



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.470 OF 2020

Surinder SinghPetitioner
Versus
Arrow Engineering Ltd ...Respondent

WITH
ARBITRATION PETITION NO.478 OF 2020

Manju Vishnoi And Anr.Petitioner
Versus
Arrow Engineering LimitedRespondent

WITH
ARBITRATION PETITION NO.474 OF 2020

Prashant VishnoiPetitioner
Versus
Arrow Engineering LimitedRespondent

WITH
ARBITRATION PETITION NO.479 OF 2020

Surinder SinghPetitioner
Versus
Arrow Engineering LimitedRespondent

WITH
ARBITRATION PETITION NO.476 OF 2020

Aditya Kumar Goel And Anr.Petitioners
Versus
Arrow Engineering LimitedRespondent

WITH
ARBITRATION PETITION NO.471 OF 2020

Surinder SinghPetitioner
Versus
Arrow Engineering LimitedRespondent

**WITH
ARBITRATION PETITION NO.477 OF 2020**

Surinder Singh	....Petitioner
Versus	
Arrow Engineering Limited	....Respondent

**WITH
ARBITRATION PETITION NO.475 OF 2020**

Swati Goel And Anr	....Petitioner
Versus	
Arrow Engineering Limited	....Respondent

**WITH
ARBITRATION PETITION NO.472 OF 2020**

Surinder Singh	....Petitioner
Versus	
Arrow Engineering Limited	....Respondent

**WITH
ARBITRATION PETITION NO.481 OF 2020**

Surinder Singh	....Petitioner
Versus	
Arrow Engineering Limited	....Respondent

**WITH
ARBITRATION PETITION NO.480 OF 2020**

Surinder Singh	....Petitioner
Versus	
Arrow Engineering Limited	....Respondent

**WITH
ARBITRATION PETITION NO.468 OF 2020**

Meena Jha And Anr.	....Petitioners
Versus	
Arrow Engineering Limited	....Respondent

**WITH
ARBITRATION PETITION NO.469 OF 2020**

Meena Jha And Anr.	....Petitioners
Versus	
Arrow Engineering Limited	....Respondent

**WITH
ARBITRATION PETITION NO.465 OF 2020**

Meena Jha And Anr.	....Petitioners
Versus	
Arrow Engineering Limited	....Respondent

**WITH
ARBITRATION PETITION NO.279 OF 2021**

Pawan Seigell	....Petitioner
Versus	
Arrow Engineering Limited	....Respondent

Mr. Mukesh Gupta a/w. Ashwini Patil i/b. Solicis Lex, Advocates for Respondent in Review Petition No.4/2021, Review Petition No.5/2021 & Review Petition No.6/2021 and for Petitioner in ARBP/470, 474, 479, 476, 471, 477, 475, 472, 481, 480, 468, 469, 465 of 2020 & 279/2021.

Mr. Robin Jaisinghani a/w. Jacinta D'Silva, Advocates for Respondent and for Applicant in Review Petition.

CORAM : SOMASEKHAR SUNDARESAN, J.
RESERVED ON : APRIL 16, 2025
PRONOUNCED ON : APRIL 23, 2025

JUDGEMENT:

Context and Background:

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April 23, 2025

Aarti Palkar

1. This is a bunch of Petitions filed and pending under Section 29-A of the Arbitration and Conciliation Act, 1996 (“***the Act***”) in connection with arbitration proceedings between multiple Petitioners (“***Petitioners***”) and the common Respondent, Arrow Engineering Ltd. (“***Arrow***”). These matters have been pending on the docket of this Court for a long time (since 2020), with neither party seriously pursuing the matter.

2. As it transpires, there have been a total of 22 Petitions, of which four came to be withdrawn. Of the 18 remaining Petitions, three Petitions (Arbitration Petition (L) Nos. 4321, 4322 and 4323 of 2020) were heard and disposed of by a Learned Single Judge of this Court by an order dated October 12, 2020 (“***October 2020 Order***”) extending the mandate of the Learned Arbitral Tribunal until November 1, 2021. Review Petitions were filed by Arrow in each of the Petitions that were disposed of, and the Learned Single Judge tagged the three Review Petitions with these Petitions by an order dated December 8, 2020.

