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

**ARB No.141 of 2017**

**Date of Decision: 12.09.2022**

**CHANDIGARH ADMINISTRATION, ELECTRICITY  
DEPARTMENT THROUGH ITS EXECUTIVE ENGINEER  
.....Petitioner**

**Vs**

**SH. VINOD SHARMA**

**.....Respondent**

**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. Ashish Rawal, Advocate  
for the petitioner.

None for the respondent.

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**RAJ MOHAN SINGH, J.(Oral)**

**[1].** Petitioner has filed the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') (Section 11(4) of the Act has been wrongly typed in the headnote of the petition) for appointment of an independent Arbitrator to settle the dispute between the parties.

**[2].** Learned counsel for the petitioner submits that the petitioner floated a scheme for providing temporary supply of electricity to J.J. Cluster/Slum dweller/Unauthorized Colonies/

residents outside the Lal Dora vide notification dated 18.04.2002. In pursuant to the aforesaid Scheme, tenders were invited by way of notice dated 24.08.2002.

[3]. Respondent applied in pursuance of the notice and offered the highest rate of bank guarantee. The respondent being the highest bidder was allotted the work order on 21.01.2003 in respect of bulk supply of electricity connections in Madrasi Colony Bapu Dham, Sector 26, Chandigarh.

[4]. After allocation of the aforesaid work, the respondent applied for three bulk supply connections i.e. single point delivery connections which were also released to him on 14.05.2003, 12.06.2003 and 12.06.2003 respectively. The sanctioned load of aforesaid bulk supplies was 30.000 KW each. The respondent was to give service in the form of electricity connections to the residents of *jhuggis* and collect bills thereof at the rate of tariff approved by the Chandigarh Administration. In lieu of the aforesaid, the respondent was entitled to commission at the rate of 20% on SOP charges excluding ED. The commission was to be adjusted against the amount due from the respondent in respect of his monthly bills for the aforesaid three connections.

[5]. The aforesaid three connections were disconnected on

04.06.2007 due to non-payment of bills by the respondent and the agreement was terminated. Thereafter the dispute was referred to the named Arbitrator in the allotment letter. The Arbitrator was appointed vide memo dated 12.08.2014. Value of the claim was to the tune of Rs.106.82 lakhs.

[6]. Evidently, as per the terms in the allotment letter, Superintendent Engineer, Electricity was appointed as Arbitrator, who entered upon the reference. Respondent appeared before the Arbitrator and filed his objections. On the objections raised by the respondent as regards the impartiality of the Arbitrator, the Arbitrator ultimately recused from the proceedings vide order dated 24.08.2016. That is how the present petition came to be filed for appointment of an independent Arbitrator.

[7]. After issuance of notice of motion, learned counsel for the respondent appeared on number of occasions. On 16.08.2022, learned counsel for the respondent sought time to have further instructions. Today none has appeared on behalf of the respondent. No further adjournment is warranted in view of directions issued by the Hon'ble Apex Court in SLP (Civil) No.5306 of 2022 that all pending applications under Section 11(5) and 11(6) of the Arbitration and Conciliation Act, 1996 or any other application either for substitution of Arbitrator and/or

change of Arbitrator which are pending for more than one year from the date of filing must be decided within six months from 19.05.2022.

[8]. Having gone through the material on record, I find that the dispute has to be resolved by way of appointment of an independent Arbitrator. Reference can be made to **TRF Limited vs. Energo Engineering Projects Limited, (2017) 8 SCC 377; Bharat Broadband Network Limited vs. United Telecoms Limited, (2019) 5 SCC 755; Perkins Eastman Architects DPC and another vs. HSCC (India) Limited, (2020) 20 SCC 760** and **Ellora Paper Mills Limited vs. State of Madhya Pradesh, (2022) 3 SCC 1**. Para No.54 of **TRF Limited's** case (supra) reads as under:-

“54. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity nor the individual respectability. We are only concerned with the authority or the power of the Managing Director. By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is

*bound to collapse. One cannot have a building without the plinth. Or to put it differently, once the identity of the Managing Director as the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated. Therefore, the view expressed by the High Court is not sustainable and we say so.”*

[9]. In my considered opinion, the plea of the respondent can very well be considered on merits by the Arbitrator in accordance with law. The authority of the official Arbitrator stands negated in view of ineligibility of such Arbitrator arising out of Section 12(5) of the Amended Act, 2015. Even Managing Director is statutorily ineligible to nominate any person as an Arbitrator in view of ratio of the aforecited case laws.

[10]. Keeping in view the facts and circumstances of the case, I hereby appoint HMJ R.P. Nagrath (Retd.), R/o #162, Sector 123, New Sunny Enclave, Kharar, Mobile No.08558809901, email: [rpnagrath@gmail.com](mailto:rpnagrath@gmail.com) as the sole Arbitrator, to resolve the dispute/difference between the parties. The appointment of the Arbitrator shall be subject to the declaration to be made by him as required under Section 12 of Arbitration and Conciliation Act, 1996 in respect of his independence and impartiality to settle the dispute between the parties.

[11]. The Arbitrator shall complete the proceedings within the

specified time in terms of Section 29-A of the said Act. The Arbitrator shall be paid fee in accordance with the IVth Schedule of the Act as amended from time to time. The fee shall be borne by the petitioner and respondent No.1 in equal proportion.

**[12].** The venue of the Arbitration shall be the place to be disclosed by the Arbitrator according to his convenience.

**[13].** A copy of this order be dispatched to the Arbitrator at the following address:-

HMJ R.P. Nagrath (Retd.),  
R/o #162, Sector 123, New Sunny Enclave, Kharar  
Mobile No.08558809901, email: [rpnagrath@gmail.com](mailto:rpnagrath@gmail.com)

**[14].** Petition stands disposed of accordingly.

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|---------------------------|--------------------------|
| September 12, 2022        | <b>(RAJ MOHAN SINGH)</b> |
| <i>Atik</i>               | <b>JUDGE</b>             |
| Whether speaking/reasoned | Yes/No                   |
| Whether reportable        | Yes/No                   |