

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

ARB-36-2017 (O&M)

Date of decision:- 15.09.2017

M/s Sai Enterprises

...Petitioner

Versus

Union of India and others

...Respondents

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

Present:- Mr. Jatinder Nagpal, Advocate,
for the petitioner.

Mr. Alok Kumar Jain, Advocate,
for the respondents.

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

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

2. The parties had admittedly entered into a contract clause 37 whereof contains an arbitration agreement. Clause 37 entitles the respondents to appoint a serving officer which is not permissible under the amended Act. The proviso states that in the event of abandonment of the supplies or cancellation of the contract under condition Nos. 26, 27 or 28 thereof, the reference shall not take place until alternative arrangements have been finalized by the government to get the supplies completed by or through any other contractor or contractors or agency or agencies.

3. The respondents contend that the petitioner abandoned the work on 17.11.2016.

4. I will presume that to be so. I will also presume that the respondents have not as yet made the alternative arrangements as contemplated in the proviso to clause 37 of the agreement. The respondents cannot frustrate an arbitration agreement by failing to make the alternative arrangements. It is now ten months since the alleged abandonment of the work.

5. Faced with this, it is contended that the cancellation was on 03.08.2017. The respondents can always make alternative arrangements. That would not affect the appointment of the arbitrator. In any event, to leave no scope for grievance, the arbitrator shall not enter upon the reference for a period of four weeks hereafter.

6. The petition is, therefore, disposed of by appointing Shri Laxman Sharma, former District and Sessions Judge, Haryana, as the sole arbitrator. The fees shall be as per the Chandigarh Arbitration Centre (CAC) (Administrative Cost and Arbitrators' Fees) Rules, 2014. The parties have agreed that the venue of arbitration shall be the Chandigarh Arbitration Centre.

(S.J. VAZIFDAR)
CHIEF JUSTICE

15.09.2017

Amodh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No