



ARB-246-2023

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

(104)

ARB-246-2023

Date of decision:- 25.10.2024

JKA Associates Private Limited

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Amit Gupta, Advocate, for the petitioner.

Mr. Rohit Ahuja, Deputy Advocate General, Punjab.

...

SUVIR SEHGAL, J. (Oral)

1. Instant petition has been filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short "the Arbitration Act") for appointment of an Arbitrator to adjudicate the disputes between the parties.

2. Counsel for the petitioner submits that a contract for upgradation/widening of Mata Gujri Marg, falling in districts of Fatehgarh Sahib and Patiala, was awarded to the petitioner vide letter dated 03.01.2022, Annexure P-4. Counsel submits that the total value of the work was approximately Rs.80 crores, and it was to be completed within a period of 18 months, and the petitioner was to maintain the road for the 5 years, after the completion. Counsel submits that Clause 25 of the agreement provides disputes resolution mechanism. He asserts that the possession of the entire site was not

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handed over to the petitioner and there were many hindrances like electricity poles and lines, trees, and other encroachments. Counsel asserts that despite communications, Annexures P-5 to P-13, the encroachments were not removed. Counsel submits that by notice dated 21.09.2022, Annexure P-15, petitioner terminated the contract acting under clause 55.1 of the contract agreement. He submits that as provided in Clause 25 (ii), petitioner raised a dispute before the Executive Engineer, National Highway Division – respondent No.4, by communication dated 18.10.2022, Annexure P-16. When he did not receive any response within the stipulated period of 60 days, petitioner invoked the arbitration clause by serving notice dated 20.12.2022, Annexure P-17, which was followed by a reminder dated 22.02.2023, Annexure P-18. He asserts that petitioner has not heard from the respondents. Counsel states that as the claim is roughly about Rs.10.81 crore, a sole Arbitrator may be appointed instead of a Tribunal comprising of 3 members, so that the parties can save cost and expense.

3. Upon notice, reply has been filed by respondents No.1 to 4, opposing the petition by taking a stand that the dispute is required to be submitted for adjudication to the Punjab Infrastructure Regulatory Authority (PIRA) in terms of Section 6 (1-B) of the Punjab Infrastructure (Development and Regulation) Act, 2002. By referring to Clause 22.1 of the contract agreement, State counsel submits that there is a provision for extension of the contract in case there is of any delay in handing of the site or for any other reason, but the petitioner never sought any extension. It is his argument that the termination letter sent by the petitioner is not in terms of Clause 55.1 of the contract agreement, Annexure P-



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2. Yet another stand has been taken by the respondents that they are not responsible for the delay as they had deposited the requisite charges with the Punjab State Power Corporation as well as with the Forest Department for the removal of the electricity lines and trees. By making a reference to the reply filed on behalf of the respondents, State counsel submits that an amount of Rs.8.44 crore, approximately, has been paid to the petitioner for the executed work. Upon instructions from Mr. Manjit Singh, SDE, National Highway Division, Mohali, he submits that the State is agreeable to the request for appointment of sole arbitrator, if the prayer made in the petition is being accepted.

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

5. From the respective stand taken by the parties, it is evident that a contract agreement was entered into between them, which contains a clause for dispute resolution through the medium of arbitration. A dispute has arisen between the parties and the petitioner has invoked the arbitration clause by serving a notice after exhausting the pre-reference mechanism. This Court is, therefore, of the view that the prayer made in the petition deserves to be acceded to. In so far as the submission of the State counsel regarding the reference of the dispute to PIRA is concerned, it would suffice to notice the notification dated 05.02.2024, issued by the Department of Finance, Government of Punjab, which is reproduced hereunder:-

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



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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”*



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6. A perusal of the above notification shows that the decision to appoint the Arbitrator has been left to the discretion of this Court, in the absence of the Chairperson and the members of PIRA. It has also been mentioned that the appointment can be made from the panel of Arbitrators circulated by this Court.
7. Accordingly, prayer made in the petition is allowed. **Mr. Justice (Retd.) R.K. Nehru, a former Judge of this Court, resident of # 1704, Sector-4, Panchkula, Mobile No. 9888462108 7508910330**, is nominated as an Arbitrator to adjudicate the dispute between the parties, subject to compliance with statutory provisions.
8. Parties are directed to appear before the learned Arbitrator on date, time, and place to be fixed by him at his convenience.
9. Liberty is granted to the parties to raise all claims, counter claims, defences, pleas, etc. before the Arbitrator.
10. 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.
11. A request letter along with a copy of the order be sent to Mr. Justice (Retd.) R.K. Nehru.

(SUVIR SEHGAL)
JUDGE

25.10.2024
Pardeep

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes