

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

205

**ARB-295-2019 (O&M)
Decided on : 22.09.2021**

Adhmi Co-operative L/C Society, Khanna Road, Krishanpura, Panipat
... Petitioner

Versus

Haryana Power Generation Corporation Ltd. and others
... Respondents

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

Present: Mr.Ramesh Kumar Jha, Advocate, for the petitioner.

Mr.S.K.Mahajan, Advocate, for the respondents.

G.S. Sandhawalia, J. (Oral)

Prayer in the present petition, filed under Section 11 of the Arbitration & Conciliation Act, 1996 (for short, the 'Act') is for appointment of an independent Arbitral Tribunal to adjudicate upon the dispute between the parties arising out of the allotment letter dated 20.09.2013.

It is the case of the petitioner that a sum of Rs.4.36 lacs + losses to the tune of Rs.15 lacs + interest was outstanding from the respondents and no response is being received despite representation dated 25.01.2019 (Annexure P-12) having been made. Thereafter also, petitioner had represented and had received letter dated 20.06.2019 to attend personal hearing on 25.09.2019. It is submitted that in such circumstances, the petition be allowed since the matter was still pending consideration before the authorities.

In response, respondents submitted that the matter is patently time-barred and should not be referred to the Arbitrator, in the facts and circumstances of the case. It has been averred that the letter of intent was issued on 26.07.2013 and the allotment letter was dated 20.09.2013. It is submitted that the actual date of start of the work was 01.08.2013 and was to be completed by 31.10.2013 but it was only completed on 29.03.2014. Due to

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

205 ARB-295-2019 (O&M)

-2-

the delay in completion of the work, penalty of Rs.4,36,945/- was imposed and deducted from the bills of the firm, which was intimated on 29.11.2016 (Annexure P-7). It is submitted that legal notice dated 11.10.2018 (Annexure P-10) was served upon the respondents, to refer the dispute to arbitration which was replied on 30.10.2018 (Annexure P-11) that the penalty of the said amount had been imposed and the same was as per Clause 2 of the work order due to the delay in completion period and no dispute existed to refer the matter to the sole Arbitrator. In the reply, it has been further averred that the penalty was deducted from third running bill prepared on 20.03.2014 and the present petition is barred by limitation.

A perusal of the paperbook would also go on to show that the petitioner-Society was itself aware regarding the imposition of the penalty amount on 18.05.2016 (Annexure P-4) and that the deduction had been made. Though it requested that the matter be solved and the amount be released but no effort was made by it to get the matter referred to arbitration, thereafter though it inter se kept on communicating with the respondents. The first request for appointment of Arbitrator was made only on 21.05.2018 (Annexure P-9) and a period of 3 years had expired by then from the third running bill.

In such circumstances, this Court is of the opinion that the petitioner cannot, now, seek appointment of Arbitrator as it should have exercised its right of appointment of Arbitrator within the prescribed period of 3 years. Reliance can be placed upon the judgment of the Three Judges Bench of the Apex Court passed in **M/s Geo Miller & Co. Pvt. Ltd. Vs. Chairman, Rajasthan Vidyut Utpadan Nigam Ltd. 2019 AIR (SC) 4244** wherein the issue of limitation under Section 43 of the 1996 Act was taken into consideration. In the said case, the application for appointment had been rejected by the High Court of Rajasthan by noting that the final bill had been raised on 08.02.1983 and the request for appointment of Arbitrator was made late in 2002. Accordingly, it was held that the maximum period which the Court should have allowed for appointment of Arbitrator was 3 years from the date the cause of action arose and therefore, the order of the Rajasthan High

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

205 ARB-295-2019 (O&M)

-3-

Court was upheld. It was further held that in commercial disputes, once the applicants have asserted their claim and the respondents have failed to settle their claim, such failure shall be treated as a denial of the applicants' claim. Merely unreasonably long period to refer the dispute to arbitration merely on account of respondents failure to settle the claim and on account of the representations and reminders, thus, would not extend the period of limitation.

In the present case, though being aware that the amount had been deducted from the third running bill on 20.03.2014 which had been objected to on 18.05.2016 (Annexure P-4), no effort was made for appointment of Arbitrator within a period of 3 years and the demand was only raised thereafter on 21.05.2018 (Annexure P-9). In such circumstances, this Court is of the opinion that once the petitioner has slept over their right, they would lose their entitlement for appointment of an Arbitrator at a belated stage.

Accordingly, in view of the above discussion, the present petition is dismissed.

September 22, 2021
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No