

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-4157-2011 (O&M)
Date of Decision:-19.12.2018.

K.K. Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. R.S. Bains, Advocate for the petitioner.
Ms. Sofia Gupta, AAG, Haryana.
Mr. D.R. Bansal, Advocate for respondent No.2.
Mr. R.K. Vashishtha, Advocate for
Mr. Sanjiv Gupta, Advocate for respondent No.3.
Mr. Akshay Jindal, Advocate for respondent No.4.

ARUN MONGA, J. (Oral)

1.) Present petition has been filed for issuance of appropriate writ/ order/direction to refund the security/guarantee money of about Rs.2.35 crores furnished by the petitioner. The said security was furnished by the petitioner with respondent No.2/Haryana State Roads and Bridges Development Corporation Ltd. pursuant to execution of a contract for collection of toll tax at point No.14 and 16 at U.P. Border-Sonipat-Gohana Road and Sohana-Nuh-Ferozepur-Zhirka-Alwar Road.

2.) It is a conceded case of the petitioner that as a pre-cursor for awarding of contract, an agreement Annexure P/23 was executed between the Haryana State Roads and Bridges Development Corporation Ltd. and

the petitioner governing the commercial relationship between the parties.

Clause 29 thereof envisaged appointment of an Arbitrator for adjudication of any dispute between the parties. The same is extracted hereinbelow:-

“29. In the event of Entrepreneur/Agent disagreeing, with the decision mentioned in the provision of above, he may request the Managing Director, HSRDC, for appointment of an Arbitrator for adjudication of the dispute. On receipt of request from the Entrepreneur/Agent for appointment of Arbitrator, Engineer-in-Chief, Haryana PWD B&R will appoint an Arbitrator for adjudication of the dispute. The arbitrator so appointed shall conduct the arbitration proceedings in accordance with the provision of the contract agreement. Fee of the Arbitrator shall be paid by the party who will seek the arbitration.”

3.) In the written statement filed by respondent No.2-Corporation, preliminary objection has been taken that the petitioner cannot invoke the extraordinary jurisdiction of this Court under Article 226 in view of the arbitration clause executed between the parties.

4.) On merits, it is stated that the said security deposit cannot be refunded to the petitioner owing to the fact that the toll was to be collected at 2 points viz. 14 and 16 and that qua the security deposit of toll point No.14 the same has already been refunded to respondent No.4 who is stated to be power of attorney/business partner of the petitioner. As far as toll point No.16 is concerned, the security deposit was forfeited owing to the non-deposit of the monthly installments as per the terms of the agreement and the dispute is covered by the arbitration clause executed between the parties.

5.) Learned counsel for respondent No.4 contends that in fact it is a

cannot be decided in the writ jurisdiction and the remedy is either civil suit or adjudication by arbitration proceedings. Learned counsel for respondent No.4 fairly concedes that even though respondent No.4 is not signatory to the arbitration agreement but may be willing to join the proceedings in case the petitioner invokes the arbitration clause.

6.) *Per contra* learned counsel for the petitioner places strong vehemence on a judgment rendered by the Supreme Court in case titled as **Krishan Lal Vs. Food Corporation of India and others** reported as (2012) 4 SCC 786 the relevant whereof is extracted hereinbelow:-

“11. It is true that there was an arbitration clause in the agreement executed between the parties. It is equally true that, keeping in view the nature of the controversy, any claim for refund of the amount deposited by the appellant could be and ought to have been raised before the Arbitrator under the said arbitration. The fact, however, remains that the High Court had entertained the writ petition as early as in the year 2002 and the present appeals have been pending in this Court for the past ten years or so. Relegating the parties to arbitration will not be feasible at this stage especially when the proceedings before the Arbitrator may also drag on for another decade. Availability of an alternative remedy for adjudication of the disputes is, therefore, not a ground that can be pressed into service at this belated stage and is accordingly rejected.”

7.) Learned counsel for the respondents state that the above said judgment is not applicable in the present case as the money claimed therein was against the Food Corporation of India which is covered under the definition of instrumentality of State. They contend that in the present case, the dispute is between the 2 warring business partners. Even the refund of

security qua toll point No.14 has since been given to respondent No.4 and

not to the petitioner with whom contract was executed. In the event it is held in favour of the petitioner that the same ought to have been refunded to him, the respondent No.4 would then also be entitled to establish his claim on the said refund already given by the Corporation. All these issues cannot be adjudicated in the writ jurisdiction.

8.) I am in agreement with the arguments addressed by the learned counsel for the respondents. Accordingly, I hold that the present petition is liable to be dismissed as not maintainable. As regards the delay, even though the judgment cited by the learned counsel for the petitioner is not applicable in the facts of the case, however, while parting, I may observe that the present case though was filed in the year 2011 but after completion of pleadings has never been heard effectively as is reflected from the order sheet. It has been getting adjourned from time to time for arguments and, therefore, at the very first opportunity when the matter has been heard today, the learned counsel for the respondents have taken the preliminary objection regarding the maintainability of the writ petition in view of the arbitration clause. In view thereof, the argument that the objection of maintainability has been taken at a belated stage does not stand the judicial scrutiny of this Court.

9.) In the circumstances, the writ petition is dismissed with liberty to the petitioner to invoke the arbitration proceedings as per clause 29, *ibid*, of the agreement Annexure P/23.

(ARUN MONGA)
JUDGE

December 19, 2018.

sandeep

Whether speaking/reasoned:-

Whether Reportable:-

Yes / No

Yes / No.