

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

**ARB No.107 of 2019(O&M)
Date of Decision: 12.10.2022**

**M/s Kuldeep Kumar ContractorPetitioner
Vs**

State of Haryana and anotherRespondents

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

Present:Mr. Ashok Gupta, Advocate and
Mr. Eklavya Gupta, Advocate
for the petitioner.

Mr. Minderjeet Yadav, DAG, Haryana
for respondent No.1.

None for respondent No.2.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has preferred this petition under Section 11(5) of the Arbitration and Conciliation Act, 1996 for appointment of an independent Arbitrator to adjudicate the dispute between the parties arising out of completion of work of War Memorial Park at Park Road, Kaithal.

[2]. The petitioner was allocated the aforesaid work on 28.07.2011 with a time limit of six months. The contract agreement was executed on 24.10.2011 between the parties.

Petitioner had already completed the work assignment on 21.03.2013. There is an arbitration Clause 24 in the Agreement.

[3]. The dispute arose between the parties in respect of non-payment of dues of the petitioner. Petitioner has claimed different amounts under claim Nos.1 to 6. Claim No.1 is in respect of due payment of final bill on account of variations and deviations from original scope of work amounting to Rs.35.50 lacs. Claim No.2 is on account of escalation in prices of wages and material in the extended period of 14 months amounting to Rs.38.70 lacs. Claim No.3 is for compensation due to prolongation of contract period amounting to Rs.102.09 lacs. Claim No.4 is in respect of litigation expenses amounting to Rs.3.5 lacs. Claim No.5 is in respect of payment of interest as per provision in the Arbitration and Conciliation Act, 1996 and the same is matter of calculations and claim No.6 is in respect of payment of interest from the date of award till actual date of payment on the awarded amount, which is subject matter of calculations.

[4]. Petitioner has tentatively claimed an amount of Rs.176.29 lacs subject to final adjudication by the Arbitrator. Petitioner has also claimed interest from the date of award till final realisation of the amount @ 18% per annum.

[5]. Notice of motion was issued on 17.05.2019. On 13.12.2019, learned counsel for the respondent No.2 had appeared and sought time to address arguments. The matter ultimately was listed on 23.05.2022 and following order was passed:-

“There is no representation on behalf of respondent No.2 neither has reply been filed.

List for arguments on 22.09.2022.

Reply, if any, be filed well before the adjourned date.

Copy of this order be conveyed to Additional Chief Secretary, Urban Local Bodies Department, Haryana and Executive Officer, Municipal Council, Kaithal.

May 23,2022
s.khan

(LISA GILL)
JUDGE”

[6]. In compliance of the aforesaid order, the order has already been conveyed to the Additional Chief Secretary, Urban Local Bodies Department, Haryana and Executive Officer, Municipal Council, Kaithal. Despite the aforesaid communication, none has appeared on behalf of respondent No.2. The present case was filed in the month of March 2019.

[7]. In view of order dated 19.05.2022 passed in Special Leave Petition (Civil) No.5306 of 2022, the Hon'ble Apex Court has directed that all pending applications under Sections 11(5) and 11(6) of the Arbitration Act or any other application either

for substitution of Arbitrator or change of Arbitrator, which are pending for more than one year from the date of filing, must be decided within six months from 19.05.2022.

[8]. In view of directions issued by the Hon'ble Apex Court, this Court has no alternative, but to accept unrebutted contentions of the learned counsel for the petitioner. Even no reply has been filed on behalf of respondent No.2 till date.

[9]. Having gone through the material on record, I find that the dispute has to be resolved by way of appointment of an independent Arbitrator. Reference can be made to **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.”

[10]. In my considered opinion, the plea of the respondent can very well be considered on merits by the Arbitrator in accordance with law. The authority of the official Arbitrator stands negated in view of ineligibility of such Arbitrator arising out of Section 12(5) of the Amended Act, 2015. Even Managing Director is statutorily ineligible to nominate any person as an Arbitrator in view of ratio of the aforecited case laws.

[11]. In view of consensus arrived at between the parties, I hereby appoint HMJ Rekha Mittal (Retd.), House No.56, Sector-11, Chandigarh, Mobile No.08558809903

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.

[12]. The Arbitrator would 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(s) equally.

[13]. The venue of the Arbitration shall be as convenience of the Arbitrator.

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

HMJ Rekha Mittal (Retd.),

House No.56, Sector-11, Chandigarh

Mobile No.08558809903.

[15]. Petition stands disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

12.10.2022

Prince

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No