

234

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

**ARB No.371 of 2018 (O&M)
Date of Decision: 18.10.2022**

Ureka Engineers

.....Petitioner

Versus

Engineer in Chief Haryana PWD (B and R) and others

.....Respondents

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

Present:Mr. Dinesh Arora, Advocate
for the petitioner.

Mr. Minderjeet Yadav, DAG, Haryana.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator to adjudicate the dispute arising out of contract agreement dated 11.04.2013.

[2]. The petitioner has fixed his tentative claim of Rs.5,68,000/- at the relevant time. There is an arbitration clause 19.2 in the contract agreement, which reads as under:-

“19.2 Conciliation/Arbitration

1.It is a term of this contract that Conciliation/Arbitration of disputes shall not be commenced unless an attempt has first been made by the parties to settle such disputes through mutual settlement.

2. If the Design Consultant is not satisfied with the settlement by the Employer on any matter in question, disputes or differences, the Design Consultant may refer to the Employer in writing to settle such disputes or differences through conciliation or Arbitration provided that the demand for conciliation or Arbitration shall specify the matters, which are in question or subject of the claim, item wise. Only such dispute(s) or difference(s) in respect of which the demand has been made, together with counter claims of the Employer shall be referred to Conciliator or Arbitrator as the case may be and other matters shall not be included in the reference.

3. The Employer may himself act as Sole Conciliator/Sole Arbitrator or may at his option appoint another person as Sole Conciliator or Sole Arbitrator, as the case may be. In case, the employer decides to appoint a Sole Conciliator/Sole Arbitrator, then a panel of at least three names will be sent to the Consultant. Such persons may be working/retired employees of the Employer of the rank of S.E. who had not been

connected with the work. The Design Consultant shall suggest minimum two names out of this panel for appointment of Sole conciliator/Sole Arbitrator. The Employer will appoint Sole Conciliator/Sole Arbitrator out of the names agreed by the Consultant.

4. In case, the Design Consultant opts for settlement of disputes through Conciliation at first stage and if the efforts to resolve all or any of the disputes thorough Conciliation fails. the Design Consultant may refer to the Employer for settlement of such disputes or differences through Arbitration. The appointment of Sole Arbitrator shall be done by the Employer as per the procedure described above. No disputes or differences shall be referred to Arbitration after expiry of 60 days from the date of notification of failure of Conciliation.

5. The Conciliation and/or Arbitration proceedings shall be governed by the provisions of the Indian Arbitration and Conciliation Act 1996 or any statutory modification or re enactment thereof and the rules made thereunder and for the time being in force shall apply to the conciliation and arbitration proceedings under this clause.

6. The language of proceedings, documents or communications shall be in English and the award shall be made in English in writing.

7. The conciliation/arbitration proceedings shall be held at a place decided by conciliator/arbitrator.

8. The fees and other charges of the Conciliator/ Arbitrator shall be as per the scales fixed by the

employer and shall be shared equally between the Employer and the Consultant.”

[3]. Learned counsel for the petitioner submits that in respect of claim espoused, the respondent department has violated clause-19 of the bilateral contract agreement and the dispute arose between the parties, for which, the petitioner has already invoked the arbitration clause 19.2.

[4]. Notice of motion was issued on 18.01.2019. The pleadings are complete.

[5]. According to the stand taken by the respondents, the petitioner was called upon to participate in the conciliation proceedings before invoking the arbitration clause in terms of clause 19.2.1. The stand taken by the respondents in terms of para Nos.7 and 8 of the reply reads as under:-

“7. That again on dated 05.04.2016, the appellant asked the respondent No. 2 to fix a meeting invoking clause 19 of the settlement of disputes and 19.1 of mutual settlement. The meeting was fixed on 17.05.2016 but the appellant did not attend the meeting. Another meeting was fixed for 04.07.2016 by the respondent No. 2 vide letter no. 75430 dated 10.06.2016 but the said letter was returned by the postal authority undelivered, Another opportunity was given to attend the meeting fixed for 21.07.2016. This meeting was also not attended by the appellant. The last opportunity to appellant was given for 09.08.2016

vide respondent No. 2 letter No. 5055/R dated 28.07.2016 as Annexure R-3.

8. The meeting was ultimately held on 29.08.2016 in this office of respondent No.2. In its statement, appellant stated that respondent No.2, i.e. Superintendent-cum-Employer was not competent to conduct any hearing. The appellant also stated that it invokes the clause of agreement for appointment of sole Arbitrator. The appellant further stated that he will not attend any further hearing fixed by the employer.”

[6]. Evidently, the petitioner was called on number of times, but ultimately, the petitioner appeared on 29.08.2016 and made a statement that respondent No.2 is not competent to conduct any hearing.

[7]. The objection raised by the petitioner was in the context of incompetence of the officer of the department to conduct any arbitral proceedings in view of ratio laid down in **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.”

[8]. The stand taken by the respondents indicates that the main objection was in respect of violation of conciliation proceedings in terms of clause 19.2.1 of the bilateral contract agreement.

[9]. The facts and circumstances of the case reveal that there exists a *bona fide* dispute between the parties and the same needs to be redressed by way of arbitral proceedings. Petitioner has already invoked arbitration clause 19.2.

[10]. In view of aforesaid, I hereby appoint Sh. R.S. Virk, District and Sessions Judge (Retd.), H-7 Aaron Ville, Fazilpur Road, Sector-48-Gurugram, Mobile No.09582255555 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 would complete the proceedings within the specified time in terms of Section 29-A of the 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 both the parties equally.

[12]. The venue of the Arbitration would 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:-

Sh. R.S. Virk, District and Sessions Judge (Retd.),
H-7 Aaron Ville, Fazilpur Road, Sector-48-Gurugram,
Mobile No.09582255555

[14]. Petition stands disposed of accordingly.

18.10.2022
Prince

(RAJ MOHAN SINGH)
JUDGE

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