

222

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

**ARB No.327 of 2019 (O&M)
Date of Decision: 16.09.2022**

M/s Bansal Construction Co.Petitioner

Vs

State of Haryana and othersRespondents

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

Present:Mr. Nikhil Kumar Vashisht, Advocate
for the petitioner.

Mr. Minderjeet Yadav, DAG, Haryana.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has preferred this petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') for the appointment of an independent sole Arbitrator for adjudicating the dispute between the parties.

[2]. The existence of contract agreement having Arbitration Clause 25-A is not in dispute between the parties. According to the petitioner, work for providing Water Supply Scheme Ambala City Town (under Economic Stimulus Package Phase-IIInd) Construction of 18 MLD Filtration Plant and providing SCADA system, including operation and maintenance and all other

works contingent thereto was allocated to the petitioner on 10.05.2013 with a time limit of 18 months to be reckoned w.e.f 10.06.2013. The expected time for completion of work was 09.12.2014. The time for completion of work was extended by mutual consent till 31.07.2016.

[3]. The respondent has disputed the claim of the petitioner by citing the terms and conditions of the contract agreement i.e. operation and maintenance service. According to the respondent, the work is said to have been completed only if all the defects noticed during the trial running of plant are rectified by the petitioner and only thereafter, operation and maintenance period of work shall start. SCADA system was not in working condition and plant was running 50% below its designed capacity and the same was in contravention to the requirement of the contract agreement. On 23.07.2020, Superintending Engineer, Public Health Engineering Circle, Sonipat was appointed as an Arbitrator to settle the dispute.

[4]. Learned counsel for the petitioner submits that in view of amended Arbitration Act 2015, the official respondent can not be appointed as the sole Arbitrator.

[5]. In para No.12 of the written statement, the respondent-State has shown its no objection in case, an independent Arbitrator is appointed, however, liability of the respondent is

denied altogether.

[6]. Reference can be made to **TRF Limited vs. Energo Engineering Projects Limited, (2017) 8 SCC 377; Bharat Broadband Network Limited vs. United Telecoms Limited, (2019) 5 SCC 755; Perkins Eastman Architects DPC and another vs. HSCC (India) Limited, (2020) 20 SCC 760** and **Ellora Paper Mills Limited vs. State of Madhya Pradesh, (2022) 3 SCC 1.** Para No.54 of **TRF Limited vs. Energo Engineering Projects Limited case (supra)** reads as under:-

“54. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity nor the individual respectability. We are only concerned with the authority or the power of the Managing Director. By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the plinth. Or to put it differently, once the identity of the Managing Director as the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated. Therefore, the view expressed by the High Court is not sustainable and we say so.”

[7]. In my considered opinion, in the event of appointing independent sole Arbitrator, all the pleas available to the petitioner shall be decided in accordance with law. Petitioner has valued its claim tentatively at Rs.1,50,80,059/-. The authority of the official Arbitrator stands negated in view of ineligibility of such Arbitrator arising out of Section 12(5) of the Amended Act, 2015. Even Managing Director is statutorily ineligible to nominate any person as an Arbitrator in view of ratio of the aforesaid cited case laws.

[8]. Keeping in view the facts and circumstances of the case, I hereby appoint HMJ Surinder Gupta (Retd.), # 542, The Foothills Cooperative Residential Society (IAS/PCS Society), New Chandigarh, Mullanpur, Mobile Nos.9646356001, 9417312323 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.

[9]. The Arbitrator is requested to 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 the petitioner and respondents in equal proportion.

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

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

HMJ Surinder Gupta (Retd.),
542, The Foothills Cooperative Residential Society
(IAS/PCS Society), New Chandigarh, Mullanpur,
Mobile Nos.9646356001, 9417312323.

[12]. Petition stands disposed of accordingly.

16.09.2022

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No