

IN THE COURT OF MR. SATYABRATA PANDA, DJ-04,
PATIALA HOUSE COURTS, NEW DELHI

ARBTN No.7418/17

Date of Institution: 06.11.2017
Date of Arguments: 23.10.2024
Date of Judgment: 23.10.2024

Sh. Pankaj
Prop. M/s Pankaj Associates,
At 61-B, DDA Flats,
Ashok Vihar, Phase-III,
Delhi-110052

...Petitioner

Vs.

Delhi Metro Rail Corporation Ltd.,
Metro Bhawan,
Fire Brigade Lane,
Barakhamba Road, New Delhi-110001.

...Respondent

23.10.2024

Present: Sh. Sunil Dutt Dixit, Ld. Counsel for petitioner
along with petitioner.
Sh. S.S. Sastry, Sh. Brijesh Tiwari and Sh. Umesh
Kumar, Ld. Counsel for respondent.

JUDGMENT (ORAL)

1. The petitioner has filed the present petition u/s. 34 of the Arbitration and Conciliation Act, 1996 ('A&C Act') challenging the arbitral award dated 21.07.2017 passed by the sole arbitrator Sh. Ashu Sharma.

2. The brief facts of the case leading to the passing of the arbitral award, as per the case of the petitioner, are as follows:
 - 2.1. The respondent had on 04.03.2013 floated tender for parking sites at Dwarka Sector-21 and Dwarka Sector-11 metro stations.
 - 2.2. Letter of acceptance (LOA) dated 28.06.2013 was issued by the respondent declaring the petitioner as the successful bidder. As per LOA, the period of tender was three years and license fee of Rs.5,00,000/- was payable monthly by the petitioner to the respondent. The LOA was issued for a super area of 7,548 sq. mtrs. i.e. 6,965 sq. mtrs. at Dwarka Sector-21 metro station parking and 583 sq. mtrs. at Dwarka Sector-11 metro station parking.
 - 2.3. On 16.07.2013, the petitioner handed over part possession of the parking site. Only 3,652 sq. mtrs. of area out of the total area promised of 6,965 sq. mtrs. was handed over to the petitioner.
 - 2.4. Various circumstances came to light after the respondent handed over the parking sites to the petitioner due to which the petitioner was unable to pay the monthly license fee without incurring losses. The previous contractor was still collecting the parking fee beyond 15.07.2013 from the commuters at the parking sites handed over to the petitioner.

Moreover, the area of parking sites handed over was also rendered unusable since there were trees, footpath and fire roads on both sides of the parking which were earmarked for quick ingress and egress of fire brigade vehicles. Various letters were written by the petitioner to the respondent in this regard but to no avail. Hence, disputes arose between the parties.

- 2.5. The petitioner issued letter dated 03.06.2014 invoking the arbitration clause and seeking resolution of the disputes.
- 2.6. On 31.07.2024, the respondent issued termination notice to the petitioner on the ground of the non-payment of the monthly license fee.
- 2.7. Subsequently, the petitioner handed over the charge of the parking site back to the respondent.
- 2.8. *Vide* letter dated 24.03.2015, the respondent appointed Sh. Ashu Sharma, who was the Senior Additional General Manager/Financial with the respondent, as Sole Arbitrator.
- 2.9. The petitioner submitted his statement of claim before the sole arbitrator praying for award to the tune of Rs. 71,53,025/-.
- 2.10. On 23.10.2015, the Arbitration and Conciliation Act (Amendment) Act 2015 became effective and

Section 12(5) along with Schedule VII were inserted to the Arbitration and Conciliation Act, 1996.

2.11. On 31.10.2015, the respondent filed its reply as well as counter-claim of Rs. 40,15,083/-.

2.12. Ultimately, the sole arbitrator passed the impugned award dated 21.07.2017 dismissing the claims of the petitioner and awarding claims to the respondent/counter claimant to the tune of Rs. 40,15,831/- along with interest @ 24% per annum.

3. Being aggrieved by the aforesaid award dated 21.07.2017, the petitioner has now preferred the present challenge u/s. 34 of the A&C Act.

