

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

Reserved on 21.10.2022

ARB No.159 of 2019(O&M)
Date of Decision: 28.10.2022

M/s S.R. Engineering Construction

-Petitioner

Versus

Union of India and another

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Petitioner/Ghanshyam Dass Dhiman-in-person.

Mr. Arun Gossain, Sr. Panel Counsel
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this petition under Section 8(2) and 20 of the Arbitration and Conciliation Act, 1940 due to failure of appointing authority in the contract to appoint an Arbitrator.

[2]. Vide order dated 12.04.2019 passed in CR No.164 of

2017, order dated 24.03.2015 passed by the Additional District Judge, Chandigarh, dismissing the objections and order dated 05.05.2016, dismissing the review petition were set aside. This Court while parting with the order had observed that the present proceedings would be governed by 1940 Act and it was held that even though, the petitioner had not challenged the award under Section 14 of 1940 Act, the objections under Section 47 of CPC were maintainable. Petition was allowed thereby setting aside the orders dated 24.03.2015 and 05.05.2016 passed by the Additional District Judge, Chandigarh. The award passed by the Arbitrator was declared as null and void. It was also observed that it would be open to the competent authority to refer the matters in dispute along with counter claim of the petitioner for arbitration as per the conditions of the contract.

[3]. Thereafter, the petitioner issued a letter dated 27.04.2019 to respondent No.2 for appointment of an Arbitrator for adjudication of the dispute including the counter claim as per conditions of contract as per arbitration agreement between the parties. All disputes between the parties to the contract (other than those for which the decision of CWE or any other person is by the contract expressed to be final and binding) shall, after written notice by either party to the contract, be referred to the sole arbitration of an Engineer Officer to be appointed by the

authority mentioned in the tender documents.

[4]. Petitioner/Ghanshyam Dass Dhiman-in-person submitted that in view of Section 31(4) of the Arbitration Act, 1940, the Court which has annulled the award, shall have the control over the proceedings and shall appoint a fresh Arbitrator to adjudicate upon the dispute in view of ratio laid down in **Gurcharan Singh and others Vs. Raghbir Cycles (P) Ltd. and another, 2006(52) RCR (Civil) 878.**

[5]. Notice of motion was issued on 31.05.2019. The respondents have taken following stand in para No.2 of the reply:-

“2. That the contents of Para No. 2 are wrong and hence denied. As submitted above, petitioner has willfully served notice to Chief Enigneer (AF) WAC Palam whereas he was required to give notice to Chief Engineer (AF) Nagpur Zone. Petitioner was well aware of the fact that the subject Contract has been transferred to Chief Engineer (AF) Nagpur Zone due to reorganization of Air Force and subsequently by MES. Therefore the action could not be taken immediately and the petitioner got the chance to blame the respondent for inaction. Had he reported the matter to the right office, the Arbitrator would have been appointed. However, it is submitted that respondent Union of India may please be given a chance to appoint the Arbitrator in terms of Contract provisions as is also stated in the order passed by

the Punjab and Haryana High Court Chandigarh vide its order dated 12 Apr 2019 which is reproduced as under:-

"The award passed by the Arbitrator is declared to be null and void. It would be open to the competent authority to refer the matters in dispute along with the counter claims of the petitioner for arbitration as per the conditions of the contract."

Since the contract contain Arbitration clause which states as under:-

"To execute all the work referred to in the said documents upon the terms and conditions contained or referred to herein and as detailed in General Summary and to carry out such deviations as may be ordered vide condition 7 of IAFW-2249 up to a maximum of Ten percent and further agree to refer all disputes, as required by condition 70 of IAFW-2249 to the sole arbitration of an Engineer Officer to be appointed by Engineer-in-Chief or in his absence the officer officiating as Engineer-in-Chief or Director General of Works if specifically authorized in writing by Engineer-in-Chief, Army Headquarters, New Delhi whose decision shall be final, conclusive and binding."

The department has no objection if Arbitrator is appointed from the MES panel of Arbitrators. Following Officers from panel of MES Arbitrators may be appointed:

(a) Shri SS Bansal, ADG (C), Standing Panel of Arbitrator, Pune.

(b) Shri Baljit Singh, ADG(C), Standing Panel of Arbitrator, Chandigarh.

(c) Shri Vinay Kulkarni, IDSE, CE, Standing Panel of Arbitrator, Lucknow.”

[6]. Perusal of the aforesaid para would show that the respondents have initially objected to the pleadings on the ground that a notice was required to be given to the Chief Engineer (AF) Nagpur Zone, whereas it was wrongly given to Chief Engineer (AF) WAC Palam. In view of above, the action could not be taken immediately and the petitioner had no right to blame to the respondents for inaction. Had the petitioner reported the matter to right officer, the Arbitrator would have been appointed. Respondents have also pleaded that a chance be given to the respondent-Union of India to appoint the Arbitrator in terms of the contract provisions as well as in compliance of order dated 12.04.2019.

[7]. In the aforesaid background, the respondents have pleaded no objection if an Arbitrator is appointed from MES panel of Arbitrators. The respondents have given the names of the arbitrators.

[8]. The arguments raised by the learned counsel for the respondents at the bar and the stand taken in written statement are vertically opposite. The arguments raised by the learned counsel for the respondents before this Court are that no

Arbitrator could be appointed by this Court as the petitioner had to approach the concerned Court under Section 8 of the Act, whereas in the stand taken in the written statement is to the effect that the respondents have no objection in case, one of the panelist arbitrators is appointed.

[9]. Having considered the submissions, I find that an independent Arbitrator has to be appointed in view of directions issued by this Court vide order dated 12.04.2017 passed in CR No.164 of 2017. The petitioner has already requested respondent No.2 vide notice dated 27.04.2019. Even as per the reply filed by the respondents, the respondents have no objection to the appointment of Arbitrator, but the Arbitrator must be appointed from MES panel of Arbitrators.

[10]. In view of facts and circumstances of the case, it would be just and appropriate not to appoint any Arbitrator from MES panel of Arbitrators, rather it would be appropriate to appoint an independent Arbitrator, who can adjudicate the dispute between the parties.

[11]. For the reasons recorded hereinabove, this petition is allowed and Ms. Rupinder Kaur Thind, Advocate, House No.333/334, Advocates Enclave, Sector-49-A, Chandigarh, Mobile No.9988820504 is appointed 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 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.

[13]. The venue of the Arbitration shall be the place to be disclosed by the Arbitrator according to his convenience.

[14]. A copy of this order be dispatched to Ms. Rupinder Kaur Thind, Advocate, at the following address:-

House No.333/334, Advocates Enclave, Sector-49-A,
Chandigarh,
Mobile No.9988820504.

28.10.2022
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No