

2023:PHHC:111208

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

ARB-328-2019 (O&M)
Date of Decision:-24.8.2023

M/s RHG Constructions, Partnership Firm ... Petitioner

Versus

Pepsu Road Transport Corporation and another ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. P.S. Rana, Advocate and
Mr. G.S. Rana, Advocate for the petitioner.

Mr. Navraj Singh Mahal, Advocate for respondent No.1.

GURVINDER SINGH GILL, J. (Oral)

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (in short hereinafter referred to as '*the Act*') for appointment of an independent Arbitrator.
2. Admittedly, the parties had entered into an agreement (Annexure A-1) dated 'NIL' wherein the respondents allotted the work for construction of Bus Stand at Sangrur.
3. Clause 25 of the Agreement (Annexure A-1) dated 'Nil' provides for dispute resolution through Arbitration. The clause also provides that the proceedings shall be held at Punjab or Chandigarh.
4. A dispute having arisen, the petitioner served notice dated 21.8.2019 (Annexure A-3). On failure of respondents to do the needful, the instant petition has been filed.

5. Learned counsel representing respondent No.1, while opposing the petition, submitted that as per arbitration clause, it is the Superintending Engineer, who should be appointed as an Arbitrator.
6. This Court is, however, unable to accept the aforesaid contention made on behalf of respondent No.1 particularly keeping in view the spirit of judgment of Hon'ble the Supreme Court rendered in Perkins Eastman Architects DPC and another Versus HSCC (India) Limited, Law Finder Doc ID #1626194.

The relevant extract of Perkins Eastman's case (supra) reads as under:

“15. We thus have two categories of cases. The first, similar to the one dealt with in *TRF Ltd.* where the Managing Director himself is named as an arbitrator with an additional power to appoint any other person as an arbitrator. In the second category, the Managing Director is not to act as an arbitrator himself but is empowered or authorized to appoint any other person of his choice or discretion as an arbitrator. If, in the first category of cases, the Managing Director was found incompetent, it was because of the interest that he would be said to be having in the outcome or result of the dispute. The element of invalidity would thus be directly relatable to and arise from the interest that he would be having in such outcome or decision. If that be the test, similar invalidity would always arise and spring even in the second category of cases. If the interest that he has in the outcome of the dispute, is taken to be the basis for the possibility of bias, it will always be present irrespective of whether the matter stands under the first or second category of cases. We are conscious that if such deduction is drawn from the decision of this Court in *TRF Ltd.*, all cases having clauses similar to that with which we are presently concerned, a party to the agreement would be disentitled to make any appointment of an arbitrator on its own and it would always be available to argue that a party or an official or an authority having interest in the dispute would be disentitled to make appointment of an arbitrator.

16. But, in our view that has to be the logical deduction from *TRF Ltd.* Para 50 of the decision shows that this Court was concerned with the issue,

"whether the Managing Director, after becoming ineligible by operation of law, is he still eligible to nominate an arbitrator" The ineligibility referred to therein, was as a result of operation of law, in that a person having an interest in the dispute or in the outcome or decision thereof, must not only be ineligible to act as an arbitrator but must also not be eligible to appoint anyone else as an arbitrator and that such person cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator. The next sentences in the paragraph, further show that cases where both the parties could nominate respective arbitrators of their choice were found to be completely a different situation. The reason is clear that whatever advantage a party may derive by nominating an arbitrator of its choice would get counter-balanced by equal power with the other party. But, in a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator. That has to be taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and recognized by the decision of this Court in *TRF Ltd.*"

7. The ratio of Perkins Eastman's case (supra) leaves no manner of doubt that a person who himself has an interest in the dispute or the outcome of dispute would be ineligible not only act as an Arbitrator but such ineligibility would even extend to appointment of any Arbitrator by him in such matter.
8. Learned counsel for respondent No.1 has not disputed the ratio of Perkins Eastman's case (supra).
9. Having regard to the facts and circumstances of the case and while bearing in mind the ratio of Perkins Eastman's case (supra), the instant petition is accepted. Accordingly, Justice Jaishree Thakur, Former Judge of this Court is appointed as the sole Arbitrator. However, such appointment would be

subject to the declaration to be made by Justice Jaishree Thakur, Former Judge of this Court under Section 12 of the Act with regard to his independence and impartiality to settle the disputes between the parties.

10. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended or as may be mutually settled by the parties and the Arbitrator.
11. As per agreement expressed by learned counsel for the parties, for the sake of the convenience of their respective clients, as also of the Arbitrator, the venue for the Arbitration shall be at Arbitration Centre, Chandigarh or at any other place convenient to all concerned.
12. After seeking convenience of the Arbitrator, the parties are directed to appear before her on 22.9.2023 at 11:00 A.M. or any other date suitable to all concerned.
13. A copy of this order be sent to the appointed Arbitrator at the given address :

House No. 36, Sector 8-A,
Chandigarh.
Phone No.98141-25236.
14. The petition is accordingly disposed of in the above mentioned terms.

24.8.2023

Pankaj

**(GURVINDER SINGH GILL)
JUDGE**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No