction of building over a portion of the said plot measuring 2.8 acres and received Rs.10,00,000/- towards security deposit. They have agreed that in case any dispute arises between them, the matter would be referred to arbitration. It is further alleged, inter alia, that dispute arose over revocation of General Power of Attorney and, accordingly, the matter was referred to the sole Arbitrator, who is respondent No.1 in this case.

3. Further allegation made in the petition is that the learned Arbitrator had not given mandatory declaration under section 12 of the Act by disclosing in writing the circumstances which are likely to give rise to his independence or impartiality in the orders. The other ground taken by the petitioners is that the sole Arbitrator has violated the principles of natural justice, as copy of reply filed by the respondent No.2 was not provided to

them. Respondent No.3 being not a party to the agreement entered appearance before the sole Arbitrator, who has added him as a party to the dispute. So, mainly, it has been alleged that the sole Arbitrator discharges duties with bias. While the matter was going on before the sole Arbitrator, the petitioners were not allowed to serve copies of applications dated 04.01.2014 & 18.02.2014. It is further alleged that in spite of application of the petitioners to cross-examine the witnesses, they were denied. It is submitted by learned counsel appearing for the petitioners that on 22.05.2014 an application was filed to decide the matter; but, on the same day, the matter was closed awaiting orders. So, he submitted that series of allegations, as made, pertain to the credibility of the sole Arbitrator.

4. Respondent No.1 has been set ex parte. Respondent No.2 filed objection, refuting the allegations made by the petitioners. According to them, the allegations are false and the petitioners have suppressed the material facts. The petition under sections 14 & 15 of the Act has been filed to linger the disposal of the arbitral proceeding. Since no bias or malice, as alleged by the petitioners, on the part of respondent No.1 has been proved, the petition is not maintainable. Not only this, but also the sole Arbitrator should be allowed to work and finalise the award.

5. Respondent No.3 filed objection, denying the allegations made in the petition. He supported the stand taken by respondent No.2 and prayed to dismiss the petition filed under sections 14 & 15 of the Act.

6. Learned counsel appearing for the petitioners submitted about the dispute with regard to the revocation of General Power of Attorney. He drew attention of the Court to the order of the sole Arbitrator vide Annexure-3, wherein the sole Arbitrator directed to file their respective claims fixing 17.05.2013. But, the petitioners filed a petition to recall the orders dated 13.06.2014, 14.06.2014 & 31.07.2014, as their application dated 28.06.2013 was rejected without any opportunity being afforded to them. He also drew attention of the Court to Annexure-5 series wherein respondent No.3 has been allowed by the sole Arbitrator to participate in the arbitral proceeding, although respondent No.3 is not a party to Annexure-1, which is a bipartite agreement. He also placed Annexure-11 to show that the interim application of respondent No.3 was entertained by the sole Arbitrator and it was fixed to 22.05.2014 for hearing. Annexure-12 shows that the present petitioners filed an application to recall the order dated 15.03.2014 and the Arbitrator should withdraw himself from the arbitral proceeding, as the applicants have lost faith in him.

7. Learned counsel appearing for the petitioners drew attention of the Court to the order dated 22.05.2014, wherein the learned sole Arbitrator closed the proceeding and allowed the order to be passed. It was submitted by him that in view of the fact that they asked the sole Arbitrator to recuse himself from the proceeding for his partiality and bias, he closed the proceeding and kept the record for orders. According to him, this shows that

the learned Arbitrator is not impartial and independent for which the mandate of the sole Arbitrator should be terminated and an independent and impartial person should be substituted as the sole Arbitrator.

8. Learned counsel appearing for respondent No.2 submitted that the factual aspect, as submitted by learned counsel for the petitioners, is wrong being not in conformity with the facts of the case. Drawing attention to Annexure-B/2 filed by respondent No.2, he submitted that there was a tripartite agreement dated 14.09.2005 and respondent No.3 is a party to such agreement, in addition to petitioners and respondent No.2. He also placed Annexure-2, which shows about the dispute over cancellation of General Power of Attorney, and respondent No.2 wrote to the petitioners for appointment of the named Arbitrator, viz respondent No.1. According to him, since it is a tripartite agreement and respondent No.1 has been appointed as an Arbitrator, it is fallacious to say that respondent No.3 cannot be entertained by the sole Arbitrator to the arbitral proceeding. He further submitted that there is a clause in the tripartite agreement at page-7 that all the parties, namely, petitioners, respondent Nos.2 & 3, have agreed for appointment of respondent No.1 and Shri Subash Chandra Parija, an Advocate; but, due to latter's elevation to the Hon'ble High Court, the sole Arbitrator, who is none other than respondent No.1, remained as the named Arbitrator. He also drew attention to the petition for arbitration, wherein at para-2, the petitioners have admitted that respondent

No.1 is the designated Arbitrator as per the agreement dated 14.09.2005 between petitioners and respondent Nos.2 & 3. So, it is not proper for the petitioners to submit that respondent No.3 is a stranger to the arbitral proceeding. Besides this, he submitted that the learned Arbitrator has followed the principles and in view of the order of this Court, as submitted by the petitioners before the sole Arbitrator, he kept the matter closed without passing any order. According to him, the petition under sections 14 & 15 is not maintainable being premature and the same warrants no interference by the Court at this stage. Had there been any award passed with bias or any sort of impartiality, the petitioners would have invoked recourse against such award under section 34 of the Act for setting aside the same.

