



ARB-65-2022 (O&M)

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

(113)

ARB-65-2022 (O&M)
DATE OF DECISION:- 21.10.2024

WELSPUN ENTERPRISES LIMITED**...PETITIONER****VERSUS****GREATER MOHALI AREA DEVELOPMENT AUTHORITY****...RESPONDENT****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. Aashish Chopra, Senior Advocate with
Ms. Rupa Pathania, Advocate,
Ms. Nitika Sharma, Advocate and
Ms. Gurpreet Randhawa, Advocate for the petitioner.

Mr. D.V.Sharma, Senior Advocate with
Ms. Sunder Kumari, Advocate for the respondent.

SUVIR SEHGAL, J. (Oral)

1. This petition has been filed under Section 11 (5) of the Arbitration and Conciliation Act, 1996 (for short “the Arbitration Act”) for appointment of an Arbitrator to adjudicate the dispute between the parties.

2. Mr. Aashish Chopra, learned senior counsel for the petitioner, submits that after the acceptance of the bid given by the petitioner, an agreement dated 05.03.2012, Annexure P-1, was entered into between the parties, whereby petitioner was awarded a contract for laying of pipeline from Kajauli headwords to waterworks at S.A.S. Nagar along with ancillary work. He submits that the value of the contract was revised to Rs.193,57,03,849/- and the work was to be completed within a period of 30

months. Counsel submits that immediately on the award of the contract,



petitioner mobilized the required resources, man power etc., but work could not be completed within the stipulated period due to breaches by the respondent. Though, the petitioner sought an extension of time for the completion of the contract, but liquidated damage of Rs.30 lacs was imposed and the petitioner approached this Court by filing a writ petition, which was withdrawn on 30.11.2017, Annexure P-2, with liberty to avail alternative remedy. He asserts that in terms of Clause 25 of the agreement, petitioner raised claims before the Engineer of the work vide letter dated 25.05.2018, Annexure P-3, but the claims were rejected vide communication dated 24.07.2018, Annexure P-4. Counsel submits that the Arbitration Clause was invoked vide notice dated 19.09.2018, Annexure P-5, which was followed by reminders, Annexure P-6 and P-7, respectively, but the respondent did not accept the request. He asserts that in the meantime, petitioner completed the project and a completion certificate was issued on 31.10.2019 and final bill was submitted on 27.12.2019. He submits that the Arbitration Clause 25 provides for appointment of a Superintending Engineer of the respondent as the sole Arbitrator, but in view of Section 12 (5) of the Arbitration Act, he is ineligible to be appointed, therefore, an independent Arbitrator be appointed to adjudicate the dispute between the parties.

3. Upon notice by this Court, petition has been contested by the respondent by filing a response, wherein it has been submitted that as reference of claim to an Arbitrator has not been sought within the period stipulated in the Arbitration Clause, the petition is barred by time. Mr. D.V.Sharma, learned senior counsel for the respondent, has placed reliance upon the judgment of the Supreme Court in **P.Manohar Reddy and Bros.**

Versus Maharashtra Krishna Valley Development Corporation and others,



(2009) 2 SCC 494 delivered by a bench of two judges, to contend that the time period laid down in the Arbitration Clause for reference of dispute to Arbitrator has to be adhered to. It has been submitted that vide letter dated 27.08.2021, Annexure R-2, petitioner was informed that he has to approach the Punjab Infrastructure Regulatory Authority (PIRA) for resolution of dispute in terms of Section 6 of the Punjab Infrastructure (Development and Regulation) Act, 2002. Another objection taken by the respondent is that Sub-Clause (viii) of Clause 25 of the Arbitration Clause provides for a pre-deposit of 10% of the amount claimed, which is mandatory. Yet another objection has been raised that the petitioner is solely responsible for the delay in the completion of the work resulting in the imposition of the liquidated damages.

4. I have heard counsel for the parties and considered their respective submission.

5. This Court will deal with the objections raised by the respondent one by one. In so far as the first objection raised by the respondent is concerned, it may be noticed that the judgment of the Supreme Court in P. Manohar Reddy's case (supra) came up for consideration before a Division Bench of the Delhi High Court in M/s Chander Kant and Co. Versus The Vice Chairman, DDA and others, Law Finder Doc ID #1422192, decided on 26.05.2009. The Division Bench discussed the effect of the amendment brought about in Section 28 of the Indian Contract Act, 1872 w.e.f. 08.01.1997. The Division Bench held that the amendment to the provision prohibits clauses, which seek to extinguish the rights of any party thereto, or discharge any party from any liability under or in respect of any contract on the expiry of a specified period so as to restrict any party from



enforcing his rights. The Court came to the conclusion that any Clause extinguishing the right of a party or discharging any party from the liability in respect of any contract on expiry of specific period so as to restrict the time period would be void. The Division Bench was of the opinion that in view of the amended Section coming into force, the distinction sought to be carved out earlier by legal pronouncements would not hold good. In particular, reference needs to be made to the observations of the Division Bench in para 11 of the judgment, which are reproduced hereunder:-

“11. In P.Manohar Reddy's case the Supreme Court had no occasion to consider the effect of the insertion of Clause (b) in Section 28 by Amending Act 1 of 1997. The Court did refer to the judgments in The Vulcan Insurance Co. Ltd. v. Maharaj Singh and another, 1976 AIR SC 287 and Wild Life Institute of India, Dehradun v. Vijay Kumar Garg, (1997) 10 SCC 528 but it was obvious that the observations were made in the context of unamended section 28 of the Contract Act. It is also seen from the judgment that the cause of action had arisen in that case on 29.10.1991 on which date the appellant's claim was rejected. It is thus clear that the Court considered the case in the light of the unamended provisions of section 28 of the Contract Act.”

