

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

Date of Decision: 20th March, 2023

1. FAO-6164-2019 (O&M)
2. FAO-6282-2019 (O&M)
3. FAO-6283-2019 (O&M)
4. FAO-6284-2019 (O&M)
5. FAO-6285-2019 (O&M)
6. FAO-6286-2019 (O&M)
7. FAO-6290-2019 (O&M)
8. FAO-6291-2019 (O&M)
9. FAO-6360-2019 (O&M)
10. FAO-6361-2019 (O&M)
11. FAO-6362-2019 (O&M)
12. FAO-6363-2019 (O&M)
13. FAO-6364-2019 (O&M)
14. FAO-6365-2019 (O&M)
15. FAO-6366-2019 (O&M)
16. FAO-6367-2019 (O&M)
17. FAO-6368-2019 (O&M)
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19. FAO-6370-2019 (O&M)
20. FAO-6371-2019 (O&M)
21. FAO-6372-2019 (O&M)
22. FAO-6373-2019 (O&M)
23. FAO-6374-2019 (O&M)
24. FAO-6375-2019 (O&M)
25. FAO-6376-2019 (O&M)
26. FAO-6378-2019 (O&M)
27. FAO-6379-2019 (O&M)
28. FAO-6380-2019 (O&M)
29. FAO-6381-2019 (O&M)
30. FAO-6382-2019 (O&M)
31. FAO-6383-2019 (O&M)
32. FAO-6384-2019 (O&M)
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39. FAO-6391-2019 (O&M)
40. FAO-6392-2019 (O&M)
41. FAO-6402-2019 (O&M)
42. FAO-6403-2019 (O&M)
43. FAO-6404-2019 (O&M)
44. FAO-6405-2019 (O&M)
45. FAO-6406-2019 (O&M)
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47. FAO-6408-2019 (O&M)

48. FAO-6409-2019 (O&M)
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59. FAO-6421-2019 (O&M)
60. FAO-6427-2019 (O&M)
61. FAO-6437-2019 (O&M)
62. FAO-6438-2019 (O&M)
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114. FAO-6528-2019 (O&M)
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118. FAO-6532-2019 (O&M)
119. FAO-6552-2019 (O&M)
120. FAO-6553-2019 (O&M)
121. FAO-6567-2019 (O&M)
122. FAO-6570-2019 (O&M)
123. FAO-6571-2019 (O&M)
124. FAO-6572-2019 (O&M)

Vijay Kumar

... Appellant

Versus

The Bathinda Central Cooperative Bank and others

... Respondents

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. D.S. Malwai, Advocate for the appellant.
 Mr. Deepak Aggarwal, Advocate for
 constesting respondent No.1

AVNEESH JHINGAN , J.(Oral)

1. These appeals are being decided by one order as the parties are common and the issue involved is similar. For convenience, the facts are being taken from FAO-6164-2019.

2. Brief facts are that the appellant was working as a Peon-cum-Chowkidar in Bathinda Central Cooperative Bank (hereinafter referred to as 'the Bank'). There were allegations of misappropriation of money. A

Committee was constituted which concluded that the appellant had misappropriated the amount of the bank. The matter was referred to the Arbitrator under Sections 55 and 56 of The Punjab Co-operative Societies Act, 1961 and Sh. Harbans Singh Jatana, Assistant Registrar, Cooperative Societies, Bathinda was appointed as an Arbitrator. The arbitration proceedings culminated into award dated 14.6.2010. The objections filed against the award were dismissed. In FAO-2161- 2012 filed by the appellant, the award was set aside on 8.5.2013 and the matter was remanded back for decision afresh. Thereafter, Mr. Harpal Singh, Assistant Registrar, Cooperative Societies, Bathinda was appointed as an arbitrator and award dated 26.4.2018 was passed. The objections filed by the appellant under Section 34 of the Act were dismissed on 24.4.2019. Hence, the present appeal.

3. Learned counsel for the appellant submits that the Arbitrator-Mr. Harpal Singh, Assistant Registrar, Cooperative Societies, Bathinda had appeared as a witness in a case of the Bank against the appellant. As per Section 12 of the Act, he could not have been appointed as arbitrator. The grievance is that in spite of raising objections under Section 34 of the Act, the same was not considered while passing the impugned order.

4. Learned counsel for contesting respondent No.1 opposes the prayer, however, on instructions is not in a position to dispute the factual aspect of the contention raised by the appellant.

Section 12(1) of the Act is reproduced below :-

“12. Grounds for challenge.—

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,-

(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject matter in dispute, whether financial,

business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and

(b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

Explanation 1. The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.

Explanation 2. The disclosure shall be made by such person in the form specified in the Sixth Schedule”.

5. As per Section 12(1)(a) of the Act, the Arbitrator is obliged to disclose existence of past or present, direct or indirect relationship with the interested parties or with subject matter of dispute whether financial, business, professional or other kind which create a doubt as to independence, impartiality of the arbitrator.

6. Without commenting upon the merits of the case, considering that the arbitrator had a connection with one of the interested party and had appeared as a witness for the bank in a case against the appellant, his impartiality and independence is in doubt. The award passed is in violation of Section 12 of the Act, consequently, the impugned order is set aside. The parties shall be at liberty to avail remedies in accordance with law including initiation of fresh arbitration.

7. Since the main cases have been decided, the pending application(s), if any is rendered infructuous.

8. Photocopy of this order be placed on the file of the connected case(s).

(AVNEESH JHINGAN)
JUDGE

20th March, 2023
anuradha

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No