

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

(233)

**2023:PHHC:121375
ARB-217-2020(O&M)
Date of Decision: 14.09.2023**

M/s Ashok Kumar

--Petitioner

Versus

State of Punjab & others

--Respondents

CORAM:- HON'BLE MR. JUSTICE VIKAS BAHL.

Present:- Mr. Arun Bansal, Advocate for petitioner.

Mr. Vishnav Gandhi, DAG, Punjab.

VIKAS BAHL.J (Oral)

1. This is a petition filed under Section 11 of Arbitration and Conciliation Act, 1996 for the appointment of an Arbitrator in respect of Contract Identification Number i.e. Package Number PRWSS-W-DIV50-4629-1 for allocation of work under scheme of providing safe drinking water supply scheme for Village Katorewala, Block Malout, District Sri Muktsar Sahib.

2. On 17.8.2023, this Court was pleased to pass the following order:-

“Learned counsel for the petitioner has referred to paragraph 8 of the present petition to highlight the fact that in the agreement in question, there is a typographical error and has submitted that in all the similar agreements, as per clause 4 sub clause (f), the value has been stated to be Rs.5 crores whereas due to typographical error, the value in the present agreement has been stated to be Rs.50 lacs. It is further submitted that in all cases of similar nature where the value of contract is less than Rs.5 crores, sole arbitrator has been appointed. Further reference has been made to the order passed by a coordinate Bench of this Court dated 12.11.2020

in ARB No.113 of 2020 titled as “M/s Hardev Singh & Co. vs. State of Punjab and others” in which a similar typographical error was there in the agreement and in the said case, affidavit dated 10.11.2020 was filed by Sh.Jaswinder Singh, Executive Engineer, Water Supply and Sanitation Department, Division no.1, Sri Muktsar Sahib-respondent no.4 and after considering the said affidavit, the matter was referred to the sole arbitrator. The order passed in the said case is reproduced hereinbelow:-

“This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19. Present is a petition under Section 11 of the Arbitration & Conciliation Act, 1996, for appointment of an Arbitrator. Admittedly, an agreement was executed between the petitioner and the respondents. A dispute has concededly arisen between the parties. It is averred in the petition and specifically argued on the last date of hearing, that in all similar contracts where value of the contract is below Rs.5 Crores, it was agreed that all disputes and differences arising therefrom, are to be referred to the Sole Arbitrator. However, due to a typographical error in the agreement it is mentioned that the dispute would be settled by an Arbitral Tribunal consisting of three (03) Arbitrators.

Learned counsel for the respondent-State, was directed to seek specific instructions in this regard.

Short reply by way of affidavit dated 10.11.2020 of Sh. Jaswinder Singh, Executive Engineer, Water Supply and Sanitation Department, Division No. 1, Sri Muktsar Sahib-respondent no.4, on behalf of respondents no.1 to 4, has been filed by the respondent-State.

Learned counsel for the respondent-State, on instructions, specifically states that in all similar contractual matters where the value of the contract is below Rs.5 Crores, disputes and differences have been referred to the Sole Arbitrator. In similar petitions, the matters stand referred to

the President of the Institution of Engineers (India). There is no objection, in case, Sole Arbitrator, is appointed in the present case, as well. As per affidavit dated 10.11.2020, it is specifically stated that there is no objection for the appointment of the Sole Arbitrator in this case.

Keeping in view the facts and circumstances of the case as well as the specific stand of the parties, this petition is disposed of, by referring the disputes and differences to the sole arbitration of the President of the Institution of Engineers (India).”

Reliance has also been placed on the order dated 09.02.2022 passed in ARB-616-2021 titled as “Hardev Singh and Co. vs. State of Punjab and others”.

A copy of both the orders have been supplied to the learned State counsel.

Learned State counsel prays for an adjournment to file an affidavit in response to paragraph 8 of the petition and also in light of the orders passed by a coordinate Bench of this Court dated 12.11.2020 in ARB No.113 of 2020 and dated 09.02.2022 passed in ARB-616-2021.

The affidavit be filed on or before the next date of hearing with an advance copy to learned counsel for the petitioner.

Adjourned to 04.09.2023.

To be taken up at 12:00 noon.

A photocopy of this order be placed on the file of connected case.”

3. In pursuance of the aforesaid order, affidavit of Executive Engineer, Water Supply and Sanitation Department, Malout, respondent no.3 on behalf of respondents no.1 to 4 has been filed and paragraphs number 4 and 5 of the same are reproduced as under:-

“4. Thus it is clear that value of the agreement in present contract for appointment of sole Arbitrator is mentioned as Rs.50 lacs and below in the present agreement.

The applicant is seeking for appointment of Sole Arbitrator by stating in paragraph 8 of the petition that due to typographical mistake with regard to value of agreement in Clause 4(f) of Special Conditions of Contract, the value is mentioned as Rs.50 lacs instead of 50 millions. The version of the petitioner is correct to the effect that in the Standard Form of the Agreement, the value for the appointment of Sole Arbitrator is mentioned as Rs.50 Million or below and the value for appointment of Sole Arbitrator is typographically mentioned as 50 lacs in present contract.

5. *That the other clarification sought by this Hon'ble High Court from Deponent in light of orders passed by Coordinate Bench of this Hon'ble Court dated 12.11.2020 in ARB No.113 of 2020 and dated 09.02.2022 passed in ARB-616-2021, it is submitted that the respondent submitted affidavit in both cases admitting the error and for reference of matter to Institution of Engineers in similar cases, as the Department accepted the error and proceeded to accept appointment of Sole Arbitrator in view of Standard Form Contract.”*

4. A perusal of the above affidavit would show that it has been stated in the same that the version of the petitioner to the effect that the contract value is Rs.5 crores (50 millions) and there is a typographical error in the contract, has been stated to be correct along with the fact that in similar cases the order, as reproduced in the order dated 17.8.2023, has been passed and accepted by the authorities.

5. Keeping in view the above said facts and circumstances as also the observations made in the order dated 17.8.2023 and the stand taken by the respondents in paragraphs no.4 and 5 of the aforesaid affidavit and also keeping in view the order passed by a Coordinate Bench of this Court in ARB-113-2020 titled as Hardeep Singh and others Vs. State of Punjab and

others, the petition is disposed of by referring the disputes and reference to the Sole Arbitrator of the Institution of Engineers.

(VIKAS BAHL)
JUDGE

14.09.2023

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No