

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

ARB-132-2019 (O&M)
Date of Decision:- 11.9.2023

M/s Daljit Singh & Brothers Contractor ... Petitioner
Versus
Chief Engineer, Punjab and Another ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Dheeraj Mahajan, Advocate for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

GURVINDER SINGH GILL, J.

1. The petitioner M/s Daljit Singh & Brothers Contractor has approached this Court seeking appointment of an Arbitrator in terms of provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short hereinafter referred to as 'the Act').
2. Admittedly, the petitioner had entered into a contract with respondents for '*Special Repair to Amritsar Bhikhiwind-Khem Karan Road*' on 1.9.2006. Although, the petitioner had executed the work pertaining to construction of road but the high level bridges which were also part of the contract had not been constructed. The respondents accordingly closed the work and imposed penalty of Rs. 9.76 lacs vide letter dated 30.6.2008. The petitioner filed an appeal to the Superintending Engineer against imposition of aforesaid penalty, which was reduced from Rs. 9.76 lacs to Rs. 2,500/-.

3. It was subsequently on 27.10.2018 that the petitioner submitted a representation to the Engineering-in-Chief submitting his claims in support of the work done by him (Annexure P-3), which is as per terms of the contract was to be decided within a period of 60 days but the same was not decided. Consequently, the petitioner served a legal notice dated 31.1.2019 (Annexure P-2) invoking arbitration but the same was not responded to leading to filing of the instant petition wherein notice of motion was issued on 10.5.2019.
4. Respondent – State is contesting the petition and has filed reply wherein an objection regarding limitation has been raised on the premises that the work having been closed on 30.6.2008 on account of incomplete construction and the respondents' department already having paid an amount of Rs. 3,87,17,595/-, being the final amount upto 31.3.2008 out of the total contract/allotment amount of Rs.4,88,21,080/-, the cause of action, if any, as alleged by the petitioner arose in 2008 for the alleged deficiency in payment whereas it is only in the year 2019 (Annexure P-2) that a legal notice has been served by the petitioner i.e. after a period of about 10 years, which is hopelessly barred by limitation even if the limitation is taken to be 3 years, though, as per the Contract it was only within a period of 6 months that the petitioner could have moved for arbitration.
5. The learned counsel for the petitioner, on the other hand, has first of all submitted that the limitation of six months as prescribed in the contract, is against the settled position of law as has been authoritatively held by Hon'ble Supreme Court in 2021(2) RCR (Civil) 337 Bharat Sanchar Nigam Ltd. & Anr. Versus M/s Nortel Networks India Pvt. Ltd. It has further been submitted that in case any provision incorporated in the terms and conditions of the contract, which is contrary to Section 28 of the Contract Act, as in the present

case where the arbitration clause tends to restrain the right of the petitioner to avail of arbitration within a period of six months only instead of three years, is bad in law. The learned counsel in order to hammer forth his aforesaid submission places reliance upon a judgment of this Court rendered in 2011(3) RCR (Civil) 36 Sunil Goyal versus Haryana State Agriculture Marketing Board & Others and also a judgment of Hon'ble Supreme Court rendered in 2018(14) SCC 265 Grasim Industries Ltd. Versus State of Kerala.

6. The learned counsel for the petitioner next submitted that although the instant petition has been filed after about 10 years from the day when partial payment of Rs. 3,87,17,595/- was made but it was on account of the fact that the respondent department itself had raised an issue pertaining to payment in the present case during the course of proceedings arising out of another contract between the parties, that the matter has virtually been re-opened.
7. On the other hand, the learned State counsel, while opposing the petition submitted that the instant petition is hopelessly time barred inasmuch as the dispute in question arises out of a contract for repair of a road which had been awarded to the petitioner on 1.9.2006 and which was closed on 30.6.2008 by the respondents as the petitioner had not executed the work and a penalty of Rs.9.76 lacs had been imposed, which, upon an appeal having been filed by the petitioner to the Superintending Engineer was reduced from Rs. 9.76 lacs to Rs. 2,500/- and that the accounts stood closed in the year 2008 itself and in case the petitioner was aggrieved on account of any deficient payment or any outstanding dues, it was within 3 years from 2008 that he could have raised any issue about the same but the petitioner having raised the issue in the year 2019, the same is barred by limitation.

