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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. ARB No.123 of 2020 (O&M)
Date of Decision: 01.09.2022

SWAMIJI CO OPERATIVE L AND C SOCIETY LTD

.....Petitioner

Vs

STATE OF HARYANA AND OTHERS

.....Respondents

2. ARB No.124 of 2020 (O&M)

SWAMIJI CO OPERATIVE L AND C SOCIETY LTD

.....Petitioner

Vs

STATE OF HARYANA AND OTHERS

.....Respondents

3. ARB No.125 of 2020 (O&M)

SWAMIJI CO OPERATIVE L AND C SOCIETY LTD

.....Petitioner

Vs

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Saurabh Garg, Advocate
for the petitioner.

Mr. Sharan Sethi, Addl. A.G., Haryana.

RAJ MOHAN SINGH, J.(Oral)

[1]. Vide this common order, ARB No.123, 124 and 125 of 2020 (O&M) are being decided as the issue involved in all the cases is the same.

[2]. Petitioner(s) has preferred these petitions under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') for the appointment of an independent sole Arbitrator.

[3]. The claim is with regard to the excavation of fish ponds in three villages namely village Khungai in District Jhajjar, village Sainthali and Bikhewala both in District Jind. Petitioner was allotted work contract of excavation of fish ponds in all the aforesaid villages on 25.07.2017 by respondent No.2. The work was completed by the petitioner within the specified time. The contract agreement has an arbitration clause No.25-A. Relevant part of the said clause reads as under:-

“Clause 25(A). (1). If any dispute or difference or any kind whatsoever shall arise between the Governor of Haryana/his authorised agents and the contractor in connection with or arising out of the contract or the execution of the work that is (i) whether before is commencement or during the work of after its completion (ii) and whether before or after the termination abandonment or branch of the contract, it shall, in the first instance be referred to for being settled by the Department of the work at the time and he shall within period of 60 days after being, requesting in writing by the

contractor to do so convey his decision to the contractor and subject to arbitration as herein after provided, such decision in respect of every matter so referred, shall be final and binding upon the contractor in case the work is already in progress, the contractor will proceed the execution of the work on the receipt of decision by the Department as aforesaid with the due diligence whether be or of Governor of Haryana/his authorised agent requires arbitrator as hereinafter provided or not if the Department of the work has conveyed his decision to the contractor and no claim to arbitration has been filed with him by the contractor within a period of sixty days from the receipt of letter communicating the decision the said decision shall be final and binding upon the contractor and will not be subject mater of arbitration at all. If the in charge of the work fails to convey his decision within a period of sixty days after being requested as aforesaid the contractor may within further sixty days of the expiry of the first sixty days from the date on which request has been made to the D.F. Haryana request the D.F. Haryana that the matters in dispute be referred to arbitration has hereinafter provided.

2. *All disputes of differences in respect of which the decision is not final and conclusive shall at the request in writing of either party made in communication sent through registered A.D. Post be referred to the sole arbitration of any serving D.F. Haryana at the relevant time it will be no objection to any such appointment that the arbitration of appointed is a Govt. servant or that he had to deal with the matter to which the contract relates and that in the course of his duties as a Government servant he had expressed his view on all or any of matters in dispute. The arbitrator to whom the matter*

originally referred being transferred or vacating his office his successor-in-office as such shall be entitled to proceed with the reference from the stage it which it was left by his procedure.

In case the arbitration nominated by the D.F. Haryana is unable or unwilling to act as such for any reason whatsoever the department shall be competent to appoint and nominee and other Assistant Engineer, as the case may be an arbitrator in his place and the arbitrator so appointed shall be entitled to proceed with the reference.”

[4]. Learned counsel for the petitioner submits that after completion of works even final bills have been prepared in all the three work assignments, but payments have not been released to the petitioner despite repeated demands. Ultimately the petitioner has invoked the arbitration clause No.25-A of the conditions of contract in all the three cases for referring the dispute to sole Arbitrator. In view of amended provision of Act No.3 of 2016, independent sole Arbitrator has to be appointed.

[5]. As per stand taken by the respondent-State, preparation of final bill is the result of forgery at the instance of some government employee and the petitioner had not performed any work in terms of clause 25-A of the conditions of contract.

[6]. In view of assertion and denial made by the parties, I find that triable and arbitral issues are involved for which the

matter is required to be referred to the sole independent Arbitrator, who will decide the claims of the petitioner in accordance with law. The Arbitrator would go into all the legal pleas raised by the parties. The contentions of the parties are specifically kept open for consideration of the Arbitrator. It is open to the respondents to file any counter claim, if so, advised before the Arbitrator within such time as may be allowed by the sole Arbitrator.

[7]. In view of existence of contract agreement having arbitration clause, I deem it appropriate to appoint Sh. I.S. Saggu, Advocate # 141, Advocates Enclave, Sector 49-A, Chandigarh, Mobile No.9814105626, issaggu49@gmail.com. as the sole Arbitrator in all the three cases, 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 shall complete the proceedings within specified time in terms of Section 29-A of the said Act. The Arbitrator shall be paid fee in accordance with the 4th Schedule of the Act as amended from time to time. The fee shall be borne by parties in equal proportion.

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

Sh. I.S. Saggu, Advocate
141, Advocates Enclave,
Sector 49-A, Chandigarh,
Mobile No.9814105626, issaggu49@gmail.com.

[10]. All the petitions stand disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

September 01, 2022

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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No