6. Three judges bench of the Supreme Court in Grasim Industries Limited Versus State of Kerala, (2018) 14 SCC 265 and in Geo Miller & Co. Pvt. Ltd. Versus Chairman, Rajasthan Vidyut Utpadan Nigam Limited, (2020) 14 SCC 643 held that even if restricted period for raising an arbitral dispute had actually been provided for in the Arbitration Clause, the same would have to be treated as void and the limitation with reference to



the claim raised by the petitioner would have to be determined only under Article 137 of the Limitation Act, 1963. Supreme Court clarified that the period of limitation would be three years prior to the date of invocation of the arbitration. When examined in the light of the settled position, it is apparent that the petitioner had invoked the Arbitration Clause within a period of three years of the rejection of the claim by the Engineer In-charge of the work. The claim, therefore, cannot be held to be barred by time. Moreover, the present petition was instituted in the month of May, 2021, which is also within the prescribed period. The first argument raised by counsel for the respondent is, therefore, rejected.

7. There is no weight in the second argument of the respondent due to the intervening circumstances. By a memorandum dated 05.02.2024, Department of Finance, Government of Punjab has issued a memorandum to various officials, including the Registrar General of this Court, intimating that the appointment of Arbitrators in cases pending before this Court, has been left to the discretion of this Court. The memorandum reads as under:-

*“File No: 1/21/2011-5FE4/39
Government of Punjab
Department of Finance
(Finance Expenditure-IV Branch)*

Dated, Chandigarh the 05th Feb, 2024

To,

- 1) All the Special Chief Secretaries/Additional Chief Secretaries/Financial Commissioners/ Principal Secretaries & Administrative Secretaries to govt. of Punjab.*
- 2) The Registrar, Punjab and Haryana High Court.*
- 3) Managing Director, Punjab Infrastructure Development Board.*
- 4) Secretary, Punjab Infrastructure Regulatory Authority.*

Subject: Regarding taking decision to appoint the Arbitrators in absence of Chairperson and Members at PIRA.

Madam/Sir,



I am directed to inform you that the following decisions have been taken for appointment of Arbitrators:-

- a) The appointment of Arbitrator in cases pending before the Hon'ble High Court, should be left to the discretion of the Hon'ble High Court.*
- b) The existing list of Arbitrators as mentioned in the Punjab and Haryana High Court and updated time to time will be used for appointment of arbitrators in future cases with the approval of competent authority in consultation with Ld. Advocate General, Punjab. However the Arbitration Fee should not be more than that has been prescribed in Schedule-B of the "Punjab and Haryana High Court (Arbitrator's Panel and Fee) Rules, 2011."*

Sd/-
Under Secretary, Finance

ID. No-1/21/20211-5FE4/40 Dated, Chandigarh: 5/2/2024

A copy of the above is forwarded to the following for kind information, please:-

- 1) OSD to worthy Chief Secretary to Govt. of Punjab.*
- 2) OSD to Ld. Advocate General, Punjab.*

Sd/-
Under Secretary, Finance"

8. As the discretion to appoint the Arbitrators has been left by the Government to this Court, counsel for the respondent cannot insist that the dispute has to be referred to PIRA, more so, as its constitution is incomplete. The second argument is, therefore, rejected.

9. The insistence of the respondent upon pre-deposit is also of no avail. Supreme Court in **Lombardi Engineering Limited Versus Uttarakhand Jal Vidyut Nigam Limited, (2024) 4 SCC 341** has held that such a condition is arbitrary and hit by Article 14 of the Constitution. Supreme Court is of the view that the same can be ignored by the referral Court while appointing an Arbitrator. As to whether the petitioner is responsible for the delay in the completion of the work or the reason for the



delay is on account of the lackadaisical attitude of the respondent is an issue, which is arbitrable. Therefore, the third and fourth argument raised by counsel for the respondent are also rejected.

10. For the afore-going reasons, this Court is of the view that a dispute persists between the parties, which deserves to be referred for determination to an Arbitrator.

11. Accordingly, the petition is allowed. Mr. Justice (Retd.) Krishna Murari, a former judge of the Supreme Court, resident of House No.27, First Floor, Nizamuddin East, Next to India Post, New Delhi – 110013, is requested to take over the role of an Arbitrator to adjudicate the dispute between the parties, subject to compliance with statutory provisions.

12. Parties are directed to appear before the learned Arbitrator on date, time, and place to be fixed by him at his convenience.

13. Liberty is granted to the parties to raise all claims, counter claims, defences, pleas, etc. before the learned Arbitrator.

14. Needless to mention that all the questions arising between the parties in this matter shall remain open for determination in the arbitral proceedings and any observation made hereinabove will not be binding on the learned Arbitrator.

15. A request letter along with a copy of the order be sent to Mr. Justice (Retd.) Krishna Murari.

16. Pending application(s), if any, stand disposed of.

(SUVIR SEHGAL)
JUDGE

21.10.2024
kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No