

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

203

ARB No.295 of 2018

Decided on: 07.10.2021

Raghav Construction Co.

... Applicant

Versus

Union of India and another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Ramesh Kumar, Advocate for the applicant.

Mr. Jagdish Marwaha, Special Senior Panel Counsel
for the respondents-UI.

(The proceedings are being conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral)

The present petition has been filed for appointment of an independent Arbitral Tribunal under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act') to adjudicate upon the the dispute between the parties arising out of the Acceptance Letter dated 18.02.2016 (Annexure P-2).

It is submitted that there is a clause for appointment of arbitrator *inter se* the parties in as much as on 15.03.2017 (Annexure P-16) the petitioner was asked to suggest two names out of a panel for co-arbitrator.

A perusal of the paper-book would go on to show that three persons were appointed namely Contractor's nominee, Railways nominee' and the Presiding Arbitrator. However, they did not as such enter into reference as per the proceedings held on 15.05.2017, on account of the fact that the value of the claim amount was below Rs.1 crore. The petitioner,

thereafter, had requested on 20.05.2017 (Annexure P-18) for appointment of a sole arbitrator, which was followed up by similar request on 08.12.2017 (Annexure P-20). The respondent, however, thereafter again vide letter dated 01.01.2018 (Annexure P-22) nominated three persons as arbitrator to enter into reference and it is the case of the petitioner in spite of number of requests having been made to start the proceedings, the said proceedings were never started. It is in such circumstances, the present petition has been filed.

Counsel for the respondents as such has argued that consent has been given on 03.04.2019 to the petitioner for appointment of arbitrator by the respondents and, therefore, this Court would not appoint any independent arbitrator as such.

The said argument is bereft of any merit in view of the law laid down by the Apex Court in the case of '**Perkins Eastman Architects DPC and another Vs. HSCC (India) Ltd.**', 2021 AIR (SC) 59, whereby it has been held that an independent arbitrator would have to be appointed rather than nominee of the department.

In such circumstances, in the considered opinion of this Court sufficient time has expired on account of the dilly-dallying of the respondents and the arbitrators appointed by them, therefore, the respondents are frustrating the very purpose of the Arbitration Act, which is made to resolve all the disputes expeditiously.

Keeping in view the fact the petitioner-Company is based at Kurukshetra and the respondents are based at Ambala, the present

petition is allowed by appointing Shri Nand Kishore, retired Additional District & Sessions Judge, resident of #220, Ajit Nagar, Ambala Cantt., District Ambala, as the sole Arbitrator. He shall file the requisite declaration under Section 12 of the Act read with the fifth and sixth schedule in order to disclose his independence and impartiality to settle the dispute between the parties. The Arbitrator is also requested to complete the proceedings within the time specified under Section 29A of the Act. The fees of the Arbitrator shall be paid in accordance with the provisions of the Act and the Rules.

Copy of the order be forwarded to the said Arbitrator at the given address and to counsel for the parties also. After seeking the consent of the Arbitrator, the parties are directed to appear before the Arbitrator on 10.11.2021 at 10.00 a.m.

The petition stands disposed of, in the abovesaid terms.

October 07, 2021
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No