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

**ARB No.49 of 2019 (O&M)  
Date of Decision: 17.11.2022**

**M/S BHARAT FOOD AGRO PRODUCTS**

**.....Petitioner**

**Vs**

**PUNJAB GRAINS PROCUREMENT CORPORATION LTD.  
AND OTHERS**

**.....Respondents**

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

Present: Mr. Aditya Grover, Advocate  
for the petitioner.

Mr. Narinder Singh, DFSO, Ludhiana.

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

[1]. The 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 Arbitrator in place of Sh. Balwinder Singh Multani, IAS (Retd.), who was unilaterally appointed by the Managing Director, PUNGRAIN to adjudicate the dispute between the parties.

[2]. An agreement was executed between the parties on 13.11.2017. As per clause 30 of the agreement, all the disputes and differences arising out of all in any manner touching or concerning the agreement whatsoever shall be referred to the

sole Arbitration of the Managing Director of the concerned agency or any person appointed by him in this regard.

[3]. Learned counsel for the petitioner submits that in view 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 the Managing Director of the concerned agency or any person appointed by him in this regard is ineligible to be appointed. 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.”*

[4]. In view of **Swadesh Kumar Agarwal vs. Dinesh Kumar Agarwal and others, 2022 SCC OnLine SC 556**, if the mandate of the Arbitrator is sought to be terminated on the ground that the sole Arbitrator has failed to act without undue delay, then the aggrieved party has to approach the concerned Court, which is defined under Section 2(e) of the Arbitration and Conciliation Act, 1996. The Court means the Principal Civil Court of original jurisdiction in the District having jurisdiction to decide the questions forming subject matter of arbitration if the same had been the subject matter of a suit. This Court is not the Court of original jurisdiction having jurisdiction to decide the question forming the subject matter of the arbitration, if the same is in the form of civil suit.

[5]. At the time of issuance of notice of motion, further proceedings before the Arbitrator were ordered to remain in abeyance till the next date of hearing. The interim order was made to continue thereafter. In view of **Swadesh Kumar Agarwal's** case (supra), the Principal Civil Court of original jurisdiction is in the District Ludhiana.

[6]. In view of above, this petition is disposed of. The

petitioner, if so, advised may approach the concerned Court for seeking termination of mandate of the Arbitrator in terms of Sections 13, 14 and 15 of the Arbitration and Conciliation Act, 1996 in accordance with law. In case such an application is moved before the concerned Court, the same shall be decided by the competent Court in accordance with law at the earliest.

[7]. The interim order passed by this Court shall remain in operation for a period of three weeks with a liberty to the petitioner to seek an appropriate order from the concerned Court in accordance with law thereafter.

November 17, 2022

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)  
JUDGE

Yes/No

Yes/No