9. After hearing the arguments of the parties at length and on going through the documents filed by the petitioners and the contesting respondents, it appears that the entire matter rests on the way the arbitral proceeding is carried on by the sole Arbitrator and about his independence and impartiality. In fact, para-2(i) of the petition accompanied by affidavit filed by the petitioners shows that respondent No.1 is the designated Arbitrator in the agreement dated 14.09.2005 between petitioners and respondent Nos.2 & 3 and the copy of the said agreement is placed at Annexure-1. Perusal of Annexure-1 shows that the said agreement is executed between petitioners and respondent No.2; but respondent No.3 is not a party to it. On the other hand, Annexure-B/2 submitted by respondent No.2 shows

that there is a tripartite agreement between petitioners and respondent Nos.2 & 3 and it is executed on 14.09.2005. Hence, the petitioners have not proved Annexure-1 to be the agreement, as alleged by them, and it can be well proved that Annexure-B/2 is the agreement to which the petitioners have averred in para-2(i) of their petition. On the contrary, respondent No.3 is a party to the tripartite agreement and, in that agreement, the sole Arbitrator has been named as one of the Arbitrators to the proceeding in the event of any dispute. Thus, it cannot be said that respondent No.3 is a stranger to the arbitral proceeding so that the action of the sole Arbitrator to entertain the interim application dated 15.03.2014 is alien to the proceeding. That apart, the documents filed by the petitioners show that they have made objections from time to time on various aspects and the learned Arbitrator used to hear and pass orders thereon. Thus, the proceeding before the sole Arbitrator does not appear to be against the principles of natural justice. Both the parties have relied on the order-sheet dated 22.05.2014 of the sole Arbitrator. On going through the copy thereof, it appears that the petitioners have submitted before respondent No.1 that they have filed a petition under section 14 & 15 of the Act before this Court, although they have filed the same in this Court on 02.06.2014. However, consequent upon such submission of the petitioners, the learned Arbitrator did not pass any order, observing that in view of the stand taken by the present petitioners, no further order by the Tribunal is required to be passed. Further, he closed

the proceeding with a direction to pass order in due course. Of course, it is not known, when he observed that no order is required to be passed, how he closed the proceeding. Since the learned Arbitrator is a quasi-judicial Authority, it cannot be said that he is determined to pass any award. Be that as it may, the entire order dated 22.05.2014 shows that honouring the order of the Court, he has refrained himself from passing any order on the application filed by the petitioners. From this, the conduct of the sole Arbitrator cannot be said to be bias or malice or it is with any partiality. On the whole, the petitioners have not been able to prove that the proceeding conducted by the sole Arbitrator is vitiated by his impartiality and bias.

10. Now, advertent to the question of law, I find that the present petition has been moved under sections 14 & 15 of the Act. Section 14 enshrines about the grounds for the termination of the mandate of an Arbitrator. In this case, there is no such allegation as per the grounds enumerated in sections 14 & 15 of the Act. Sub-section (2) of section 13 of the Act specifically states that failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal. Sub-section (3) of section 12 of the Act states that an Arbitrator may be challenged only if (a) circumstances exist that give rise to

justifiable doubts as to his independence or impartiality, or (b) he does not possess the qualifications agreed to by the parties. Again, coming to sub-section (3) of section 13, it appears that unless the Arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

11. From a reading of the above provisions, it appears that the Arbitrator has to decide on the petition of the petitioners about justifiable doubts as to his independence and impartiality. As it seems, such matter has not been decided by the learned Arbitrator so far, as revealed from the order dated 22.05.2014. Moreover, he has not withdrawn from his office by any reason; or by or pursuant to agreement of the parties, as required under sub-section (1) of section 15 of the Act. Besides, the grounds, as envisaged in section 14(1)(a) & (b) of the Act, have not been proved by the petitioners in this case. It is well settled that had there been any award of the Arbitrator passed with malice or bias, they may be ground for filing an application under section 34 of the Act. Hence, I find that the pre-condition to terminate the mandate of the sole Arbitrator being not successfully proved by the petitioners, the petition under sections 14 & 15 of the Act is liable to be disallowed being not maintainable. Hence ordered :

**O R D E R**

The petition under sections 14 & 15 of the Arbitration and Conciliation Act, 1996 fails and, accordingly, the same stands dismissed, but in the circumstances without cost.

**District Judge, Khurda  
at Bhubaneswar.**

27.06.2014.

Dictated, corrected by me and pronounced in the open Court this day the 27<sup>th</sup> June, 2014.

**District Judge, Khurda  
at Bhubaneswar.**

27.06.2014.

