

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

CR No.983 of 2012 (O&M)

Date of Decision- 4th September, 2015

M/s A.N. Kapoor (Janitors) Pvt. Ltd.

... Petitioner

Versus

PGIMER, Chandigarh and others

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Present: Mr. Harsh Aggarwal, Advocate
for the petitioner.

Mr. Amit Aggarwal, Advocate
for respondents No.1 to 4.

RAJ MOHAN SINGH, J.

1. Petitioner has assailed orders dated 26.12.2011 (Annexure P-13) and dated 12.01.2012 (Annexure P-15) passed by respondent No.4 being illegal, arbitrary, null and void. Petitioner has also sought issuance of direction, setting aside the appointment of respondent No.5 as an Arbitrator in utter disregard to terms and conditions of agreement and to appoint an independent Arbitrator in view of order dated 08.12.2011 (Annexure P-12) passed by the High Court.

2. Petitioner-Company is specialized in providing Sanitation, House Keeping and Kitchen Services to various institutions. Petitioner was given an assignment by the respondent-PGIMER. A dispute arose with regard to claim for which number of representations were made by the petitioner. According to petitioner, instead of making payment, penalty was imposed by respondents for non-supply of man power. Petitioner represented to the respondents for referring the matter for arbitration as per Clause 42 of the Agreement. Despite number of representations and reminders, no Arbitrator was appointed. Ultimately, contract of the petitioner-Company was brought to an end abruptly vide letter dated 27.02.2010 w.e.f 01.03.2010 by respondent No.4. Representations made by the petitioner in respect of pending dues did not yield any fruitful result. Ultimately, petitioner filed an application bearing Arbitration Case No.5 of 2011 before the High Court. High Court was pleased to pass the following order on 08.12.2011:-

“HEMANT GUPTA, J. (ORAL)

The petitioner has invoked the jurisdiction of this Court under Section 11 of the Arbitration and Conciliation Act, 1996 (for short ‘the Act’) for appointment of an Arbitrator in respect of the disputes arising out an Agreement dated 20.07.2005.

Vide the aforesaid agreement, the petitioner was awarded contract for providing Sanitation, House Keeping & Kitchen Services. As per the petitioner, a sum of Rs.59,78,247/- is due and payable for the work done and also for wrongful termination and the damages.

In reply though the stand of the respondents is that the excess payment has been made, but learned counsel for the respondents states that the respondents are not insisting upon the recovery of the excess payment made and that all the payments due in terms of the agreement stand made to the petitioner.

The question; whether any payment is due to the petitioner or not, is a disputed question of fact. Such dispute is required to be decided by an Arbitrator in terms of Clause 42 of the Agreement, which reads as under:

“In case of any dispute arising of the above agreement between the Medical Superintendent (on behalf of the DPGI) and (Managing Director on behalf of firm), the matter shall be referred to the Director of PGI, Chandigarh, for arbitration who decision shall be final and binding on both parties, in case of an legal dispute between the two parties, venue of the arbitration shall be at Chandigarh only.”

In view of the said fact, the present petition is disposed of with a direction to the Director, Post Graduate Institute of Medical Education & Research, Chandigarh to exercise its jurisdiction to decide the disputes between the parties. If, the Director fails to invoke its jurisdiction within a period of one month, it shall be open to the petitioner to invoke the jurisdiction of this Court again for appointment of an independent Arbitrator.

08.12.2011

(HEMANT GUPTA)”
JUDGE

3. In purported compliance to the aforesaid order, respondent No.4 appointed respondent No.5 as an Arbitrator vide order dated 26.12.2011. Petitioner objected to the aforesaid

appointment as being not in consonance with the order passed by the High Court. The objection of the petitioner was ignored and it was reiterated by the respondent-PGIMER that the Director, PGIMER has been declared as Chief Executive Officer of the Institute. Regulation 25 (3) of the PGIMER, Regulations 1967 empowers the Director to delegate any of his power to any officer of the institute for proper administration. The appointment of Professor Anil Bhalla (respondent No.5) as an Arbitrator was reiterated i.e. how the present revision petition came to be filed.

4 Learned counsel for the petitioner has stated that as per Arbitration Clause No.42 contained in the Arbitration Agreement, Director PGIMER himself was to act as an Arbitrator and therefore, respondent No.5 could not be appointed as an Arbitrator by the Director. Vide order dated 08.12.2011 passed by this Court, specific direction was given to Director, PGIMER to exercise its jurisdiction to decide the dispute. As per Arbitration Clause also, the matter was required to be referred to the Director of PGIMER for Arbitration and his decision shall be final and binding on the parties. The order dated 08.12.2011 further stipulated that if the Director fails to invoke its jurisdiction within a period of one month, it shall be open to the petitioner to invoke the jurisdiction of this Court again for appointment of an independent Arbitrator. With this background, learned counsel for the petitioner submitted that the orders dated 26.12.2011 and 12.01.2012 passed by respondent No.4 are in utter disregard to Arbitration Clause as well as direction passed by this Court on 08.12.2011 in Arbitration Case No.5 of 2011.

5. On the other hand, learned counsel for the respondents submitted that as per Section 11(3) of Post Graduate Institute of Medical Education and Research Chandigarh Act, 1966 “The Director shall exercise such powers and discharge such functions as may be prescribed by regulations or as may be delegated to him by the Institute or the President of the Institute or by the Governing Body or the Chairman of the Governing Body.”

