

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

ARB No.358 of 2018 (O&M)

Date of Reserve: 01.09.2022

Date of Decision: 14.10.2022

**The Kissan Workers Cooperative Labour and Construction
Society Ltd.Petitioner**

Vs

**The Amritsar Cooperative Labour and Construction and
others
.....Respondents**

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

Present: Mr. Dheeraj Mahajan, Advocate
for the petitioner.

Mr. Jastej Singh, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') as amended by Amendment Act, 2015 (3 of 2016) for appointment of an independent Arbitrator/arbitral Tribunal to adjudicate the dispute between the parties arising out of contract agreement in pursuance of the arbitration clause.

[2]. Petitioner has pleaded that in response to the notice

inviting tender for the work namely “construction of office building of Amritsar Labour and Construction Union Limited”, the petitioner submitted its tender rates. The petitioner was found to be the lowest tenderer and was allotted the work vide work order No.212 dated 21.02.1997. A formal agreement was executed between the parties on 09.04.1997. Due to non-fulfillment of primary contractual obligations by the respondents, the work could not be executed in time and financial loss was caused to the petitioner due to the delay in execution of work. The work was completed on 27.04.1998 and the respondents illegally withheld the amount of Rs.7,56,576/-. The said payment along with other payments was not made despite issuance of notice dated 27.03.2001. The legal notice was also served upon the respondents on 26.04.2001.

[3]. Owing to inaction on behalf of the respondents, a civil suit for recovery of Rs.13,61,835/- was filed by the petitioner. In the said suit, respondents filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator and reference of the matter to the Arbitrator. The application filed by the Administrator, The Amritsar Cooperative L&C Union Ltd., was allowed vide order dated 06.08.2011 directing the parties to resolve the dispute by invoking arbitration clause. The claim forming subject matter of the suit

was an amount of Rs.7,56,575/- along with interest to the extent of Rs.6,05,260/- @ 24% P.A.. The Registrar, Co-operative Societies, Punjab, Chandigarh was required to adjudicate the dispute as per arbitration clause. The prayer was made for referring the dispute to the Registrar, Co-operative Societies, Punjab for adjudication and to enter upon the reference and pass the award in accordance with law. Vide the said order, the Registrar, Co-operative Societies, Punjab was appointed as Arbitrator to get the dispute resolved. Parties were directed to resolve their dispute by invoking the jurisdiction of the Registrar, Co-operative Societies, Punjab. Till decision of the Arbitrator, the suit proceedings were adjourned sine-die.

[4]. Petitioner remain unsuccessful against the order dated 06.08.2011 in CR No.515 of 2012 and the same was dismissed by the High Court on 20.12.2017. In pursuance of the order passed by the civil Court, the petitioner submitted its statement of facts and claims as per provisions of the Arbitration and Conciliation Act on 12.07.2018. The Registrar, Co-operative Societies, Punjab instead of acting himself as an Arbitrator unilaterally passed an order dated 23.07.2018 directing the Deputy Registrar, Co-operative Societies, Amritsar to hear the petition and decide the case on merits.

[5]. In pursuance of the aforesaid order dated 23.07.2018

passed by the Registrar, Co-operative Societies, Punjab, the Deputy Registrar, Co-operative Societies, Amritsar received the case file on 26.07.2018 along with an order dated 23.07.2018. Thereafter the Deputy Registrar sent the reference back to the Registrar Co-operative Societies, Punjab in view of provisions of the Arbitration and Conciliation Act, 1996 (amended on 23.10.2015) as the Deputy Registrar was not competent to arbitrate the dispute in view of amended provision. The issue was to be adjudicated as per provisions of the Arbitration and Conciliation Act, 1996 as amended on 23.10.2015. It was also recited that provisions of Punjab Co-operative Societies, Act, 1961 were not applicable and the matter was to be decided only under the provisions of the Arbitration and Conciliation Act, 1996. A request was made for withdrawal of the order passed by the Registrar, Co-operative Societies, Punjab. The Deputy Registrar, Co-operative Societies, Amritsar vide order dated 23.08.2018 referred the case back to the Registrar, Co-operative Societies, Punjab in pursuance of letter dated 26.07.2018, showing that he had no authority to conduct proceedings as per provisions of the Arbitration and Conciliation Act, 1996 and the case should have been filed under the Punjab Co-operative Societies Act, 1961 and the rules framed thereunder.

[6]. In view of order dated 06.08.2011, the Registrar, Co-operative Societies, Punjab was to act as an Arbitrator as per arbitration clause according to the provisions of the Arbitration and Conciliation Act, 1996. Despite the letter dated 23.08.2018 issued by the Deputy Registrar to the Registrar, Co-operative Societies, Punjab to withdraw the order dated 25/26.07.2018, nothing had happened thereafter and the Registrar, Co-operative Societies, Punjab did not proceed with the matter on merits.

