

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

ARB-97-2014 (O&M)
Date of decision:- 15.05.2015

Singh Construction Co.

...Applicant

Versus

Punjab State Power Corporation Ltd. and another

...Respondents

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

Present: Dr. A.K. Bansal, Advocate,
for the applicant.

Mr. Alok Jain, Advocate,
for the respondents.

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

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

2. The parties had entered into an agreement clause 51 whereof states that the disputes shall be referred to the sole arbitration of the nominee of the owner. The applicant addressed a notice dated 02.04.2014 raising claims against the respondents. The letter stated that the applicant assumed that the authority who had issued the Letter of Intent is the nominee of the respondent/owner and called upon the respondents to confirm the same. There was no response. By a letter dated 09.05.2014 (Annexure R2), the respondents referred to clause 50 of the agreement which requires any suit to be filed in the Courts at Bathinda. In other words, the respondents have not nominated the arbitrator.

3. Learned counsel for the respondents contended that the arbitration had not been invoked within the period of 180 days stipulated in Clause-51. That is incorrect. The period of 180 days commenced from the date of completion of work or payment of the final bill, as is stated in the written

statement of the respondents themselves. A sum of Rs.10 lacs was paid towards the final bill on 26.03.2014. The arbitration was invoked on 02.04.2014. That the payment of Rs.10 lacs was delayed on account of audit objection is irrelevant. Whatever be the reason, the final bill was paid on 26.03.2014.

4. It was then contended that the applicant addressed the letter invoking the arbitration clause to the wrong officer. According to the respondents, it ought to have been addressed to the Additional S.E./Sr. Executive Engineer (Construction). This submission is based on Clause-50 of the agreement which reads as under:-

“50. JURISDICTION

The filing of any suit in case of any dispute shall be within the jurisdiction of the courts at Bhatinda. The Addl. S.E./Sr. Executive Engineer (Construction), GNDTP, Bathinda, in-charge of work shall defend, initiate as required, the cases including arbitration case on behalf of Owner.”

Clause-50 only identifies the officer who would be responsible from the respondents' side for conducting the proceedings. The clause did not mandatorily require the invocation of the arbitration clause to be addressed to such officer.

5. In these circumstances, the petition is disposed of by appointing Mr. Justice N.K. Sodhi, former Chief Justice of the Karnataka High Court as the sole arbitrator. The arbitrator shall fix his own fee.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

15.05.2015

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