Rules 25 (3) & 41(A) of Post Graduate Institute of Medical Education and Research Chandigarh Act, 1966 read as under:-

Rule 25 (3)

“For the proper administration of the Institute the Director shall have powers to delegate any of his powers conferred on him under the Act, the rules and these regulations to any officer of the Institute subject to such limitation as may be imposed by the Governing Body.”

Rule 41 (A)

“ The Director of the Institute shall be competent to file suits or application or commence other proceedings civil or criminal for and on behalf of the Institute and to prosecute the same and for such purpose to sign, execute or attest complaints, petitions, appeals or other documents that may be necessary therefor and to verify the same, to swear to affidavits and to compromise, refer to arbitration and to defend in suit or other proceeding that may be filed against the Institute and to prosecute the claim or defence in the Court of appeal or origin or before any officer whether in Civil, criminal, revenue court or office or before

income tax authorities and for such purpose to appoint any advocate, Pleader, solicitor or agent.”

6. Learned counsel while defending the action of the respondents has submitted that competence of Arbitral Tribunal cannot be questioned in these proceedings, the order of the Arbitral Tribunal would be appealable under Section 37 of the Act. The aggrieved party has to wait till the award is passed by the Tribunal according to scheme of the Act. Learned counsel stressed that Arbitral Tribunal is a creation of a contract between the parties and is a Forum chosen by the parties to the agreement. Learned counsel further submitted that once the Arbitration proceedings have commenced in the Arbitral Tribunal, the parties have to wait until and unless the intermediate proceeding gives right to any appealable cause in favour of aggrieved party under Section 37 of the Act. Learned counsel further stressed that there will be minimum judicial intervention while the matter is in the process of being arbitrated upon.

7. I have considered the submissions made by both the parties.

8. The order dated 08.12.2011 specifically directed Director PGIMER, Chandigarh to exercise its jurisdiction to decide the dispute between the parties. As per Arbitration Clause, the matter is required to be referred to Director of PGIMER Chandigarh for Arbitration and his decision shall be final and binding on both the parties. Therefore, an obligation has been

created on the post of Director to arbitrate the matter. In any case, Director is not supposed to delegate this obligation to anyone else.

9. By referring to Section 11(3) of the Act, an effort has been made by the learned counsel for the respondents to demonstrate that Director can exercise such powers and discharge such functions as may be prescribed by regulations or may be delegated to him by the Institute. Apparently, an onerous duty has been given to the Director by virtue of Clause 42 of the Agreement as well as by order dated 08.12.2011 passed by the Court to arbitrate the dispute himself. In no way, delegation has been suggested either in Clause 42 of the Arbitration or in the order dated 08.12.2011 passed by this Court. Rule 25 (3) of PGIMER Chandigarh, Regulations 1967 talks for administration of institute, Director shall have powers to delegate any of his power conferred on him under the Act and Rules. Since the obligation has not been created under the Act or the Rules but by virtue of Arbitration Clause and direction of the Court, therefore, respondents cannot seek protection under Rule 25(3) of the Abid Rules. Similarly, Rule 41 (A) is also of no consequence because the Director himself is competent to initiate proceedings for or against the Institute. An obligation has been created for which Director is legally required to arbitrate the issue. So far as, plea regarding minimum interference by means of judicial process is concerned, the same is only after lawful appointment of Arbitrator/Arbitral Tribunal. If the Arbitration starts before the Arbitral Tribunal duly appointed/constituted in terms of bilateral

obligations between the parties, then there should be minimum judicial intervention till the matter is decided by the Arbitral Tribunal. Such decision would be appealable under Section 37 of the Act. In the instant case, very composition of the Arbitral Tribunal is in question, therefore, taking of cognizance by the Arbitral Tribunal is not present. The submissions made by learned counsel for the respondents are not attracted in the present context.

10. In order dated 08.12.2011, it has been stipulated that in case Director fails to invoke its jurisdiction within a period of one month, it shall be open to the petitioner to invoke the jurisdiction of this Court again for appointment of an independent Arbitrator.

11. Learned counsel for the respondents also cited **2007(93)DRJ127 (Delhi) Newton Engineering and Chemicals Ltd. Vs. Indian Oil Corporation Ltd. and Two others** to contend that when the Arbitrator is appointed in terms of Arbitration Clause, there is no provision in the Act empowering the Court to terminate the mandate of Arbitrator. The remedy is to challenge the appointment before the Arbitral Tribunal. Apparently, the facts involved in the present case are different. Since the very appointment of respondent No.5 as Arbitrator is claimed to be beyond the scope of Arbitration Clause, therefore, no such issue is involved in the present case. Moreover, the issue has already been debated before the Court and now it is the order of the Court which has to be given effect. The order of the Court specifically recites that in case the Director fails to invoke its jurisdiction within

a period of one month, it shall be open to the petitioner to invoke the jurisdiction of this Court again for appointment of an independent Arbitrator. At this stage, appointment of Arbitrator is an issue, therefore, question of giving award by the Arbitrator and thereafter, a further challenge in appropriate Forum are the issues which are not required to be answered in the present petition.

12. Apparently, the impugned orders dated 26.12.2011 (P-13) and dated 12.01.2012 (Annexure P-15) passed by respondent No.4 are in utter disregard to the Arbitration Clause as well as to the decision rendered by the High Court in Arbitration Case No.5 of 2011 on 08.12.2011 and therefore, impugned orders are quashed being illegal.

13. Petitioner would be at liberty to seek appointment of independent Arbitrator by invoking jurisdiction of High Court in terms of Section 11 (6) of the Act in accordance with law.

(RAJ MOHAN SINGH)

JUDGE

4th, September, 2015

Prince