

CR No.3993 of 2015 (O&M)
Date of decision : March 01, 2018

Versus

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Mr. C.S. Bakshi, Advocate for the respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 23.04.2015 passed by the learned Arbitrator, Punjab State Grain Procurement Corporation Limited (for short the 'PUNGRAIN') at S.A.S. Nagar, Mohali. whereby two applications filed by the present petitioner, one under Section 16 of the Arbitration and Conciliation Act, 1996 (for short 'the Arbitration Act'), for raising the objections regarding jurisdiction of Arbitral Tribunal in the absence of the arbitration agreement and the second was for amendment of the written statement, were dismissed.

I have heard learned counsel for the parties and have also carefully gone through the case file.

It comes out that the arbitration proceedings are pending between the parties before the Arbitrator, PUNGRAIN, S.A.S. Nagar, Mohali. During the proceedings, an objection regarding the jurisdiction was raised by the present petitioner by filing an application under Section 16 of the Arbitration Act. The Arbitrator observed that same type of the objection has been raised many times and has been adjudicated upon. Therefore, the same was dismissed.

Learned counsel for the petitioner has referred to the previous application, wherein no such objection was raised.

Section 16 of the Arbitration Act provides as under:

16. Competence of arbitral tribunal to rule on its jurisdiction.— *(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—*

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is

raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.

From the Section itself, it is clear that the objection regarding the jurisdiction of Arbitral Tribunal may be taken before the Arbitrator himself regarding the existence of validity of arbitration agreement and it has to be decided by passing a speaking order thereon.

It also comes out that before the Arbitrator, the arbitration agreement was not produced and rather the witness of the Department, namely, Lovkesh Sharma, D.M., PUNGRAIN, Ludhiana, while appearing as CW1, stated that he does not have the original agreement. Now, it is at Ludhiana, Headquarter. The Headquarter is having arbitration agreement but he is not in possession of the same.

Before this Court, an opportunity was given to the respondents-Department to produce the arbitration agreement.

Toady, learned counsel for the respondents has fairly conceded that there is no arbitration agreement between the parties, rather it is stated that there is a policy, under which the paddy is allotted for procurement and that under that policy, there is an arbitration Clause 17(j)(a).

However, the further question would arise as to whether the petitioner is bound by the the said policy or not?

Therefore, a serious question regarding the jurisdiction of arbitrator has arisen and needs to be decided by the Arbitrator himself under Section 16 of the Arbitration Act.

As such, the impugned order is set aside and the matter is remanded to the Arbitrator, PUNGRAIN, S.A.S. Nagar, Mohali with a direction to hear both the parties regarding its jurisdiction and deal with all the points raised by them and pass a speaking order thereon. The matter be dealt with expeditiously.

Thus, the present revision petition is allowed. The pending application(s), if any, stands disposed of.

(KULDIP SINGH)
JUDGE

March 01, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No