

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

Arbitration Case No. 16 of 2017 (O&M)

Date of Decision: 21.11.2018

Jaswinder Kaur

.....Petitioner

versus

Estate Officer, Union Territory, Chandigarh

.....Respondent

CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE

Present : Mr. Rohit Khullar, Advocate, for the petitioner.

Mr. Suvir Sehgal, Sr. Standing Counsel for U.T. Chandigarh
with Mr. Namit Kumar, Advocate, for the respondent.

KRISHNA MURARI, C.J.(oral)

This is an application under section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996) for appointment of an arbitrator.

2. After hearing learned counsel for the parties, vide order dated 19.05.2017, Mrs. Justice Bakshish Kaur, a former Judge of this Court, was appointed as the sole arbitrator. The arbitrator entered into the reference and the parties are not at issue that the claims and the written statement were filed by the parties and the arbitration proceedings were going on.

3. At this stage, a review application numbered as RA-CR-154-CII of 2017 was made by the respondent herein on the ground that certain documents which reflected that the petitioner himself made an application on 08.03.2016 before the named Arbitrator in the agreement who entered into the reference and decided the proceedings vide order dated 05.12.2016 were not noticed by the Court while passing the order appointing the

arbitrator. On the aforesaid grounds not only the review application was entertained but vide order dated 20.04.2018, the order dated 19.05.2017 was recalled and the application made under section 11 of the Act of 1996 was directed to be heard again on-merits. In pursuance of the said order, the petition is listed.

4. Learned counsel for the petitioner submits that even if the named arbitrator in the agreement entered into the reference and passed an award, the same is without jurisdiction in view of the amendment brought in vide Act No. 3 of 2016 which came into force w.e.f. 23.10.2015 which provides as under:-

“(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator.”

5. The Seventh schedule of the Act of 1996 clearly provides that in case the arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party is disqualified from functioning as an arbitrator.

6. In the case in hand, admittedly the agreement between the parties named the Finance Secretary of the Chandigarh Administration to be the sole arbitrator. There is no dispute about the fact that he is an employee and thus is debarred from acting as an arbitrator in view of Section 12(5) of the Act of 1996. Once the named arbitrator is ineligible to function, the award rendered by him also loses its efficacy and cannot be said to be an award in the eyes of law.

7. Faced with such a situation, learned counsel for the parties agreed that the earlier arbitrator, namely, Mrs. Justice Bakshish Kaur, who had entered into the reference and the proceedings were going on and had reached the advance stage, may be allowed to continue to function as an arbitrator and the proceedings may restart from the stage where they were stopped under the orders passed by this Court in review proceedings.

8. In such circumstances, I dispose of this petition by directing that Mrs. Justice Bakshish Kaur, who was appointed as arbitrator vide order dated 19.05.2017 shall continue to function as an arbitrator and the proceedings shall resume from the stage where it were stopped under the orders of this Court and shall be brought to a logical end expeditiously in accordance with the provisions of the Act and the procedure prescribed thereunder. Rest of the terms and conditions contained in order dated 19.05.2017 shall remain unaltered.

9. With the aforesaid observations, the petition stands disposed of.

(KRISHNA MURARI)
CHIEF JUSTICE

21.11.2018
ravinder

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