3. Thereafter, nothing concrete has moved in the matter. Even the extended mandate expired. No fresh petitions under Section 29-A of the Act were filed by the three parties involved.

4. These matters were listed by the Court on its own motion, when it was found that these Petitions have been pending for over five years. The proceedings got underway after a few rounds of jostling among the parties about the appropriate manner to proceed further.

Arbitration Proceedings:

5. The underlying arbitration proceedings relate to contracts by which, Arrow was to construct bungalows in the Navi Mumbai International Airport Influence Notified Area (“**NAINA**”) that was being planned by the City and Industrial Development Corporation of Maharashtra Ltd. (“**CIDCO**”). The claims from the Petitioners were for Arrow to be directed to specifically perform the contracts to construct the Petitioners’ bungalows.

6. Indeed, it was that the Petitioners that had initiated arbitration and secured orders under Section 11 of the Act from this Court to get the arbitration proceedings underway. A Learned Senior Counsel of this Court was appointed as an arbitrator on June 30, 2016. Pleadings in the arbitration were completed by April 26, 2017. On June 19, 2017, an application was made by the Petitioners before the Learned Arbitral Tribunal asking for leave to approach this Court for issuance of witness summons under Section 27 of the Act to a planning official of CIDCO (NAINA), since bringing a government servant as a witness into a private

arbitration was not within the powers of the Petitioners. The application was allowed by the Learned Arbitral Tribunal.

7. No Petition under Section 27 was filed in Court. On October 29, 2017, an application was moved before the Learned Arbitral Tribunal requesting that the mandate of the Learned Arbitral Tribunal be terminated on the premise that the Petitioners realised that they would be unable to afford the fees of the Learned Arbitral Tribunal. It was also pointed out that in another parallel arbitration proceedings being conducted before another arbitral tribunal, Arrow had been unable to pay arbitrator fees, on the premise that its accounts had been frozen. Therefore, the Petitioners submitted, they would be burdened even more by having to pay Arrow's fees as well to the Learned Arbitral Tribunal. Arrow filed a reply stating that there was no scope for termination of arbitration proceedings on the premise that payment of costs was unaffordable. However, Arrow submitted that a simple termination of arbitration as envisaged in the Act would be acceptable. A rejoinder was filed by the Petitioners contending that Arrow indeed had initially consented to terminate the arbitral proceedings due to the fees being unaffordable and even had traded drafts of a joint application for termination. However, it was submitted, after one Mr. Vineet Malhotra (the promoter of Arrow) was arrested, Arrow's intention to consent was

withdrawn. The Petitioners requested the Learned Arbitral Tribunal to withdraw from office since the Petitioners would find it unaffordable to pay for the arbitration proceedings, and simply terminating the arbitration would cause irreparable injury to the Petitioners. A sur-rejoinder was filed by Arrow asserting that there was no consent to terminate the arbitration jointly and there had only been a willingness to consider a joint request. Arrow asserted that the only course for the Petitioners was to pay all the fees to pursue the arbitration, or to abandon it and terminate the proceedings once and for all.

8. By a detailed order dated January 17, 2018, the Learned Arbitral Tribunal ruled that such an application was not maintainable. It was ruled that allowing such an application would lead to an unhealthy practice of pressuring an arbitrator to withdraw on the premise that fees were not affordable, after having agreed to the fees. The Learned Arbitral Tribunal pointed out that there were 22 arbitration proceedings underway, with Arrow being a common Respondent. The fees for meetings held for issuance of directions were being charged at a “nominal” rate of Rs. 3,000 per case per hour. However, for “hearing of arguments” fees were charged at Rs. 60,000 per hour and that too for only one matter, since the 22 cases were identical. Likewise, for hearings for recording evidence of witnesses. No particulars of the reasons for the

claimed inability or disability to afford such fees had been set out, the Learned Arbitral Tribunal noted. Without going into the motive behind the application, the Learned Arbitral Tribunal ruled that it would be appropriate to dispose of the application seeking termination, as not being maintainable.

