

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ARB-160-2014 (O&M)

Date of decision:- 21.08.2015

M/s S.L. Bajaj and another

...Petitioners

Versus

The Government Medical College and Hospital, Sector 32-B,
Chandigarh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE

Present: Mr. Puneet Bali, Senior Advocate,
with Mr. Arun Gupta, Advocate,
for the petitioners.

Mr. Vikas Suri, Advocate,
for the respondents.

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S.J. VAZIFDAR, A.C.J. (ORAL)

This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 for the appointment of an arbitrator.

2. The parties had entered into an agreement dated 30.11.2012 in respect of house keeping and cleaning services in the respondent-hospital. Clause 33 of the agreement, which contains an arbitration agreement, reads as under:-

“33. Dispute Resolution

This agreement shall be deemed to have been made/executed at Chandigarh for all purposes. In the event of any dispute related to the interpretation or rights or liabilities arising out of this agreement, the same shall, at first instance, be amicably settled between the parties. If any dispute is not settled amicably, the same shall be referred to the sole arbitrator i.e. the Secretary, Medical Education & Research, Chandigarh Administration, which shall include an acting/officiating Secretary, Medical Education & Research, Chandigarh Administration. The award given by the

arbitrator shall be final and binding upon both the parties. The venue of arbitrator shall be the U.T. Secretariat, Sector-9, Chandigarh.”

3. The disputes and differences arose between the parties. The petitioners addressed a lengthy notice dated 20.08.2014 setting out the disputes. Somewhere in the middle of the notice, the petitioners invoked the arbitration clause (due to typographical error mentioned as clause 23 instead of clause 33). The notice even did not call upon the respondents to appoint an arbitrator. This is probably because under clause 33 the arbitrator is specified. It is contended that despite the expiry of the period of 30 days and the filing of this petition, the respondents had failed to appoint an arbitrator. It is contended on behalf of the petitioners that the respondents had, therefore, forfeited their right to appoint an arbitrator.

4. Firstly, it is doubtful whether this argument is sustainable in view of the nature of the arbitration clause which specifies that the Secretary, Medical Education & Research, Chandigarh Administration would be the arbitrator. However, in the facts of this case, it is not necessary to consider this aspect for it cannot be said that there was a failure on the part of the respondents to appoint the arbitrator in time. The petition was filed on 01.10.2014 and the respondents appointed an arbitrator on 19.01.2015. What happened prior thereto is important. The respondents had by a letter dated 30.11.2013 terminated the contract. The petitioners represented against the same. Ultimately, the petitioners filed CWP-15314-2014 which was disposed of by an order and judgement dated 04.08.2014. The respondents were directed to consider the representation within two months from the date of receipt of a certified copy of the order. The notice invoking the arbitration was served thereafter on 20.08.2014. However, at that stage, the respondents

were required to consider the representation by virtue of the said order dated 04.08.2014. There was no question of the appointment of an arbitrator at that stage. The period of two months stipulated in the order came to an end on 04.10.2014. The petition was filed on 01.10.2014. In deference to the order dated 04.08.2014, the respondents did not do so and were considering the representation. In the facts of the case, I am not inclined to hold that the respondents have forfeited their right to appoint the arbitrator. In any event, there is nothing to indicate that the arbitrator mentioned in the clause is biased or that there is any likelihood of bias on his part.

5. In these circumstances, the petition is disposed of.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

21.08.2015
Amodh