

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

ARB No.311 of 2021(O&M)

Date of Decision: November 08 , 2021.

M/s Jagdeep Singh and Company

..... PETITIONER

Versus

Punjab Land Development Reclamation Corpn. Ltd. Mohali and another

..... RESPONDENTS

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Rose Gupta, Advocate
for the petitioner.

Mr. Anupam Singla, Advocate
for respondent No.1.

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

LISA GILL, J.

This is a petition under Section 11(6) of the Arbitration & Conciliation Act, 1996 (for short, 'Arbitration Act') seeking appointment of a sole Arbitrator.

Petitioner-firm was running the business of transportation under the name and style of M/s Jagdeep Singh and Company through its sole proprietor Mr. Jagdeep Singh. It was allotted tender for transportation of 1.5 lakhs metric tonnes of loose and packed Gypsum powder from Hanumangarh (Rajasthan) to anywhere in the State of Punjab w.e.f. 01.04.1997 to 31.03.1998, by the

respondent-Corporation pursuant to tender notice published in March, 1997. It is further stated that the petitioner deposited an amount of ₹7,50,000/- by way of bank draft as earnest money alongwith the tender form and thereafter, another sum of ₹7,50,000/- was deposited. Thus, total amount of ₹15,00,000/- was deposited by the petitioner as cash security. Agreement was executed between the petitioner and respondent-Corporation on 04.04.1997. It is further averred that the respondent-Corporation allotted the scheduled gypsum to begin with, but did not adhere to the said schedule thereafter. The petitioner is stated to have requested the respondents to make available requisite quantity of Gypsum in terms of the agreement, but to no avail. However, in an illegal manner, the respondents proceeded to float another tender for transportation of 23,632 metric metric tonnes of Gypsum from Hanumangarh (Rajasthan) to various stations in the State of Punjab on the ground that the petitioner had failed to transport the above quantity of Gypsum.

Floating of fresh tenders by the respondents on 24.11.1997 was admittedly challenged by the petitioner by way of filing a civil suit. Respondent-corporation filed an application under Section 8 of the Arbitration Act, which was dismissed by the learned trial court on 09.01.1998. Revision petition i.e., CR No.670 of 1998 filed by the respondent-corporation was disposed of by this High Court on 28.08.1998 on the basis of a consensus arrived at between the parties. It was agreed that an Arbitrator would be appointed by the court in terms of clause 19 of the agreement dated 04.04.1997 (Annexure P1) and that the Arbitrator appointed by the court shall settle the dispute within the period prescribed by the court. Learned Additional Civil Judge (Senior Division), Dhuri was directed to appoint an Arbitrator to decide

the dispute between the parties in terms of clause 14 of the agreement and the Arbitrator so appointed, it is stated, would decide all the disputes arising out of the agreement between the parties. However, no statement of claim was filed before the Arbitrator by any of the parties and arbitral proceedings were accordingly terminated by the Arbitrator vide order dated 19.03.1999 (Annexure P5). Civil Revision No.5919 of 2003 was preferred by the respondent-Corporation, which was disposed of by this High Court vide order dated 29.03.2011 (Annexure P6). It has been observed in order dated 29.03.2011 as under:-

“It is, therefore, apparent that the petitioner's right, particularly its right to claim adjudication of the matter by way of a reference has neither been adverted to much less adversely affected. In so far as respondent no.1's plea that he has a right to seek, refund of security, suffice it to state that the matter can only be considered as and when such a plea is raised in any proceedings that respondent no.1 may chose to initiate or in any proceedings that may be pending between parties. The impugned order therefore, does not call for interference.”

Present petitioner, thereafter for the first time moved a representation dated 20.01.2018 before the Additional Chief Secretary-cum-Financial Commissioner Development, Punjab seeking release of the security amount alongwith interest. Thereafter, demand was raised by the petitioner on 19.09.2020 (Annexure P10) regarding refund of security amount after many long years.

Claim of the petitioner is clearly time barred. Learned counsel for the petitioner is unable to deny that prior to September, 2020 no demand had

ever been raised by the petitioner for refund of the security amount, though

representation, it is submitted, had been made before the Additional Chief Secretary-cum-Financial Commissioner Development, Punjab and that too on 20.01.2018. Though such a representation would not be sufficient, however, even if the same is accepted it is also hopelessly time barred as cause of action had admittedly arisen to the petitioner in the year 1997. Petitioner had filed a civil suit (Annexure P2) challenging issuance of fresh tenders by the respondent-corporation on 28.11.1997. It is not denied that no demand, whatsoever, had ever been raised for refund of the security amount by the petitioner at any stage prior to September, 2020/January 2018.

Challenge to floating of the fresh tender on 24.11.1997 cannot, in any manner, be termed to be raising of a dispute for seeking refund in respect to the agreement dated 04.04.1997. Furthermore, it is a matter of record that the petitioner chose not to file/submit any statement of claim before the sole Arbitrator, which was appointed by the learned Additional Civil Judge (Senior Division), Dhuri pursuant to order dated 24.08.1998 passed by this High Court in Civil Revision No.670 of 1998, which was disposed of, admittedly on the basis of a consensus arrived at between the parties.

Argument raised by learned counsel for the petitioner that observation in order dated 29.03.2011 in CR No.5919 of 2003 entitles the petitioner to stake a claim for refund of the security amount is clearly misplaced. Furthermore, even if the same is accepted, learned counsel for the petitioner is unable to deny that no such claim was raised by the petitioner from 2011 till September, 2020 or even January, 2018. Therefore, claim of the petitioner is clearly time barred.

Hon'ble Supreme Court in **Bharat Sanchar Nigam Ltd. And**

another v. M/s Nortel Networks India Pvt. Ltd., 2021(5) SCC 738, has specifically held that where the claims are *ex facie* time-barred and it is manifest that there is no subsisting dispute, court may refuse to make the reference. Present is a *lis* which is an example where the claim set-up by the petitioner is clearly time barred and it cannot be said that there is any subsisting dispute.

Petition is accordingly dismissed.

November 08 , 2021.
'om'

(LISA GILL)
JUDGE

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