9. Thereafter, on January 24, 2018, the Learned Arbitral Tribunal noted that after leave was granted for approaching this Court for issuance of witness summons, no progress on that front was reported and instead, the application for termination had been moved. Arrow's counsel pointed out that 18 months had expired since the appointment of the Learned Arbitral Tribunal and that the mandate of the Learned Arbitral Tribunal had expired. The Petitioners submitted that they would be willing to seek an extension of the mandate of the Learned Arbitral Tribunal by filing an application under Section 29-A of the Act. The Learned Arbitral Tribunal noted that the fees owed was to the tune of Rs. 9,24,000 and the Petitioners had once paid sums of Rs. 66,000 and Rs. 93,000 (without clarity on what amount of tax had been deducted at source) while Arrow had paid Rs. 1,43,100 (after deduction of tax at source). The Learned Arbitral Tribunal ruled that any application under Section 29-A of the Act must disclose to the Court, these facts on unpaid fees.

10. One and half years later, the petition under Section 29-A of the Act being Arbitration Petition No. 1285 of 2019 was filed in August 2019, disclosing these facts and pointing out that post-dated cheques of equal installments had been paid as agreed with the Learned Arbitral Tribunal for the Petitioners' share of the fees. The Petitioners reiterated that they would not be able to afford the arbitral fees, and accused Arrow of frustrating the arbitration by making it unaffordable for the Petitioners. The petition sought extension of mandate by a period of one year coupled with substitution of the arbitrator manning the Learned Arbitral Tribunal. By an order dated March 9, 2020, the petition was withdrawn with "liberty to file a fresh appropriate petition". Thereafter, these Petitions now under consideration in these proceedings came to be filed on October 9, 2020.

Analysis and Findings:

11. I have examined the record with the assistance of Mr. Rajendra Mishra, Learned Counsel on behalf of the Petitioners and Mr. Robin Jaisinghani, Learned Counsel on behalf of Arrow. I find that these proceedings have gone stale and no cause is made out for extending the mandate of the Learned Arbitral Tribunal. In my opinion, extending the mandate would be of no real benefit to anyone and the only implication could be the prolonging of agony for all the litigating parties involved. That apart, the extension would not be in aid of either party achieving

closure on a stale dispute and would give neither party confidence that they would be well served by expending more time and resources on the arbitration.

12. It is also noteworthy that in the October 2020 Order passed by a Learned Single Judge of this Court in three petitions, there has already been an express rejection of the request for substitution of the arbitrator manning the Learned Arbitral Tribunal. The premise that the fees were unaffordable was specifically repelled. It was ruled that the Court is not bound to use its power to substitute the arbitrator. The arbitral fees were held to have been well known to the three Petitioners. Mr. Mishra confirms that there has been no appeal by the Petitioners against the October 2020 Order. The explanation offered is that since Arrow had filed Review Petitions in the three cases where the mandate stood extended, his clients decided to await the outcome in the review proceedings. November 1, 2021, the extended deadline for the arbitration has come and gone and not a muscle has been moved in the arbitration proceedings. That apart, even while the Review Petitions were tagged and were pending along with these Petitions, no application for further extension was filed.

13. The extension of statutory timelines effected by the Supreme Court in a *suo motu* response to the overwhelming implications of the Covid-19 Pandemic came and went, with timelines being extended by a period of 90 days beyond February 28, 2022. The Petitioners took no efforts to seek an extension on the premise that they should benefit by what was granted to everyone else by virtue of the extensions directed by the Supreme Court. Even after the expiry of 90 days since February 28, 2022, three more years have gone by.

