



CR-3000 of 2024

-1-

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

226

CR-3000 of 2024

Date of decision: 30.05.2024

**Superintending Engineer, Punjab Water Supply and Sewerage Board
and others** **...Petitioners**

Versus

Triveni Engineering and Industries Ltd. and another **...Respondents**

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Vijay Kumar Kaushal, Advocate
for the petitioners.

Mr. Amit Jhanji, Senior Advocate with
Ms. Eliza Gupta, Advocate and
Mr. Sahil Shehrawat, Advocate
for respondent No.1.

SUVIR SEHGAL, J.

1. Instant revision petition has been filed under Article 227 of the Constitution of India read with Section 151 CPC for setting aside order dated 18.04.2024, Annexure P-1, passed by the learned Arbitrator, respondent No.2, vide which application dated 20.03.2024, Annexure P-2, filed by the petitioners for summoning the record during cross-examination of claimant-witness CW1, has been dismissed.



CR-3000 of 2024

-2-

2. Factual matrix leading to the filing of the petition is that respondent No.1 was allotted a work for providing and laying of sewer, construction of WTP, STP, etc., vide allotment letter dated 03.06.2015, Annexure P-3, for an approximate cost of Rs. 211.97 crore. A contract agreement No.13 of 2015-16 was entered into between the parties, which contained an arbitration clause. A dispute arose between the parties and by order dated 27.05.2022, this Court appointed an Arbitrator, who has passed the impugned order during the course of arbitral proceedings.

3. Counsel for the petitioners submits that respondent No.1 breached the terms and conditions of the contract agreement by subletting 85% of the work to other subcontractors at rates much lower than the DNIT rates vide allotment letters, Annexures P-4 to P-9. He submits that during the cross-examination of the claimant's-witness, an application was moved for summoning of the record from respondent No.1, which has been illegally declined vide order impugned herein. It is his argument that the allotment letters, Annexures P-4 to P-9, have been admitted by the claimant's-witness in his cross-examination, Annexure P-10, but when an application was filed for the production of the documents, the same was erroneously declined by the Arbitrator, respondent No.2 vide the impugned order. He asserts that prior to filing the defence statement, an application was moved by the petitioners for supply of requisite documents, which was dismissed by the then learned Arbitrator vide order dated 13.11.2022, Annexure P-12, granting liberty to the petitioners to move a fresh application at an appropriate stage. He has referred to Order XI Rule 17, CPC, and judgment of Delhi High Court in **Life Insurance Corporation of India Versus**



CR-3000 of 2024

-3-

Shrishti Properties Pvt. Ltd. 2023 SCC Online Del.3497, to urge that petitioner is entitled to obtain the documents which are in the exclusive possession of respondent No.1.

4. Upon notice by this Court, Mr. Amit Jhanji, Senior Advocate, who is assisted by Ms. Eliza Gupta and Mr. Sahil Shehrawat, Advocate, have put in appearance on behalf of respondent No.1 and have opposed the petition on merits as well as on its maintainability. Besides referring to Section 5 of the Arbitration and Conciliation Act, 1996 (for short “the Act”), he has relied upon **Future Retail Limited Versus Amazon.com NV Investment Holdings LLC and others**, 2022 SCC Online Del 13, to contend that in exercise of jurisdiction under Article 227 of the Constitution, High Court cannot interfere with the procedure adopted by the arbitral tribunal.

5. I have considered the rival submission of counsel for the parties and examined the record of the case with their able assistance.

6. In **M/s S.B.P. & Co. versus Patel Engineering Limited and another** (2005) 8 SCC 618, Supreme Court disapproved the approach of the High Court under Article 226 or 227 of the Constitution of India, of correcting orders passed by the Arbitral Tribunal. It was observed as under:-

“45. It is seen that some High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable of being challenged under [Article 226](#) or [227](#) of the Constitution of India. We see no warrant for such an approach. [Section 37](#) makes certain orders of the arbitral tribunal appealable. Under [Section 34](#), the aggrieved party has an avenue for ventilating his grievances against the award including any in-between orders that



might have been passed by the arbitral tribunal acting under [Section 16](#) of the Act. The party aggrieved by any order of the arbitral tribunal, unless has a right of appeal under [Section 37](#) of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The arbitral tribunal is, after all, the creature of a contract between the parties, the arbitration agreement, even though if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the arbitral tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the arbitral tribunal is capable of being corrected by the High Court under [Article 226](#) or 227 of the Constitution of India. Such an intervention by the High Courts is not permissible.

