

In the High Court of Punjab and Haryana, at Chandigarh

1. Arbitration Case No. 101 of 2021 (O&M)

Rajeev Kumar Goel

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

AND

2. Arbitration Case No. 105 of 2021 (O&M)

Rajeev Kumar Goel

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

Date of Decision: 24.03.2021

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. P.S.Rana, Advocate
for the petitioner.

Ms. Kirti Singh, Deputy Advocate General,
Haryana, for the respondents.

Anil Kshetarpal, J.

By this order, Arbitration Case No. 101 and 105 of 2021 shall stand disposed of. Learned counsel for the parties are also *ad idem* that these two petitions can be disposed of by a common order.

Through these two petitions, filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the 1996 Act”), as amended, a prayer is made to appoint an independent Arbitrator in both the petitions. The existence of a clause in the agreement for resolution

of the disputes through a Sole Arbitrator is not in dispute. It is also not in dispute that the requests sent by the petitioner to the Engineer-in-Chief/respondent No.2 on 16.03.2020 for appointment of an Arbitrator has failed to invoke any response. Thus, the Engineer-in-Chief has forfeited his right to appoint or nominate an Arbitrator. Even otherwise, on or after 23.10.2015, the amended Arbitration and Conciliation Act has come into force and now the party or its officials or its nominees can no longer act as Arbitrator. Similarly, none of the parties has the power to nominate an Arbitrator.

Keeping in view the aforesaid facts, this Bench is required to nominate an Arbitrator. On careful reading of Clause 25A containing the provision for resolution of disputes through arbitration shows that the Arbitrator is required to have some essential qualification. Clause 25A(2) provides that the arbitrator will be any serving Superintending Engineer or Engineer-in-Chief of Haryana PWD, Water Supply & Sanitation Department at the relevant time. However, in view of the aforesaid amendment, they can no longer be nominated as an Arbitrator. This Court has also examined the nature of the dispute and is of the considered view that the arbitration can be carried out by a retired Judicial Officer who has rich experience of adjudicating such disputes.

Hence, both the petitions are allowed. This Bench finds it appropriate to nominate Mr. P.L.Ahuja, District and Sessions Judge (retired) as an Arbitrator in both the petitions.

(a) Appointment of Arbitrator: Mr. P.L.Ahuja, District and Sessions Judge (retired), is hereby nominated to act as

the Sole Arbitrator to decide the disputes and differences between the parties in both the petitions.

(b) Communication to Arbitrator of this order:

- (i) A copy of this order will be communicated to the learned Sole Arbitrator by the learned counsel for the petitioner within one week from the date of the order being uploaded.
- (ii) In addition, within one week of this order being uploaded, the Registry will forward an ordinary copy of this order to the learned Sole Arbitrator at the following postal address:

Arbitrator : Mr. P.L.Ahuja, District and Sessions Judge (retired)

Address : # 705, Swastik Vihar, Patiala Road, Zirakpur - 140603

Mobile No. : +91 9464542727 &
+91 9888693850

- (c) Disclosure:** The learned Sole Arbitrator is requested to forward his statement of disclosure under Section 11(8) read with Section 12(1) of the Arbitration Act, 1996 to the Registrar General of this Court, referencing this arbitration petition, as soon as possible, and in any case, sufficiently in advance of his entering upon the reference to his arbitration. That statement will be retained by the Registrar General on the file of this application. Copies will be given to both sides.

- (d) Appearance before the Arbitrator:** The parties will

appear before the learned Sole Arbitrator physically or through video conferencing on such date and at such place as he nominates and will obtain appropriate directions in regard to fixing a schedule for completing the pleadings, etc.

(e) Contact/communication information of the parties:

Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator within one week of this order being uploaded. The information is to include a valid and functional email address.

(f) Application under Section 16: Liberty to either side to file an application before the learned Sole Arbitrator under Section 16 in regard to any matter or claim and its arbitrability or with regard to the jurisdiction and competency of the arbitral tribunal.

(g) Interim Application(s):

(i) Liberty to both the parties to make an interim application or interim applications including (but not limited to) an interim application under Section 17 of the Arbitration & Conciliation Act, 1996 before the learned Sole Arbitrator.

(ii) Any such application will be decided in such manner and within such time as the learned Sole Arbitrator deems fit.

- (h) Fees:** The fees of Arbitral Tribunal shall be governed by IVth Schedule of the Arbitration and Conciliation Act, 1996.
- (i) Sharing of costs and fees:** Parties agree that all arbitral costs and the fees of the arbitrator will be borne by both sides in equal shares at the first instance.
- (j) Venue and seat of arbitration:** The venue of arbitration shall be at such place or places as may be fixed by the Sole Arbitrator in his sole discretion.
- (k) Contentions kept open.** All contentions before the learned Sole Arbitrator are specifically kept open.

It is clarified that it is open to the respondents to file a counter-claim, if so advised, before the learned Sole Arbitrator, within such time and subject to such terms as the learned sole Arbitrator may direct.

Costs of the arbitration proceedings may be included by both the sides in their claims before the learned Sole Arbitrator.

**(Anil Kshetarpal)
Judge**

March 24, 2021
“DK”

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