[7]. Vide letter dated 26.09.2018, the Registrar, Co-operative Societies, Punjab again wrote a letter to the Deputy Registrar to comply with the order dated 23.07.2018 and 14.09.2018 and sent the file to the Deputy Registrar for compliance thereof. Since the Registrar, Co-operative Societies, Punjab was not inclined to enter upon the reference as per order of the civil Court, therefore, the petitioner issued a notice dated 16.10.2018 for appointment of an independent Arbitrator as per amended provisions of the Arbitration and Conciliation Act, particularly in view of the letter dated 23.08.2018 issued by the Deputy Registrar, Co-operative Societies, Amritsar, showing his inability to decide the matter as per provisions of the Arbitration and Conciliation Act, 1996 and returned the original record to the Registrar, Co-operative Societies, Punjab.

[8]. Learned counsel for the petitioner submitted that as per amended provisions of the Arbitration and Conciliation Act, 1996, the appointment of Registrar, Co-operative Societies, Punjab is now contrary to the spirit of amendment and the Registrar Co-operative Societies is not entitled to further delegate its power to the Deputy Registrar, Co-operative Societies. In such like situation, the petition under Section 11(6) of the Act is maintainable for appointment of an independent Arbitrator to decide the dispute. The petitioner has tentatively valued its claim for more than Rs.40 lakhs and has also reserved its right to file detailed claim before the competent Court/authority.

[9]. Learned counsel for the petitioner by relying upon the arbitration clause as well as ratio(s) of **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** further submitted that in view of amended provisions of the Arbitration and Conciliation Act, 1996 the official/departmental Arbitrator cannot be appointed in view of Section 12(5) of the Act.

[10]. Learned counsel for the petitioner by relying upon **Delhi Transport Corporation Ltd. vs. Rose Advertising, 2003(2) R.C.R. (Civil) 552** further submitted that the parties had already acted under the provisions of Arbitration and Conciliation Act, 1996 and as per arbitration agreement, if any changes are made in the Act, the same will apply to the parties and new arbitration Act will apply in such a situation. Learned counsel further submitted that the parties went for arbitration with clear understanding and belief that the proceedings were being conducted under the Arbitration Act, 1996. The Arbitrator was to be appointed under the said Act. Petitioner had also submitted its claim before the Arbitrator (Registrar, Co-operative Societies, Punjab). Learned counsel referred to para nos.2, 3 and 4 of the aforesaid judgment to contend that the provisions of Arbitration and Conciliation Act, 1996 will apply to the present case.

[11]. Per contra, learned counsel for respondent No.1 by referring to Section 55 of the Punjab Co-operative Societies Act, 1961 submitted that settlement of disputes in terms of Section 55 of the said Act has to be referred before the prescribed authority under the Act. In support of his contention, learned counsel referred to **Gujarat Urja Vikas Nigam Ltd., vs. Essar Power Ltd., (2008) 4 SCC 755** and **National Highway Authority of India vs. Sayedabad Tea Company Limited and**

others, (2020) 15 SCC 161 and also submitted that the special statute shall prevail upon the Arbitration Act.

[12]. Having heard learned counsel for the parties, I find that the settlement of disputes in terms of Section 55 of Punjab Co-operative Societies Act, 1961 is applicable in respect of any dispute touching the constitution, management or the business of the Co-operative Society. No such situation arises in the present case. The case relates to the dues of the petitioner for the work done. The civil Court vide order dated 06.08.2011 has already allowed the application under Section 8 of the Arbitration and Conciliation Act, 1996. The aforesaid order was passed on the application filed by the Administrator, The Amritsar Cooperative L&C Union Ltd. The Registrar, Cooperative Societies, Punjab was appointed as Arbitrator to resolve the dispute and to enter upon the reference. The petitioner had already submitted the statement of facts and claim before the Registrar. The Deputy Registrar, Co-operative Societies has also shown his inability to conduct the proceedings in view of amended provisions of Arbitration and Conciliation Act, 1996.

[13]. There is no dispute with regard to the precedents cited by learned counsel for respondent No.1, however the same are not applicable to the instant case as the appointment of

Arbitrator had already been ordered by the civil Court and thereafter it was only the competence of the Arbitrator in view of Arbitration and Conciliation Act as amended on 23.10.2015 to continue its proceedings or delegate its authority to Deputy Registrar. Existence of arbitration clause is not in dispute. In view of ratio(s) of **TRF Limited; Bharat Broadband Network Limited; Perkins Eastman Architects DPC and another** and **Ellora Paper Mills Limited's** cases (supra), I find that it is a fit case where an Arbitrator can be appointed by this Court while exercising the powers under Section 11(6) of the Act.

[14]. For the reasons recorded hereinabove, I hereby appoint **Sh. G.K. Dhir, District & Sessions Judge (Retd.) R/o # 572, Old Sunny Enclave, Behind Gurudwara Sahib, Sector 123-125, Kharar, Distt. SAS Nagar (Mohali), Mobile No.9815739308** 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.

[15]. 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.

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

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

Sh. G.K. Dhir, District & Sessions Judge (Retd.)
R/o # 572, Old Sunny Enclave, Behind Gurudwara
Sahib, Sector 123-125, Kharar,
Distt. SAS Nagar (Mohali), Mobile No.9815739308

[18]. Petition stands disposed of accordingly.

14th October, 2022	(RAJ MOHAN SINGH)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No