4. Although the petitioner has raised various grounds in the petition u/s. 34 of the A&C Act, however, Ld. Counsel for the petitioner has confined his arguments for setting aside of the impugned award to the sole ground that the arbitrator, who was a serving employee of the respondent, was appointed unilaterally by the respondent and that as such, the award was null and void and unsustainable in law. Ld. Counsel has not pressed any other grounds.

5. Ld. Counsel for the petitioner has submitted that in the present case, admittedly, the sole arbitrator Sh. Ashu Sharma, who was a serving employee of the respondent being the Senior General Manager/Financial of the respondent, was unilaterally appointed as arbitrator by the

respondent. It is submitted that this unilateral appointment of the arbitrator was directly hit by Section 12(5) read with Schedule VII of the A&C Act as inserted by the Arbitration and Conciliation (Amendment) Act, 2015 ('2015 Amendment Act') and that as such, the award was liable to be set aside.

6. Ld. Counsel for the petitioner has heavily relied upon the decision dated 25.08.2023 of the Hon'ble High Court of Delhi in *OM 360 Degrees Advertisement and Entertainment Private Limited Vs. Delhi Metro Rail Corporation Limited MANU/DE/5914/2023*. It is submitted that in the said decision, in similar facts and circumstances, the Hon'ble High Court of Delhi had set aside an award on the basis that the arbitrator appointed unilaterally by the party was *de jure* ineligible to act and lacked inherent jurisdiction. It is submitted that in *OM 360 Degrees (supra)*, the Hon'ble High Court relied upon the decision of the Hon'ble Supreme Court in *Ellora Papers Mills Limited Vs. State of Madhya Pradesh MANU/SC/8/2022* and it was held that Section 12 of the A&C Act as amended by the 2015 Amendment Act would be applicable to arbitral proceedings initiated prior to coming into force of the 2015 Amendment Act as well.
7. Ld. Counsel for the petitioner has also relied upon the decision of the Hon'ble High Court of Delhi in *Vineet Dujodwala Vs. Phoenix ARC Pvt. Ltd 2024 SCC OnLine Del 5940* and has submitted that even in this case, it was held that even in cases of arbitral proceedings commenced

prior to the commencement of the 2015 Amendment Act, the unilateral appointment of arbitrator would vitiate the award.

8. Ld. counsel for the petitioner has further submitted that, in any case, a reading of the arbitral clause between the parties in the present case would show that the parties had agreed that the arbitration proceedings would be governed by the A&C Act as amended from time to time and that as such, the parties had agreed that all future amendments made to the A&C Act would apply to the arbitration proceedings between the parties. It is submitted that even as such, since the parties had themselves agreed that the amendments to the A&C Act would apply to the arbitration proceedings, then the amendments made by the 2015 Amendment Act were applicable in the present case including the Section 12(5) and Schedule VII which were inserted to the A&C Act.

9. Ld. Counsel for the petitioner further submits that the award in the present case was also a case of contravention of the fundamental policy of the Indian law as well as in conflict with the most basic notions of morality and justice in as much as there was a violation of the principles of natural justice. It is submitted that the principles of natural justice dictated that a party ought not to be a judge in its own case. It is submitted that in the present case, the arbitrator was a serving employee of the respondent corporation and was unilaterally appointed by the respondent, and as such, there was violation of this basic

principle of natural justice, and even as such, the award was in conflict with the public policy of India u/s. 34(2)(b) (ii) of the A&C Act.

10. On this basis, it is submitted that the arbitral award is unsustainable and is liable to be set aside.
11. On the other hand, Ld. Counsel for the respondent has submitted that Section 12(5) and Schedule VII of the A&C Act which were introduced *vide* the 2015 Amendment Act with effect from 23.10.2015 would not apply to the present case, since the arbitration proceedings in the present case had already commenced and were pending when the 2015 Amendment Act came into effect on 23.10.2015.
12. Ld. Counsel for the respondent has heavily relied upon the decision of the Hon'ble High Court of Calcutta in *West Bengal Housing Board Vs. Abhishek Construction 2023 SCC Online Cal 827*. It is submitted that in this decision, the Hon'ble High Court of Calcutta has directly dealt with the issue as to whether the provisions of the 2015 Amendment Act in relation to unilateral appointment of arbitrator would apply to arbitral proceedings initiated before 23.10.2015 and has, after referring exhaustively to the law, held that the 2015 Amendment Act would not apply to arbitral proceedings which had commenced prior to the coming into force of the 2015 Amendment Act, and that the objection of unilateral appointment of the arbitrator could not be raised in such cases. It is further submitted that the Hon'ble High Court of Calcutta has in

West Bengal Housing Board (supra) also noticed the decision of the Hon'ble Supreme Court in *Ellora Paper Mills (supra)* and has distinguished the said decision on the basis that in the facts of that case, the arbitral proceedings had not “*technically commenced*” prior to the date when the 2015 Amendment Act came into effect.