14. These Petitions were listed by this Court on its own motion because they invoke a jurisdiction meant to be dealt with in 60 days but they had remained pending for more than three years. Mr. Mishra had to take instructions from his clients to ascertain if they were still interested in the matter. When it was found that a Learned Single Judge had already repelled the notion of the arbitral fees being unaffordable to the Petitioners and such rejection was not appealed against, Mr. Mishra was asked to also ascertain if the Learned Arbitral Tribunal was willing to continue with the matter in such circumstances. On March 7, 2025 he confirmed that the Learned Arbitral Tribunal is available to conduct the proceedings and has expressed its willingness subject to the fees being paid.

15. However, on reflection and upon examination of the record and having heard the Learned Counsel for the parties, I do not find that it would be appropriate or necessary to extend the mandate of the Learned Arbitral Tribunal. Evidently, Arrow had confirmed its earlier inability to pay the arbitral fees on account of its accounts being frozen, and in the same breath also canvassed that the Petitioners must pay Arrow's share of arbitral fees for the proceedings to continue. Even if this may present an equitable consideration in favour of the Petitioners, from the review of the record, after the Learned Single Judge repelled the prayer for substitution of the arbitrator while indeed extending the mandate, neither was the extended mandate acted upon nor was the rejection of the prayer for substitution challenged.

16. It would be reasonable to conclude that the Petitioners evidently lost interest in the matter, or even if they have some residual interest, the pendency of the arbitration has been no cause of any injury much less anxiety or concern to the Petitioners. There is no evidence of any activity on the part of the Petitioners for nearly five years. Although the October 2020 Order allowed the extension of mandate until November 1, 2021, no further step was taken either in the arbitration proceedings or in these Petitions after November 1, 2021.

17. At the least, further petitions under Section 29-A ought to have been filed by the three Petitioners highlighting that the pendency of these Petitions and the Review Petitions had led to a standstill and that the expiry of the mandate on November 1, 2021 ought not to stand in the way of the arbitral proceedings. These matters have been run akin to a class action (all Petitioners being near-identically placed) but there was a collective quiet until these Petitions were listed by the Court on its own motion.

18. Mr. Jaisinghani would seek to rely on a transcript of a Whatsapp Group formed by the Petitioners to show that there has been no activity whatsoever on it between October 2017 and December 2019, which, according to him would show laxity on their part and thereby an inexorable inability to show sufficient cause for the delay in conduct of the arbitration. I am not inclined to examine or rely upon the Whatsapp group chat transcript since nothing would turn on it. The fact remains that after June 19, 2017, when the Learned Arbitral Tribunal granted leave for issuance of witness summons to a CIDCO (NAINA) planning official, no steps were taken by the Petitioners. Instead, four months later, they filed an application seeking termination of the mandate by way of withdrawal by the arbitrator, on the premise that they could not afford his fees. This is a pointer to the fact that the Petitioners had a view that

pursuit of the proceedings was not worthwhile and they would perhaps consider pursuing it further if it became much cheaper for them to pursue. I have already dealt with above my views on even the extended mandate for three Petitions having come to an end on November 1, 2021 and the collective silence thereafter.

19. These are not circumstances in which this Court can come to a view that sufficient cause for extension of mandate is made out. The dispute resolution avenue appears to have gone stale. Nearly a decade has gone by since the Section 11 Order was passed, appointing the Learned Arbitral Tribunal. Nearly half a decade has gone by since three Petitions were allowed extending the mandate.

20. The Review Petitions had become infructuous because the very order sought to be reviewed had run its course and nothing had transpired under it. In my opinion, no useful purpose would be served in extending the mandate of the Learned Arbitral Tribunal at this stage under these Petitions.

21. In the result, in my opinion, it would be appropriate to let the stale arbitration proceedings that have been long dead with no serious intention to revive them, be finally buried by dismissal of these Petitions.

In my opinion, this is the most fair and reasonable outcome possible for the litigants involved in these proceedings, giving them closure and enabling them to move on to any other avenue or means that they may be entitled to pursue in accordance with law. All the Petitions are ***finally disposed of*** by their being dismissed.

22. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN J.]