

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

227

ARB No. 105 of 2019 (O&M)

Date of Decision:27.10.2022

SANJEEV KUMAR

.....Petitioner

Vs

UNION OF INDIA AND ANR

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Nitin Thatai, Advocate for the petitioner.

Mr.Shobit Phutela, Advocate for respondent .

RAJ MOHAN SINGH, J.(Oral)

The present petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short “the Act”) for appointment of an Arbitrator in terms of Clause 27 of the Agreement dated April, 2018.

The aforesaid agreement was executed for licence to occupy land for the purpose of Comprehensive Parking Contract at Main side, Ludhiana Railway Station for which open tenders were floated by respondent No.2 on 27.12.2017. Vide the aforesaid tender, comprehensive parking for three years was to

be allotted for Railway Station, Ludhiana i.e. for Ludhiana (Main side) and Ludhiana (Civil Lines side). The reserve price for Ludhiana (Main Side) for one year was Rs.66,72,840/- and for three years, it was Rs. 2,00,18,520/-. The designated area was 4745.90 sqm for private vehicles and existing area earmarked (in circulating area) for commercial vehicles. The cost of tender was Rs.10,000/- + 18% GST and earnest money to be deposited was Rs.20,01,852/-. Similarly, the reserve price for Ludhiana (Civil Lines) for one year was Rs.20,72,712/- and for three years, it was Rs.62,18,136/- and the designated area was 1516.15 sqm for private vehicles. The cost of tender was Rs.5,000/- + 18% GST and earnest money to be deposited was Rs.6,21,814/-.

The petitioner was successful bidder and was allotted comprehensive parking contract at Railway Station Main for three years on 19.03.2018. The petitioner was allotted comprehensive parking contract at Railway Station Civil Lines side for three years. Petitioner was required to deposit Rs.27,06,000/- towards quarterly licence fee + 18% GST with Station Superintendent, Ludhiana for railway station Main and Rs.9,90,000/- + 18% GST for Railway station Civil Line side. Petitioner completed all the necessary formalities. After execution of the agreement, respondent No.2 was to hand over the work site free from all obstructions. The site was to be handed over to the petitioner within one week from 25.03.2018, but the same was not handed over till 19.06.2018. Due to

unavailability of the work site, the petitioner had suffered financial loss. Petitioner filed numerous representations before respondent No.2 to hand over the work site as per stipulations in the agreement, but of no use.

Learned counsel for the petitioner has relied upon representations dated 21.06.2018, 28.06.2018, 30.06.2018, 02.07.2018, 07.08.2018 and 20.08.2018 in this regard. Petitioner has also invoked arbitration clause for appointment of an arbitrator but the same has not been replied by the respondents. Rather respondent No.2 has terminated the comprehensive parking contract in question on 10.09.2018 on the ground that since licence fee of second quarter was not deposited by the petitioner, therefore competent authority had decided to terminate the contract with forfeiture of security amount and performance guarantee. Petitioner ultimately sent notice dated 15.01.2019 to respondent No.2 for appointment of an arbitrator. Petitioner had already deposited a sum of Rs.1.03 crore with respondent No.2 and the said amount has not been refunded to the petitioner alongwith interest.

Notice of motion was issued on 17.05.2019. As per reply filed by the respondents, two objections have been taken i.e. firstly in view of Clause 27.1 (c) of the contract agreement, the demand for arbitration should specify the matters, which are in question or subject of the dispute or difference as also the amount of claim item wise, if any. Only such dispute or

difference in respect of which the demand has been made, together which counter claim or set off given by the Railway shall be referred to arbitration.

Perusal of the aforesaid clause would show that the word “or” is appearing in all the aforesaid options. Petitioner with reference to the notice of invocation dated 15.01.2019 had elaborated 'the subject of the dispute' to which no reply was filed by the respondents. Recital of 'subject of dispute' in the notice of invocation would suffice to serve the requirement of Clause 27.1 (c) of the contract agreement, which would be ultimately treated to be an arbitration clause.

The second objection in the written statement is in respect of waiver of Clause 12 (5) of the Act. Annexure R-1 has been attached alongwith the reply. Perusal of vernacular proforma of the aforesaid document would indicate that all the necessary columns are blank with the alleged signature of the tenderer at the tale of the paper. This document is neither signed by the respondent authority nor was filled with reference to any details of the petitioner except the alleged short signatures appearing across the first three lines, which would remain debatable.

Learned counsel for the respondent has orally submitted that in terms of Clause 15 of the agreement, Railway Administration, if so required can terminate the contract *suo moto* with one month's notice to the licensee. No such ground

has been taken in the reply. The reply filed by the respondent is conspicuously silent with regard to the requirement arising out of the aforesaid clause of termination.

Having considered the pleadings of the parties, I find that a bona fide dispute exists between the parties and the matter has to be referred to the sole arbitrator for adjudication.

The tentative value of the claim is Rs.1.03 crore plus interest till date and compensation (if any).

In view of aforesaid, I hereby appoint Hon'ble Mr. Justice Rameshwar Singh Malik (Retd.), House No. 280, Advocates Society, Sector 49-A Chandigarh (Mobile: 7837049206) 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.

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 equally shared by the parties.

The venue of the Arbitration proceedings shall be at Ludhiana, however, the same shall be as per convenience of the Arbitrator.

A copy of this order be dispatched to the Arbitrator at the following address:-

Mr.Justice Rameshwar Singh Malik (Retd.), House
No. 280, Advocates Society, Sector 49-A Chandigarh
(Mobile: 7837049206)

(RAJ MOHAN SINGH)
JUDGE

27.10.2022

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whether speaking/non speaking yes/no
whether reportable/non reportable yes/no