

206-b IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ARB-189-2020 (O&M)
Date of decision : February 16, 2021

POLYCNES, THROUGH ITS PROPRIETOR SH PALAKDHARIPetitioner

Versus

MUNICIPAL CORPORATION AND OTHERS ...Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Deepak Singh Saini, Advocate for the petitioner.

Mr. Ashish Yadav, Advocate for the respondents.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Prayer in this petition under Section 11 (6, 7, 8) of Arbitration and Conciliation Act, 1996 (for short – ‘the Act’) is for appointment of sole independent Arbitrator. Petitioner was allotted the work of (A) construction of various roads with interlocking paver block M-35 grade, 80m thick in Baldev Nagar, Ward no. 21, Gurgaon allotted vide memo No. MCG/EE/VI/2017/8182 dated 08.02.2017 on the basis of tender submitted on 07.11.2016 and (B) construction of various roads with interlocking tiles from Choma Fatak to revenue Rasta Ward no. 01, Gurugram allotted vide memo no. EE-II/MCG/2017/20513 dated 17.04.2017 on the basis of tender submitted on 09.11.2016. Petitioner is stated to have started and completed the work within stipulated period as per satisfaction and direction of Engineer-in-Chief, but the payments were statedly not released. A dispute admittedly arose between the parties. Legal notice dated 23.11.2019 was issued by the petitioner for the department to settlement. Request for appointment of Arbitrator was also addressed by the petitioner vide letter dated 24.09.2019 but to no avail, therefore, present petition seeking appointment of sole independent Arbitrator has been filed.

In terms of clause 25A of agreement dated 18.04.2019, there is a provision for reference of the matter to the sole arbitration of any serving Superintending Engineer of the Municipal Corporation, Gurgaon, to be nominated by designation by Chief Engineer at the relevant time. The clause in question reads as under”-

(ii) All dispute or difference in respect of which the decision is not final and conclusive shall at the request, in writing, of either party, made in a communication sent through Registered A.D. post be referred to the sole arbitration of any serving Superintending Engineer of Municipal Corporation, Gurgaon to be nominated by designation by Chief Engineer of Municipal Corporation, Gurgaon at the relevant time. There will be no objection to any such appointment that the arbitrator so appointed is a Govt. Servant/in service of Municipal Corporation Gurgaon or that had to deal with the matter to which the contract relates in the course of his duties as a Govt. Servant/in service of Municipal Corporation, Gurgaon he has expressed his views on all or any of the matter in dispute. The Arbitrator to whom the matters is originally referred being transferred or vacating his office, his successor-in-office, as such shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

Or

In case the arbitrator nominated by the Chief Engineer, Municipal Corporation, Gurgaon is unable or unwilling to act as arbitrator such for any reason, whatsoever the Chief Engineer, Municipal Corporation, Gurgaon shall be competent to appoint and nominate any other Superintending Engineer of Municipal Corporation, Gurgaon as arbitrator in his place and the arbitrator so appointed shall be entitled to proceed with the reference.”

Though reply has not been filed despite opportunity, learned counsel for the respondents – Municipal Corporation does not deny that a dispute has arisen

between the parties in respect to the work allotted to the petitioner. Service of legal notice by the petitioner is also not denied.

Dispute has admittedly arisen between the parties. Through legal notice dated 23.11.2019, the applicant invoked the arbitration clause. Petitioner's proposed arbitrator was not acceptable to the respondent and it unilaterally appointed someone else as the Sole Arbitrator. It is submitted by learned counsel for the petitioner that unilateral appointment of arbitrator by the respondent is violative of the amended provision of the Act. In view of the amendment of the Act and judgments of Hon'ble Supreme Court in **TRF Ltd., Vs. Energo Engineering Projects Ltd, 2018(5) R.C.R (Civil) 10** and **Perkins Eastman Architects DPC and another Vs. HSCC (India) Limited 2020 AIR(SC) 59**, it is a settled position that the Superintending Engineer of the respondent or a person in service of the Municipal Corporation could not have been appointed as Arbitrator.

Learned counsel for the respondent is unable to deny the unsustainability of unilateral appointment of Arbitrator by the management.

Keeping in view the facts and circumstances, this petition is allowed. Sh.C.B. Jaglan, District and Sessions Judge, (Retired), resident of Flat No. D-503, Alaknanda Society, Sector 56, Gurugram, is appointed as the Sole Arbitrator. However, such appointment would be subject to the declaration to be made by the Arbitrator under Section 12 of the Act with regard to his independence and impartiality to settle the disputes between the parties.

The Arbitrator is to complete the proceedings within the time limit specified under Section 29-A of the Act.

The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended, to be borne equally by the parties.

Venue of the Arbitration shall be at Gurugram or at any other place convenient to all concerned, subject to discretion of the Arbitrator.

Parties to appear before the Sole Arbitrator on such date and time as nominated by him. Proceedings may also be conducted through video conferencing subject to consensus among all.

February 16, 2021
rts

(Lisa Gill)
Judge

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