46. The object of minimising judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under [Article 227](#) of the Constitution of India or under [Article 226](#) of the Constitution of India against every order made by the arbitral tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the arbitral tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under [Section 37](#) of the Act even at an earlier stage.”

7. In **Union of India Vs. M/s Varindera Construction Limited and others, 2018 (7) SCC 794**, Supreme Court held that Section 5 of the Act specifically restricts the interference of the courts and it is only in exceptional circumstances as provided in the Act that the court is entitled to



CR-3000 of 2024

-5-

intervene in the dispute, which is subject matter of arbitration. Apex Court emphasised that the Court shall not intervene with the subject matter of arbitration unless injustice is caused to either of the parties.

8. In ***Future Retail Limited (supra)***, High Court of Delhi held that the Act is a complete code in itself and its intention is to ensure expeditious disposal of disputes between the parties and minimum interference by the Court. If the parties are encouraged to approach the Court at every stage of the arbitration proceedings, the Court held that the whole purpose of arbitration would stand frustrated. It would be relevant to reproduce hereunder, the observations of the Delhi High Court:-

“24. Undoubtedly, in view of the fact that Article 227 of the Constitution of India is a constitutional remedy, there cannot be a compete bar to the petitions being filed under Article 227. However, as noted above, there is only a very small window for interference with orders passed by the Arbitral Tribunal while exercising jurisdiction under Article 227. The said window becomes even narrower where the orders passed by the Arbitral Tribunal are procedural in nature. Therefore, this window cannot be used for impugning case management orders passed by the Arbitral Tribunal, which are in the nature of procedural orders. Such orders are completely in the domain and discretion of the Arbitral Tribunal, and include orders relating to the scheduling of the arbitration proceedings or the order in which applications filed by the parties are to be considered or the timelines in relation to the arbitration proceedings. This Court, in exercise of jurisdiction under Article 227, cannot dictate to a duly constituted Arbitral Tribunal, the



CR-3000 of 2024

-6-

manner and the procedure of carrying out the arbitration proceedings.”

9. A Coordinate Bench of this Court in **Guru Dashmesh Rice Mills and another Vs. Punjab State Civil Supplies Corporation Limited and others** 2004 SCC Online P&H 831, came to the conclusion that a petition under Article 227 of the Constitution will not lie against an interim order by an Arbitrator appointed under a private agreement between the parties though the petitioner may question such an order under Section 34 of the Act, if so advised.

10. By order under challenge herein, learned Arbitrator has declined the application filed by the petitioner for summoning of the record. This order is purely a procedural one and cannot be a subject matter of challenge under Article 227 of the Constitution of India in view of the settled legal position noticed above. Section 19 of the Act clarifies that an Arbitral Tribunal is not bound by the provisions of the Code of Civil Procedure or the Indian Evidence Act and the parties are free to agree on the procedure to be followed by the Arbitral Tribunal while conducting the proceedings. In case of disagreement between the parties, the Tribunal can conduct the proceedings in the manner it thinks appropriate. Vast power has been vested with the Arbitral Tribunal to regulate its procedure for effective and expeditious conduct of the arbitral proceedings in a transparent and fair manner. It gives ample discretion to the Arbitral Tribunal to decide the matter, in which, the proceedings are to be conducted, including the orders to be passed on the various applications filed by the parties. It would not be appropriate for this Court, in exercise of its power under Article 227 of the

Tribunal during the course of its proceedings. No exceptional case has been made out for interference with the impugned order.

11. For the foregoing reasons, petition is found to be devoid of merit and is hereby dismissed.

30.05.2024

(SUVIR SEHGAL)
JUDGE

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Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No