

IN THE HIGH COURT OF PUNJAB AND HARYANA ATCHANDIGARH

**CM-2860-CII-2022 in and
ARB-55-2022 (O&M)
Date of Decision: March 14, 2022**

M/s. Syncotts International Petitioner(s)

Versus

Punjabi University and another Respondent(s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Shrey Vasudev, Advocate
for the petitioner.

Mr. H.S. Batth, Advocate
for the respondents.

LISA GILL, J. (Oral)

Though matters were being taken up through physical hearing mode today, this matter has been taken up through video conferencing on specific request of learned counsel and in terms of circular dated 14.09.2021.

CM-2860-CII-2022

Documents Annexures P-14 and P-15 annexed alongwith the application, are taken on record, subject to just exceptions.

Application is disposed of.

ARB-55-2022

Prayer in this petition under Section 11(6)(c) of the Arbitration and Conciliation Act, 1996 (for short – ‘the Act’) is for appointment of sole independent Arbitrator for resolution of disputes and differences arising out

of contract agreement dated 06.03.2013, Annexure P-1, executed between the parties.

Contract agreement dated 06.03.2013 was entered into between the parties for construction of synthetic athletic tracks at Punjabi University, Patiala. Work was completed successfully, which was duly certified by IAAF in September, 2015 and was handed over to respondent no.1-University. Thereafter, dispute arose between the parties regarding the payment. Legal notice dated 16.07.2018 (Annexure P-7) was issued. Civil suit for recovery was filed by the applicant before the learned Civil Judge (Junior Division), Patiala. The applicant filed an application under Order 8 Rule 10 read with 151 CPC while the respondents filed an application under Sections 5 & 8 of the Arbitration and Conciliation Act, 1996. Learned Civil Judge (Jr. Division), Patiala allowed the application filed by the respondent and vide order dated 16.04.2021 (Annexure P-8) directed that as the matter involved an arbitrable dispute with there being a specific arbitration clause in the contract agreement, the matter should be referred to the arbitrator. The file was accordingly consigned to record.

It is submitted that the respondent took no steps for appointment of an arbitrator. The applicant thus issued notice dated 27.10.2021 proposing the appointment of Mr. S.P. Arora as the sole Arbitrator. In reply thereto, the respondents vide communication dated 17.12.2021, it is stated, refused to accept the said Arbitrator claiming it to be against the terms and conditions of the agreement and ultimately the applicant received notice dated 24.12.2021 (Annexure P-9) from Mr. Parminder Singh Bhogal, stating that he had been appointed as the sole

Arbitrator by the Vice Chancellor of respondent no.1. Reference has been made to subsequent communication dated 28.12.2021 by the applicant raising objections to the unilateral appointment of the Arbitrator as well as legal notice, Annexure P-12.

Heard learned counsel for the parties.

Existence of an arbitral dispute between the parties is not denied and neither is the existence of the clause for arbitration in the agreement. Clause 25 of the agreement provides for resolution of disputes through arbitration. Clause 25(V & VI) read as under:-

V. All disputes or differences in respect to which the decision is not final and conclusive shall all the request of either party made in a communication sent through registered A.D. post be referred to the sole arbitration of the Executive Engineer Department. Building and Roads Branch acting as such at the time of reference unless debarred from acting as an Arbitrator by an order of the University in which event, the Vice-Chancellor shall appoint any other technical officer not below the rank of S.E. to act as an arbitrator on receipt of a request from either party.

VI. Vice Chancellor shall have the authority to change the arbitrator on an application by either the contractor of the Engineer-in-Charge requesting change of the arbitrator giving reasons thereof, either before the start of the arbitration proceedings or during the course of such proceedings. The arbitration proceedings would stand suspended as soon as an application for change of Arbitrator filed before the Vice Chancellor and a notice thereof is given by the applicant to the Arbitrator. The Vice Chancellor after hearing both the parties may pass a speaking order rejecting the application or accepting to change the Arbitrator simultaneously, appointing a technical officer not below the rank of a Superintending Engineer as Arbitrator under the Contract. The new Arbitrator so appointed may enter upon the

reference a fresh or he may continue the hearings from the point these were suspended before the previous Arbitrator.

Learned counsel for the respondents is unable to deny that after passing of order dated 16.04.2021 by the learned Civil Judge (Jr. Division), Patiala, the Arbitrator was not appointed immediately or even within 30 days of issuance of the notice dated 27.10.2021. Furthermore, in view of the judgment of the Hon'ble Supreme Court in *Perkins Eastman Architects DPC and another Vs. HSCC (India) Ltd., 2019 SCC Online SC 1517* and *TRF Ltd. Vs. Energo Engineering Project Ltd. 2017 AIR (SC) 3889*, unilateral appointment of the Arbitrator by the respondent is not sustainable. Learned counsel for the respondents, however, submits that the dispute involved is technical and it is only an Expert who can deal with the matter. Learned counsel refer to order dated 09.12.2016 passed in ARB-07-2016 and 09.10.2020 in ARB No.94 of 2020, to submit that the present is a similar matter.

Keeping in view the facts and circumstances of the case, I do not find any impediment in the appointment of a sole independent Arbitrator in this case. Unilateral appointment of the Arbitrator by the respondent in the manner as aforementioned cannot be an impediment thereto.

Keeping in view the facts and circumstances of the case, this petition is disposed of, by referring the entire disputes and differences between the parties arising out of agreement dated 06.03.2013 to the President of the Institution of Engineers (India).

14.03.2022

Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No