

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

Arb. No.123 of 2015 (O&M)
Decided on: 12.02.2016

M/s Jay Pee & Sons

.... Applicant

versus

Punjab Water Resources Management &
Development Corp. Ltd. & anr.

.... Respondents

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

Present: Mr. G.S.Rana, Advocate
for the applicant.

Mr. Amit Singh Sethi, Advocate
for the respondents.

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

This is an application filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for the appointment of an Arbitrator. The parties had entered into construction contract, Clause 56 whereof contain an arbitration agreement. The clause insofar as relevant reads as under:

56. Arbitration:

All disputes of differences in respect of which the decision has not been final and conclusive shall be referred for arbitration to a sole arbitrator appointed as follows:-

On receipt of notice from the Contractor of his intention to refer the dispute for arbitration. Managing Director shall send to the Contractor a list of three officers of the rank of serving Superintending Engineers who have not been connected with the work under this contract. The contractor shall within thirty days of receipts of this list select and communication to Managing Director, name of one officer from the list who shall then be appointed as a

sole Arbitrator. If contractor fails to communicate his selection of name within stipulated period, the Managing Director shall without delay select one officer from the list and appoint him as the sole Arbitrator."

The disputes and differences arose between the parties. The applicant invoked the arbitration clause by a letter dated 06.06.2015 (Annexure A-6). The respondents by a letter dated 16.06.2015 (Annexure A-7) stated that the appointment of an Arbitrator was under process and that the applicant would be intimated as early as possible. The applicant thereafter addressed a reminder on 17.07.2015 (Annexure A-8). The present application was filed on 03.08.2015.

However, the respondents had addressed a letter dated 29.07.2015 forwarding a panel of three Arbitrators' names to be appointed as per Clause 56 of the Contract. The letter expressly refers to the contract between the parties and the applicant was called upon to select one of the officers from the panel. The applicant has not done so till today.

The applicant vide letter dated 05.08.2015 stated that the letter did not relate to them. This is also the contention raised before me.

The applicant's case is that the letter dated 03.07.2015, which is an enclosure to the letter dated 29.07.2015, does not relate to the contract between the parties. As mentioned earlier the letter expressly referred to the parties. What is contended is that the enclosure thereto which contains the panel of three Arbitrators is addressed by the Under Secretary, Irrigation to the Chief Engineer, KAD, Department of Irrigation, Punjab.

It appears that the respondents were unable to appoint a person of the rank of Superintending Engineer, who had not been connected with the work under the Contract, which was requirement of Clause 56. It therefore, sought the names of persons of the rank of serving Superintending Engineer from the Govt. of Punjab. It is in this context that the enclosure to the letter dated 29.07.2015 must be read. It clearly mentions the panel of three persons.

In these circumstances, it cannot be said that the Arbitrator was not appointed. The only indulgence the petitioner can be shown is the option to choose one of the three persons despite the fact that the respondents have already nominated one of them namely Anand Kumar Ojha, Superintending Engineer as the Arbitrator.

The petition is accordingly disposed of. The applicant shall be entitled to select one of three persons mentioned in the enclosure dated 29.07.2015 by 15.03.2016.

12.02.2016
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(S.J.Vazifdar)
Acting Chief Justice