

Present:
Mr. Justice Md. Iqbal Kabir
And
Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 6724 of 2023

Bangladesh Chemical Industries Corporation
(BCIC), BCIC Bhaban, 30-31, Dilkusha C/A, Dhaka-
1000, represented by its Chairman
....Petitioner

Versus

M/S. Total Shipping Agencies, a proprietorship
concern, represented by its proprietor Afnan Islam,
having registered office at 1st Floor, Malek Chamber,
5/5, Agrabad Commercial Area, Police Station-
Double Mooring, District-Chattogram
....Opposite Party

Mr. Mohammad Ashraf Uddin Bhuiyan, Advocate
....For the Petitioner

Ms. Anita Ghazi Rahman, Senior Advocate with
Ms. Nauriin Ahmed, Advocate
....For the Opposite Party

Judgment on 02.07.2025.

Md. Iqbal Kabir, J:

This Rule was obtained by the Petitioner upon making a revision application under Section 115(1) of the Code of Civil Procedure, 1908 against the Order No. 08 dated 19.11.2023 passed by the learned Senior District Judge, Dhaka in Arbitration Miscellaneous Case No. 509 of 2022 (impugned Order) rejecting the application of the Petitioner for reconsidering the Order No. 06 dated 22.01.2023 and to change the name of the previous arbitrator, namely, Mr. Md. Manjurul Basit (District and Sessions Judge (Rtd.) and allow Advocate Bikash Paul to be appointed as an arbitrator on behalf of the Petitioner.

The facts of the case, to dispose of the Rule, need not necessarily be described.

Facts remains that the Court below vide its Order dated 22.01.2023, allowed the Arbitration Miscellaneous Case by appointing Mr. Ahmed Jamil Mustafa (Senior District and Sessions Judge (Rtd.)) as arbitrator for the Opposite Party and Mr. Md. Manjurul Basit (District and Sessions Judge (Rtd.))

as Arbitrator for the Petitioner to initiate an arbitration to resolve the dispute between the parties.

Subsequently, based on an application filed by the Opposite Party, the Court below vide its Order dated 30.01.2023 appointed Mr. Ashraful Hadi (Barrister at law) as arbitrator for the Opposite Party in place of Mr. Ahmed Jamil Mustafa (Senior District and Sessions Judge (Rtd.)). The Petitioner also filed an application to reconsider the Order No. 06 dated 22.01.2023 and thereby, prayed to change the arbitrator, namely, Mr. Md. Manjurul Basit (District and Sessions Judge (Rtd.)) and allowed to replace Advocate Bikash Paul in place of Mr. Md. Manjurul Basit (District and Sessions Judge (Rtd.)) as an arbitrator on behalf of the Petitioner. However, the learned Senior District Judge, Dhaka vide Order No. 08 dated 19.11.2023 rejected the same.

Thereafter, the Arbitral Tribunal was constituted comprising Mr. Justice Moyeenul Islam Chowdhury, former Judge, High Court Division, as Chairman and Mr. Md. Manjurul Basit as Arbitrator for the Respondent, i.e., the Petitioner, and Mr. Ashraful Hadi as arbitrator for the Claimant, i.e., the present Applicant.

Mr. Mohammad Ashraf Uddin Bhuiyan, the learned Advocate for the Petitioner, upon placing the petition, submits that the Opposite Party-Petitioner did not get the opportunity to select and nominate the arbitrator for and on behalf of them. According to him, the Court below suo motu appointed the arbitrators, though the Opposite Party Petitioner, was not at all familiar with the aforesaid arbitrators. According to him the order of the Court is illegal, misconceive and bad in law as the parties are free to agree on a procedure for appointing the arbitrator or arbitrators under the law and in this particular case, the Judge of the Court violated the provision of law as the opposite party was neither afforded any opportunity to appoint their arbitrator nor got any chance to select any arbitrator as such the Judge of the Court below committed an error of law occasioning failure of justice and thus, the same impugned order is liable to be set aside.

However, this matter was taken up for hearing, and at the time of the Rule hearing, Ms. Anita Ghazi Rahman, the learned Senior Advocate for the Opposite Party, submitted that her client has no objection if the Rule is made absolute.

It is pertinent to note that both parties have applied to change the arbitrators. The Court allowed the application filed by the Opposite Party, but the application filed by the Petitioner-Opposite Party was rejected, though the Petitioner-Opposite Party was in the same position and was not afforded any opportunity to appoint their arbitrator, nor did they get any chance to select any arbitrator. In this context, it can be said that the alleged acts are discriminatory and without applying its judicial mind, the Court below passed such an order and thereby committed error and illegality in the exercise of its discretion. Therefore, we find substance to accept the proposal made by the Petitioner-Opposite Party.

However, in the midst of hearing, by filing a supplementary affidavit Petitioner proposed a new name, called Mr. Md. Badruddoza, Senior Advocate, Supreme Court of Bangladesh, as Arbitrator to be appointed in place of Advocate Mr. Bikash Paul.

He submits for the interest of the BCIC, the authority proposes a new name to be an arbitrator. However, this court did not find any wrong in proposing the name of Mr. Md. Badruddoza, Senior Advocate, Supreme Court of Bangladesh, as an Arbitrator in place of the previous proposal. The prayer of the Petitioner is allowed, Mr. Md. Badruddoza, Senior Advocate, Supreme Court of Bangladesh, is hereby appointed as an arbitrator at the instance of the Petitioner by this Court.

Accordingly, the Rule is made absolute without any order as to cost.

The impugned Order No. 08 dated 19.11.2023 passed by the learned Senior District Judge, Dhaka, in Arbitration Miscellaneous Case No. 509 of 2022 is hereby set aside.

The order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

Let a copy of this judgment and order be communicated to the court concerned forthwith.

Md. Riaz Uddin Khan, J:
I agree.