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

**CM No.5658-CII of 2019 in/and
ARB No.225 of 2018 (O&M)
Date of Decision: 31.08.2022**

M/S GANPATI FOOD

.....Petitioner

Vs

**THE PUNJAB STATE COOPERATIVE SUPPLY AND
MARKETING FEDERATION LIMITED MARKFED AND
ANOTHER**

.....Respondents

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

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

Mr. Vinod K. Kanwal, Advocate for
Mr. P.I.P Singh, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has preferred this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') for the appointment of an independent sole Arbitrator.

[2]. Petitioner has entered into an agreement with the respondent No.1 on 06.10.2017 in respect of shelling of paddy for the year 2017-2018 and supply of resultant rice to the Food

Corporation of India till 31.03.2018. The respondent-Corporation supplied 56908-87-500 quintals of A-Grade paddy to the petitioner. Petitioner had delivered the needful. A physical verification was ordered to be conducted by the respondent on 14.03.2018 in the premises of the petitioner. The committee found that there was a shortage of 53095 bags of paddy weighing 19910.62500 quintals. A report to that effect was given in favour of the respondent. Subsequent to the physical verification, the respondent No.1 vide letter dated 06.04.2018 issued by the Managing Director, Markfed appointed Sh. B.R. Bansal, Additional District and Sessions Judge (Retd.) as sole Arbitrator without concurrence of the petitioner to adjudicate the dispute between the parties. The Arbitrator fixed the date as 16.05.2018 for the first time and thereafter issued a letter dated 17.05.2018 calling upon the petitioner to appear on 13.06.2018 in the context of invoking arbitration clause of the agreement amongst the parties.

[3]. Petitioner raised objection with regard to the unilateral appointment of the Arbitrator vide letter dated 11.06.2018. Petitioner was asked to file objection in an appropriate Court as the parties had agreed to the arbitration clause authorizing the Managing Director of the Federation to appoint an Arbitrator to adjudicate the dispute arising out of agreement in question.

[4]. Learned counsel for the petitioner submits that after the amendment in the Act vide amendment Act No.3 of 2016 w.e.f. 23.10.2015, the Arbitrator appointed by the Department is not permissible in view of Section 12(5) of the Arbitration and Conciliation Act. No proceedings were undertaken before the Arbitrator on 13.06.2018 as the petitioner did not appear on the date fixed. The respondent at a later stage, even appointed another Arbitrator namely Sh. B.S. Multani, IAS (Retd.) without consent of the petitioner.

[5]. Learned counsel for the petitioner submits that the Arbitrator has not disclosed his neutrality and fairness in the process of appointment as an Arbitrator which is amended as per Act of 1996. The appointment of Arbitrator by the Managing Director after 2015 amendment, is illegal as the concept of neutrality of independent Arbitrator viz. his independence and impartiality are vital issues for arbitration process. The appointment of Arbitrator *de hors the* mandated law in terms of 2015 amendment, is illegal and in such circumstances, new independent Arbitrator has to be appointed.

[6]. In support of his submissions, learned counsel for the petitioner relies upon **Perkins Eastman Architects DPC and another vs. HSCC (India) Limited, (2020) 20 SCC 760.**

Learned counsel also refers to para No.54 of **TRF Limited vs.**

Energo Engineering Projects Limited, (2017) 8 SCC 377. The

same 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.”

[7]. Per contra, learned counsel for respondent No.1, objects to the claim of the petitioner on the premise that appointment of an Arbitrator is justified as per arbitration clause.

[8]. Having heard learned counsel for the parties, I find that the contract agreement having arbitration clause is an admitted fact. The dispute, if any, has to be resolved by way of appointment of an Arbitrator. After amendment in 2015, Section

12(5) of the Act mandates that there has to be neutrality and impartiality of the Arbitrator and there cannot be any mechanism to appoint a private Arbitrator by the respondent-Corporation. All disputed issues can be decided by the Arbitrator with reference to the quality of evidence to be produced by the parties at an appropriate stage. Tentative value of the claim is Rs.3,82,01,569/-. Arbitration clause has also been invoked.

[9]. Keeping in view the facts and circumstances of the case, I hereby appoint HMJ Mahavir Singh Chauhan (Retd.) #145, Near Jalvayu Towers, New Sunny Enclave, Sector 123, SAS Nagar (Mohali), Punjab, contact nos.08558809908, 09463600606 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.

[10]. The Arbitrator is requested to 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 4th 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.

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

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

HMJ Mahavir Singh Chauhan (Retd.)
#145, Near Jalvayu Towers,
New Sunny Enclave, Sector 123,
SAS Nagar (Mohali), Punjab,
contact nos.08558809908, 09463600606

[13]. Petition stands disposed of accordingly.

August 31, 2022

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No