

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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ARB-255-2023 (O&M)
Date of decision: 21.02.2024

M/s Garg Construction Company, Bathinda ...Petitioner

VERSUS

Bathinda Development Authority, Bathinda and others ...Respondents

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ARB-257-2023 (O&M)
Date of decision: 21.02.2024

M/s Garg Construction Company, Bathinda ...Petitioner

VERSUS

Bathinda Development Authority, Bathinda and others ...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. P.S. Rana, Advocate for the petitioner(s)
(in both cases).

Mr. Rakesh Gupta, Advocate for the respondents.
(in both cases).

VINOD S. BHARDWAJ, J. (Oral)

1. Since the dispute in both the petitions is between the same parties and for a similar relief, they are being decided by a common order. Facts are however, being extracted from **ARB-255-2023** titled as ‘**M/s Garg Construction Company, Bathinda Vs. Bathinda Development Authority, Bathinda and others**’.

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2. