

235

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

**ARB No.64 of 2020 (O&M)
Date of Decision:14.12.2022**

M/s P.K. Verma and Company

.....Petitioner

Vs

**Municipal Corporation Amritsar through its Commissioner
and another**

.....Respondents

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

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

Mr. Sanjeev Soni, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an independent Arbitral Tribunal for adjudication of the dispute between the parties.

[2]. Learned counsel for the petitioner submits that the dispute has arisen out of the contract agreement dated 22.09.2016, vide which work assignment was allocated to the

petitioner in respect of P/Laying Ready Mix Concrete and Construction of Road Gully Chamber in Streets of Ward No.25. The work assignment was allocated to the petitioner only after finding the petitioner to be the lowest tenderer. The contract agreement has Arbitration Clause No.26, which provides that in case of dispute between the parties, then the Commissioner of Municipal Corporation, Amritsar, shall be the sole Arbitrator to decide that dispute and his decision shall be final and binding on both the parties.

[3]. 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.”

[4]. In case of identical nature between the same parties, this Court in ARB No.63 of 2020 decided on 30.09.2022 has appointed Mr. Sanjeev Kumar Garg, District and Sessions Judge (Retd.) as Arbitrator.

[5]. On facts, learned State counsel could not dispute the existence of dispute between the parties, for which the petitioner has already invoked the arbitration clause.

[6]. The tentative claim of the petitioner is to the tune of

Rs.30 lacs subject to the final adjudication by the Arbitrator on merits.

[7]. In view of aforesaid facts and circumstances of the case, I hereby appoint **Mr. Sanjeev Kumar Garg, District and Sessions Judge (Retd.), House No.518/AS/PCS Society, Mullanpur, New Chandigarh, Mobile No.7626900060** 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.

[8]. 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.

[9]. The venue of the Arbitration shall be disclosed by the Arbitrator as per his/her convenience.

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

Mr. Sanjeev Kumar Garg, District and Sessions Judge (Retd.).

House No.518/AS/PCS Society, Mullanpur, New
Chandigarh,
Mobile No.7626900060.

[11]. Petition stands disposed of accordingly.

14.12.2022

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No