13. Ld. Counsel for the respondent has further submitted that even Section 26 of the 2015 Amendment Act was very clear to the effect that the 2015 Amendment Act would not apply to arbitral proceedings which had commenced prior to the commencement of the 2015 Amendment Act i.e. on 23.10.2015, unless the parties otherwise agreed.
14. Ld. counsel for the respondent has also relied upon the decision dated 06.01.2017 of the Hon'ble High Court of Delhi in FAO (OS) No.221/2016 titled as *Ardee Infrastructure Private Limited Vs. Anuradha Bhatia*, and has submitted that even in the said decision, it was categorically held, taking note of Section 26 of the 2015 Amendment Act, that the 2015 Amendment Act did not apply to arbitration proceedings which had already commenced prior to the commencement of the 2015 Amendment Act unless the parties agreed otherwise.
15. Ld. Counsel for the respondent has also relied upon the decision of the Hon'ble Supreme Court in *BCCI Vs. Kochi Cricket Private Limited*. It is submitted that in this case, the controversy involved was the question of construction of Section 26 of the 2015 Amendment Act. It is submitted

that in this decision, the Hon'ble Supreme Court has categorically held that the provisions of the 2015 Amendment Act would not apply to arbitral proceedings commenced prior to the commencement of the 2015 Amendment Act.

16. Ld. counsel for the respondent has also referred to the judgment dated 10.11.2021 of the Hon'ble Supreme Court in Civil Appeal No.6112/2021 entitled as *Ratnam Sudesh Iyer Vs. Jackie Kakubhai Shroff* and has submitted that even in this decision, the Hon'ble Supreme Court has held that the 2015 Amendment Act would apply only to arbitral proceedings commenced on or after the commencement of the 2015 Amendment Act and not to arbitral proceedings commenced prior thereto unless the parties otherwise agreed.
17. Ld. counsel for the respondent has submitted that as such, the clear position was that the objection of unilateral appointment of the arbitrator u/s. 12(5) of the A&C Act as amended by the 2015 Amendment Act could not be raised in respect of arbitration proceedings which had commenced prior to the 2015 Amendment Act coming into effect.
18. Ld. counsel for the respondent has further submitted that in the present case, the parties had also not agreed for application of the 2015 Amendment Act. It is submitted that as per the arbitration agreement between the parties, the arbitration proceedings were agreed to be governed by

the A&C Act as amended from time to time up to the date of the notice invoking the arbitration clause. It is submitted that once there was a notice invoking arbitration, the arbitration proceedings stood commenced in terms of Section 21 of the A&C Act and any amendments made to the A&C Act subsequent to the commencement of the arbitral proceedings would not apply to the arbitral proceedings in the present case. It is submitted that in the present case, the petitioner had invoked the arbitration on 03.06.2014 and it is only those amendments to the A&C Act which were made on or before 03.06.2014 which could apply and that no amendments made subsequent to 03.06.2014, including the 2015 Amendment Act, would apply to the present case.

19. On this basis, it is submitted that the petition deserves to be dismissed.
20. I have considered the submissions of the ld. counsels for the parties and I have perused the record.
21. Various important amendments came to be made in the A&C Act by virtue of the 2015 Amendment Act. There is no dispute that the 2015 Amendment Act was with effect from 23.10.2015. By way of the 2015 Amendment Act, Section 12(5) was inserted in the A&C Act, and which provides as follows:

“(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the

parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.”

