

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

Arbitration Case No.37-2018 (O&M)

Date of decision:- 20.01.2023

M/s Shri Durga Publicity Service

...Applicant(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE

Present:- Mr. Amit Jain, Senior Advocate,
with Mr. Chetan Slathia, Advocate, for the applicant.

Mr. K.S. Kang, Senior Deputy Advocate General, Punjab.

Mr. Ashok Kumar Bazaz, Advocate, for respondents No. 2 & 3.

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RAVI SHANKER JHA, CHIEF JUSTICE (Oral)

This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 seeking a direction to the respondent-authorities to decide the dispute raised by the applicant.

Learned senior counsel for the applicant submits that it had initially filed a writ petition being CWP-14341-2011 on account of a dispute having arisen between the parties in respect of the contract entered into between them on 17.07.2006. It is stated that in terms of the contract, the respondent-authorities had passed an order dated 20.07.2011. This Court vide an order dated 19.08.2011 passed in CWP-14341-2011 had initially stayed the operation of the order of termination and later on by a final order dated 03.10.2017 disposed of the writ petition by permitting the applicant to continue to operate the contract till its expiry i.e. 17.10.2017 granting liberty to seek the remedy of claiming damages or invoke the arbitration clause as contained in the agreement. He further submits that pursuant thereto, the applicant issued a legal notice to the respondent-authorities invoking arbitration on 02.11.2017 and

while doing so it had also objected to the appointment of the arbitrator. The respondent-authorities had not given an opportunity to the applicant and passed an order on its representation without actually deciding the dispute. He further submits that in such circumstances, the respondent-authorities be directed to decide the dispute raised by the applicant arising out of the contract including the issue regarding its objection to the competence of the Commissioner, Municipal Corporation, Jalandhar to decide the same.

Learned counsel for respondents No. 2 and 3, per-contra, submits that in this case the contract entered into between the parties was of the year 2006 and the dispute resolution clause providing the Commissioner, Municipal Corporation, Jalandhar as the sole arbitrator was there and, thus, the same was prior to the amendment brought about in the Act on 23.10.2015. He further submits that the applicant on his request was permitted to invoke this clause by this Court in the writ petition filed in the year 2011 while finally disposing of the same on 03.10.2017 and at that point of time he did not object to the arbitrator. He, therefore, submits that the issue relating to the competence or otherwise of the Commissioner, Municipal Corporation, Jalandhar cannot now be raised and therefore, the application be dismissed as the petitioner has not pressed his dispute on merits which is even otherwise barred by limitation at this stage.

I have heard learned counsel for the parties.

It is observed that the applicant had filed CWP-14341-2011 in respect of the dispute that had arisen between it and the respondents and got it disposed of with liberty to either invoke the remedy available to it under common law or invoke the arbitration clause. In the year 2017, admittedly, the amendment in the Act had already come into existence and was in force. The applicant at that point of time did not raise any objection as to the competence of the Commissioner, Municipal Corporation, Jalandhar to decide its claim. On the contrary, the applicant had sought invocation of the said clause for

adjudication of the dispute by the Commissioner, Municipal Corporation, Jalandhar. In the circumstances, as the applicant has already invoked the arbitration clause by issuing the legal notice pursuant to the order passed by this Court after having accepted the terms of the contract and without assailing the provision for adjudication of the dispute by the Commissioner, Municipal Corporation, Jalandhar while getting the writ petition disposed of in the year 2017, therefore, in such circumstances he cannot now be permitted to turn around and assail the competence of Commissioner, Municipal Corporation, Jalandhar as the arbitrator. Learned counsel for respondents No. 2 and 3 has also placed before this Court an order dated 24.08.2018 passed in ARB-237-2018 titled as *M/s Technofab Equipment Industries Vs Union of India and others* wherein a similar view has been taken in identical circumstances.

Having heard learned counsel for the parties and looking to the fact that the legal notice invoking arbitration was issued by the applicant pursuant to the liberty obtained and granted by this Court, the application deserves to be disposed of directing the respondent-authorities i.e. the Commissioner, Municipal Corporation, Jalandhar, to consider and take a decision on the dispute raised by the applicant pursuant to the legal notice.

Without expressing any opinion on the merits of the dispute and taking the statement of learned counsel for respondents No. 2 and 3 on record that the dispute raised by the applicant would be considered and decided by the Commissioner, Municipal Corporation, Jalandhar, including the issue of maintainability, the application filed by the applicant stands disposed of with the aforesaid finding and observations.

(RAVI SHANKER JHA)
CHIEF JUSTICE

20.01.2023
Amodh Sharma

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