

225

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

**ARB No.573 of 2021 (O&M)
Date of Decision: 19.12.2022**

M/S DALJIT SINGH AND BROS

.....Petitioner

Vs

STATE OF PUNJAB AND ORS

.....Respondents

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

Present:Mr. Balbir Singh Jaswal, Advocate
for the petitioner.

Mr. R.S. Pandher, Sr. D.A.G., Punjab.

RAJ MOHAN SINGH, J.(Oral)

The petitioner has preferred this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') for appointment of an Arbitrator to adjudicate the dispute between the parties arising out of the contract agreement letter No.55 of 1993-94 under the relevant provision of General Condition of Contract between the parties having arbitration clause No.25 of the contract agreement.

Learned counsel for the petitioner submits that the petitioner is a contractor engaged in construction of various national and State highways including bridges. The respondent-

State of Punjab floated tender for the work of construction of bridges to High Level Bridge over river Beas towards Sri Hargobindpur side on certain terms and conditions. The petitioner was allotted the work assignment being the lowest tenderer on 27.04.1993 and accordingly an agreement was executed.

The petitioner was able to complete the project in all respects according to specifications and to the satisfaction of the authority within the time stipulated despite various bottlenecks and hurdles in the execution of work. After inspection of the completed work only part payment of bills was released in favour of the petitioner and dispute arose between the parties. The petitioner was compelled to file arbitration application before the Superintending Engineer, Central Works, B&R, Amritsar. A designated Arbitrator was appointed and he proceeded with the arbitral proceedings after entering upon the reference.

Due to pathetic conduct of the Arbitrator, the petitioner wrote a letter dated 19.06.2007 to the Arbitrator-cum-Superintending Engineer, Central Works Circle, PWD B&R Branch, Amritsar to adjudicate the claim with respect of work of construction of approaches to the High Level Bridge over River Beas towards Sri Hargobindpur side and start arbitration proceedings and fix early dates so as to avoid undue sufferance

to the petitioner. The petitioner again issued a letter to the Arbitrator on 03.03.2010. In the said context, on 19.04.2010, the Arbitrator wrote a letter to the Executive Engineer, Central Works Division, Hoshiarpur and the petitioner fixing 28.04.2010 to be the date for arbitral proceedings.

No proceedings were held on the said date, nor was any further date fixed by the Arbitrator. Thereafter the petitioner again wrote to the Arbitrator on 04.03.2011 requesting him to fix some date for adjudication of the claims of the petitioner. Faced with the pathetic conduct of the Arbitrator, the petitioner served a legal notice upon the Superintending Engineer on 01.12.2012 highlighting the conduct of the Arbitrator and also invoked Section 14 of the Arbitration and Conciliation Act, 1996 for terminating the mandate of the Arbitrator as he had become *de jure* to perform his functions and failed to act without undue delay.

In response to the aforesaid notice, Department replied in the context of delay for deciding the dispute that the same is unexplained and the onus to rectify the mistake on the part of claimant lies with the petitioner and the delay cannot be deflected towards the authority, who is not directly or indirectly concerned in the matter. The Punjab Government has transferred the work from Central Works Division Hoshiarpur to R&B Division (Now Construction Division No.1) Hoshiarpur vide

letter dated 19.05.2000 and the orders are unchanged even till now. Furthermore the work had been got finalized from R&B Division (Now Construction Division NO.1), Hoshiarpur by the agency by receiving full and final payment along with securities from that Division. As such the jurisdiction and the competency to entertain the arbitration claim by the Arbitrator exclusively lies at the end of concerned Superintending Engineer In-charge Construction Circle, Hoshiarpur.

Owing to the inaction by the Department, the petitioner issued a request to the respondents-Department to refer the dispute to some retired District Judge to settle the claim of the petitioner failing which the petitioner shall avail the legal remedy in the competent Court of law. The petitioner again issued a notice dated 12.06.2019 on the same subject followed by one more notice dated 23.11.2019.

According to reply filed by the respondents, the petitioner may approach the Superintending Engineer-cum-Arbitrator, Central Works PWD (B&R) Branch, Amritsar for adjudication of the dispute referred by the petitioner under the relevant clause provided under the agreement.

Evidently, the designated Arbitrator was appointed by the Department. At the relevant time Amritsar circle was the relevant circle and thereafter the circle was transferred to Hoshiarpur and on that ground the Arbitrator stopped working

due to change of the circle.

The petitioner had also issued a notice under Section 14 of the Arbitration and Conciliation Act, 1996 for terminating the mandate of the Arbitrator by appointing/substituting new Arbitrator in his place. In view of **Swadesh Kumar Agarwal vs. Dinesh Kumar Agarwal and others, 2022 SCC OnLine SC 556**, if the mandate of the Arbitrator is sought to be terminated on the ground that the sole Arbitrator has failed to act without undue delay, then the aggrieved party has to approach the concerned Court defined under Section 2(e) of the Arbitration and Conciliation Act, 1996. The Court means the principal civil Court of original jurisdiction in the District having jurisdiction to decide the questions forming subject matter of arbitration if the same had been the subject matter of a suit. The High Court is not the Court of original jurisdiction having jurisdiction to decide the questions forming subject matter of arbitration if the same is in the form of a civil suit.

Evidently, the mandate of the earlier Arbitrator is sought to be terminated on the ground that the sole Arbitrator has failed to act without undue delay. The petitioner if so, advised may approach the concerned Court under Section 2(e) of the Act i.e. the Principal Civil Court in the District having jurisdiction to decide the questions forming subject matter of arbitration if the

same is in the form of a civil suit.

In view of aforesaid precedent, the petitioner may avail its remedy before the competent Court.

Disposed of.

December 19, 2022

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No