22. Along with insertion of Section 12(5) to the A&C Act, simultaneously Schedule VII was also inserted to the A&C Act which specifies the categories of relationships between the arbitrator and a party which would render the arbitrator as ineligible to be appointed as arbitrator.
23. There is no dispute that in case Section 12(5) read with Schedule VII of the A&C Act is to apply in the present case, then the arbitral award would certainly be unsustainable given the nature of relationship between the arbitrator and the respondent. However, the dispute is whether Section 12(5) read with Schedule VII would apply to the present case.
24. Section 26 of the 2015 Amendment Act holds the key to this controversy. Section 26 provides as under:

“26. Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of Section 21 of the principal Act,

before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act.”

(Emphasis supplied by me)

25. A perusal of Section 26 of the 2015 Amendment Act clearly shows that even in cases of arbitration proceedings commenced prior to the commencement of 2015 Amendment Act, the 2015 Amendment Act would apply in case the parties agreed to the same.
26. Now, coming to the arbitration agreement between the parties in the present case, which is contained in Clause 45 of the Terms and Conditions. This clause is extracted hereunder:

“45. Conciliation and Arbitration

In the event of any dispute, difference of opinion or dispute or claim arising out of/or relating to this agreement or breach, termination or the invalidity thereof, shall firstly be attempted to be settled by conciliation. All disputes relating to this agreement or on any issue whether arising during the progress of the services or after the completion or abandonment thereof or any matter directly or indirectly connected with this service agreement shall in the first place be referred to a sole conciliator appointed/nominated by GM/Civil on receipt of such requests from either parties.

The conciliator shall make the settlement agreement after the parties reach agreement and

shall given an authenticated copy thereof to each of the parties.

The settlement agreement shall be final and binding on the parties.

The settlement agreement shall have the same status and effect of an arbitration award.

The views expressed or the suggestions made or the admissions made by either party in the course of conciliation proceedings shall not be introduced as evidence in any arbitration proceedings.

Any dispute that cannot be settled through conciliation procedure shall be referred to arbitration in accordance with the procedure given in Para given below.

The parties agree to comply with the awards resulting from arbitration and waive their rights to any form of appeal insofar as such waiver can validly be made.

Arbitration Procedure

If the efforts to resolve all or any of the disputes through conciliation fail, then such disputes shall be referred within 30 days to a sole arbitrator who would be nominated by DMRC Ltd. The venue of such arbitration shall be at Delhi/New Delhi. The award of the sole arbitrator shall be binding on all parties. The cost of Arbitration shall be borne by respective parties. There will be no objection if conciliator/or sole arbitrator nominated/appointed is an employee of DMRC.

Rules governing Arbitration Proceedings

The Arbitration Proceedings shall be governed by Indian Arbitration and Conciliation Act 1996 as

amended from time to time including provisions in force at the time the reference is made.”

(Emphasis supplied by me)

27. The matter now revolves around the construction of the aforesaid arbitration agreement between the parties.
28. As per the contention of the petitioner, by way of this arbitration clause, the parties had agreed that the arbitration proceedings would be governed by the provisions of the A&C Act as amended from time to time till the passing of the award which would also include the 2015 Amendment Act.
29. On the other hand, it is the case of the respondent that it is only the provisions of the A&C Act as amended up to the date of the notice invoking arbitration i.e. 03.06.2014 which would apply and any amendments made to the A&C Act subsequent thereto would not apply.
30. It would hence be relevant to carefully consider the wordings and language used in the arbitration clause. The arbitration clause provides that the “*arbitration proceedings*” shall be governed by the “*Indian Arbitration and Conciliation Act, 1996*” “*as amended from time to time*” “*including*” “*provisions in force at the time the reference is made*”. Clearly, the parties had agreed that the amendments made “*from time to time*” to the A&C Act would apply. The words “*as amended from time to time*” are of wide import and would mean both past as well as

future amendments. The amendments to the A&C in the context of the present arbitration agreement could be divided into 3 classes. The first class of amendments would be the amendments made between the date of commencement of the A&C Act till the date of the execution of the arbitration agreement. The second class of amendments would be the amendments made between the date of execution of the arbitration agreement and the date of notice invoking arbitration i.e. the date of reference. The third class of amendments would be the amendments made between the date of notice invoking arbitration i.e. date of reference and the date of conclusion of the arbitral proceedings i.e. passing of the arbitral award. Hence, there are three periods over which the amendments to the A&C Act would have been made and which would have been in the contemplation of the parties at the time of executing the arbitration agreement. Importantly, the parties have agreed that the arbitration proceedings would be governed by the A&C Act *“as amended from time to time”* *“including”* the provisions in force at the time when reference is made. The use of the word *“including”* is most crucial. The use of the word *“including”* clearly shows that the parties had agreed that all amendments to the A&C Act till the time of passing of the award would govern the arbitration proceedings, and this would also *“include”* the provisions in force at the time of the reference of the dispute to arbitration. The inclusive clause to include the provisions in force at the time of reference of the dispute to arbitration would not restrict the wide words *“as*