8. This Court has considered rival submissions addressed before this Court.
9. It is not in dispute that the accounts in respect of the contract for repair of road stood closed in the year 2008 and the payment of Rs. 3,87,17,595/- had also been made in the year 2008 itself. There is nothing on record to show that the petitioner had ever raised any issue in respect of the said payment or had ever issued any notice for invoking arbitration during the next three years. While it is correct that the limitation for filing an application under Section 11 of the Act would begin to run from the date when there is failure to appoint Arbitrator but that would not mean that merely issuance of a notice for invoking arbitration in stale claims would make the limitation start afresh. Hon'ble Apex Court in 2021(2) RCR (Civil) 337 Bharat Sanchar Nigam Ltd. & Anr. Versus M/s Nortel Networks India Pvt. Ltd. was seized of a similar matter. Para 38 wherein the facts are noticed is reproduced herein-under :-

“38. Applying the law to the facts of the present case, it is clear that this is a case where the claims are ex facie time barred by over 5 ½ years, since Nortel did not take any action whatsoever after the rejection of its claim by BSNL on 04.08.2014. The notice of arbitration was invoked on 29.04.2020. There is not even an averment either in the notice of arbitration, or the petition filed under Section 11, or before this Court, of any intervening facts which may have occurred, which would extend the period of limitation falling within Sections 5 to 20 of the Limitation Act. Unless, there is a pleaded case specifically adverting to the applicable Section, and how it extends the limitation from the date on which the cause of action originally arose, there can be no basis to save the time of limitation.”

10. Hon'ble the Apex Court, thereafter, held as under :-

“39. The present case is a case of deadwood/no subsisting dispute since the cause of action arose on 04.08.2014, when the claims made by Nortel were rejected by BSNL. The Respondent has not stated any event which would extend the period of limitation, which commenced as per

Article 55 of the Schedule of the Limitation Act (which provides the limitation for cases pertaining to breach of contract) immediately after the rejection of the Final Bill by making deductions.

In the notice invoking arbitration dated 29.04.2020, it has been averred that:

“Various communications have been exchanged between the Petitioner and the Respondents ever since and a dispute has arisen between the Petitioner and the Respondents, regarding non payment of the amounts due under the Tender Document.”

The period of limitation for issuing notice of arbitration would not get extended by mere exchange of letters, or mere settlement discussions, where a final bill is rejected by making deductions or otherwise. Sections 5 to 20 of the Limitation Act do not exclude the time taken on account of settlement discussions. Section 9 of the Limitation Act makes it clear that : “where once the time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it.” There must be a clear notice invoking arbitration setting out the “particular dispute” (including claims / amounts) which must be received by the other party within a period of 3 years from the rejection of a final bill, failing which, the time bar would prevail.

In the present case, the notice invoking arbitration was issued 5 ½ years after rejection of the claims on 04.08.2014. Consequently, the notice invoking arbitration is ex facie time barred, and the disputes between the parties cannot be referred to arbitration in the facts of this case.”

11. The broad principles laid in the above cited judgment are as under :-

- (i) The period of limitation for filing an application under Section 11 would be governed by Article 137 of the First Schedule of the Limitation Act, 1963. The period of limitation will begin to run from the date when there is failure to appoint the arbitrator; It has been suggested that the Parliament may consider amending Section 11 of the 1996 Act to provide a period of limitation for filing an application

under this provision, which is in consonance with the object of expeditious disposal of arbitration proceedings;

(ii) In rare and exceptional cases, where the claims are ex facie timebarred, and it is manifest that there is no subsisting dispute, the Court may refuse to make the reference.”

12. The law settled in the aforesaid judgment leaves no manner of doubt that mere issuance of notice or any correspondence would not revive a claim, which is otherwise hopelessly time barred. In the present case, there is a delay of about a decade on part of the petitioner in invoking arbitration. There is no reason justifying the said delay. Though, normally in case of a question which is disputed which has some chequered or disputed facts, this Court would leave it to the Arbitrator to decide on issue of limitation but the present case is a case of undisputed facts where admittedly the accounts were closed in the year 2008 and no steps thereafter were taken by the petitioner for a decade and as such, the instant case would fall in one of those rare and exceptional cases justifying dismissal at the very outset.
13. Under these circumstances, the petition being hopelessly time barred, is dismissed.

11.9.2023

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**(GURVINDER SINGH GILL)
JUDGE**

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No