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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ARB No.c of 2020 (O&M)
Date of Decision: 21.11.2022

PREM CHAND GOYAL

.....Petitioner

Vs

STATE OF PUNJAB AND OTHERS

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Prince Goyal, Advocate
for the petitioner.

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

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this petition under Section 11 read with Section 12 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') for appointment of an independent Arbitrator to decide the dispute between the parties arising out of agreement dated 30.05.2012.

[2]. Existence of agreement is not in dispute. The aforesaid agreement clause No.25.3(f) reads as under:-

“25.3 (f) Where the value of the contract is Rs.50 millions and below, the disputes or differences arising shall be referred to the Sole Arbitrator. The Sole

Arbitrator should be appointed by agreement between the parties; failing such agreement, by the appointing authority, namely the President of the Institution of Engineers (India)."

[3]. As per bid dated 09.02.2012 for execution of augmentation of water supply scheme for village Jeon Singh Wala, Tehsil Talwandi Sabo, District Bathinda, the assignment was allotted to the petitioner. After completion of the work assignment, a dispute arose between the parties for which the petitioner has invoked the arbitration clause. The petitioner has tentatively valued his claim to the tune of Rs.23 lakhs along with interest till the date of realisation of the amount.

[4]. The Arbitrator was not appointed after notice of invocation within the stipulated period but the respondent of its own appointed one Sh. H.S. Dhaliwal, District Judge (Retd.) as the sole Arbitrator.

[5]. The grievance of the petitioner is that in the facts and circumstances of the case, a technical expert has to be appointed that too by way of agreement between the parties. For the appointment of Sh. H.S. Dhaliwal, District Judge (Retd.), there was no agreement between the parties. In the event of failure to do so by the appointing authority, an expert Arbitrator has to be appointed by this Court while exercising jurisdiction

under Section 11(6) of the Act.

[6]. On 04.12.2020, following order was passed by the Coordinate Bench of this Court:-

“Inter alia contends that as per clause 25.3 (f) conditions of contract (Annexure P-2) that the sole arbitrator could be appointed by agreement between the parties; failing such agreement, by the appointing authority, namely the President of the Institution of Engineers (India). The said clause reads as under:

“25.3(f) Where the value of the contract is Rs.50 millions and below, the disputes or differences arising shall be referred to the Sole Arbitrator. The Sole Arbitrator should be appointed by the agreement between the parties; failing such agreement, by the appointing authority, namely the President of the Institution of Engineers (India).”

It is thus submitted that appointment of Sh. H.S. Dhaliwal, District Judge (Retd.) vide communication dated 19.11.2020 (Annexure P-6) by respondent No.3 is without agreement of the petitioner and in the facts and circumstances is not justified.

Notice of motion.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab, accepts notice on behalf of the State-respondent Nos.1 to 5.

To come up on 03.02.2021, for service of respondent No.6.

In the meantime, the said arbitrator shall restrain

himself from entering into the said proceedings.

(G.S. SANDHAWALIA)
JUDGE

04.12.2020
parveen”

[7]. Evidently, the appointed Arbitrator has not entered upon the reference and thereafter the aforesaid stay was granted by this Court vide order dated 04.12.2020. The existence of dispute between the parties has been acknowledged by the respondents when the respondent proceeded to appoint the Arbitrator of its own.

[8]. In view of facts and circumstances of the case, I deem it appropriate to refer the present case to the President of the Institution of Engineers (India) to appoint an independent 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.

[9]. 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 both the parties equally.

[10]. Venue of the Arbitration shall be the place to be disclosed by the Arbitrator according to his convenience.

[11]. Petition stands disposed of accordingly.

November 21, 2022	(RAJ MOHAN SINGH)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No