amended from time to time” which would also encompass the amendments made post reference of the dispute to arbitration. In case the parties had agreed otherwise that it is only the amendments made up to the date of reference to arbitration which would apply as contended on behalf of the respondent, then the parties would not have used the words “*as amended from time to time*” “including” “*provisions in force at the time the reference is made*” but would have provided that the arbitration proceedings would be governed by the A&C Act as amended from time to time “*up to*” or “*until*” the date when reference was made. The use of the word “*including*” instead of the words “*up to*” or “*until*” clearly shows that the application of amendments made to the A&C Act during the period from the commencement of the arbitration proceedings till passing of the award was not excluded. In my view, this would be the most reasonable construction of the arbitration agreement between the parties.

31. Hence, the parties had clearly agreed that the arbitration proceedings would be governed by the A&C Act and that all future amendments to the A&C Act would apply. Hence, clearly, the 2015 Amendment Act would apply in the present case by virtue of the agreement of the parties. As already mentioned, Section 26 of the 2015 Amendment Act clearly provides that the parties could agree for application of the 2015 Amendment Act even to proceedings commenced prior to the commencement of the 2015 Amendment Act. Hence, I have no manner of

doubt that Section 12(5) read with Schedule VII of the A&C Act as introduced by the 2015 Amendment Act would apply to the present case.

32. Hence, the arbitrator in the present case was clearly ineligible to act as arbitrator and the award is unsustainable and is liable to be set aside.
33. Now, even assuming that the parties had only agreed that amendments to the A&C Act only up to the date of notice of invocation were to apply as contended by the respondent, even in such case, in light of the clear decision of the Hon'ble High Court of Delhi in *OM 360 Degrees (supra)* the petitioner would succeed. Incidentally, the respondent herein was also the respondent in the said case. In *OM 360 Degrees (supra)*, the Hon'ble High Court of Delhi had occasion to deal with a similar situation in which the arbitration proceedings had commenced prior to the commencement of the 2015 Amendment Act and the controversy was in respect of an award passed by an arbitrator who was unilaterally appointed by the respondent and who was a serving employee of the respondent. In these circumstances, the Hon'ble High Court held as follows:

“6. Contractor has raised a preliminary submission that the arbitral proceedings were vitiated inasmuch as the Arbitrator on the date of his appointment was a serving employee of the Respondent. The impugned Award is also assailed on other grounds.

7. Respondent, on the other hand, though does not dispute the aforementioned statement, submits that since the arbitral proceedings were initiated prior to the 2015 Amendment to A&C Act coming into force, thus it was the unamended Act which shall govern the procedure of the arbitral proceedings. While defending the nomination of the AT, it was submitted that merely because the Arbitrator happens to be an employee of the Respondent, that by itself would not render the appointment invalid and unenforceable.

8. Indisputably, the AT was unilaterally nominated by the Director of the Respondent in terms of Clause 29.1 of the License Agreement.

9. The issue raised here is no longer res integra. Independence and impartiality of the arbitrator are the hallmarks of any arbitration proceedings. Rule against bias is one of the fundamental principles of natural justice which apply to all judicial and quasi-judicial proceedings. The Supreme Court in Ellora Paper Mills Limited v. State of Madhya Pradesh, reported as (2022) 3 SCC 1, while emphasizing on the "neutrality of arbitrator", noted that Sub-section (5) of Section 12 lays down that notwithstanding any prior agreement to the contrary, any person whose relationship with the parties or counsel or the subject matter of the dispute falls under any of the categories specified in the Seventh Schedule, he shall be ineligible to be appointed as an arbitrator. It

further held that Section 12(5) of the A&C Act, as amended by the 2015 Amendment Act, would be equally applicable to arbitral proceedings initiated prior to the coming into force of Amendment Act, 2015 as well.

10. There is no express waiver in writing by the Contractor waiving its right to the applicability of Sub-section (5) of Section 12. The present case relates to de jure ineligibility of the sole arbitrator. Indisputably, the learned Sole Arbitrator, while entering reference and delivering the Award, was a serving employee of the Respondent. The Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.* reported as (2020) 20 SCC 760, held as under :-

“21. But, in our view that has to be the logical deduction from TRF Ltd. Para 50 of the decision shows that this Court was concerned with the issue, "whether the Managing Director, after becoming ineligible by operation of law, is he still eligible to nominate an arbitrator". The ineligibility referred to therein, was as a result of operation of law, in that a person having an interest in the dispute or in the outcome or decision thereof, must not only be ineligible to act as an arbitrator but must also not be eligible to appoint anyone else as an arbitrator and that

such person cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator. The next sentences in the paragraph, further show that cases where both the parties could nominate respective arbitrators of their choice were found to be completely a different situation. The reason is clear that whatever advantage a party may derive by nominating an arbitrator of its choice would get counter-balanced by equal power with the other party. But, in a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator. That has to be taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and recognised by the decision of this Court in TRF Ltd."

11. Recently, Supreme Court while dealing with a similar issue in Glock Asia-Pacific Ltd. vs. Union of India (UOI) reported as 2023 SCC OnLine SC 664 held as under:

“21. In contrast, the arbitration clause in the present case enables a serving employee of the Union of India, a party to the contract, to nominate a serving employee of the Union of India as the Sole Arbitrator. Such an authorisation is clearly distinct from the arbitration Clause in Voestalpine Schienen GmbH (supra) and Central Organisation of Railway Electrifications (supra), and is in conflict with Section 12(5) of the Act. It was informed at the bar that the correctness of judgement of Central Organisation of Railway Electrifications has been challenged and referred to a larger bench in Union of India v. M/s. Tania Constructions Ltd as well as JWS Steel Ltd. v. Southwestern Railways. As we have noticed that the decision in Central Organisation of Railway Electrifications (supra) is not applicable in the present case, its reference to the larger Bench will have no bearing on the outcome of the present case.”

12. Even, if the Contractor had participated in the arbitral proceedings and raised no objection to the appointment of the learned Sole Arbitrator, the same would neither amount to waiver of its right under Section 12(5) of the A&C Act nor make the Award valid. (Ref: Govind Singh v. Satya Group Pvt. Ltd. and Anr. reported as 2023 SCC OnLine Del 37)

13. The law on the issue having been well settled, this Court has no hesitation to hold that the learned Arbitrator was de jure ineligible to act and lacked inherent jurisdiction to render the Award. The ineligibility goes to the root of his jurisdiction. The Award as such is held to be a nullity and is accordingly, set aside.

14. Since the preliminary issue has been decided in the affirmative, the other issues need not be delved into.

15. The petition is disposed of in above terms.”

(Emphasis supplied by me)

34. A perusal of the above extract clearly shows that the Hon'ble High Court of Delhi has in *OM 360 Degrees (supra)* specifically noted the decision of the Hon'ble Supreme Court in *Ellora Paper Mills Limited (supra)* and has interpreted the said decision to observe that the said decision holds that Section 12 of the A&C Act, as amended by the 2015 Amendment Act, would be equally applicable to arbitral proceedings initiated prior to the coming into force of the 2015 Amendment Act. This Court is bound by this interpretation. Although the Hon'ble High Court of Calcutta has taken a different view in the decision in *West Bengal Housing Board (supra)*, with utmost respect, this Court being bound by the decision of the Hon'ble High Court of Delhi in *OM 360 Degrees (supra)*, the decision of Hon'ble High Court of Calcutta in *West*

Bengal Housing Board (supra) which is relied upon by the respondent would be of no assistance to the respondent. Hence, the petitioner is bound to succeed in the petition.

35. Accordingly, the petition under section 34 of the A&C Act is allowed and the impugned award dated 21.07.2017 is set aside.
36. Parties to bear own costs.
37. File be consigned to record room after due compliances.

(SATYABRATA PANDA)
District Judge-04
Judge Code- DL01057
PHC/New Delhi/23.10.2024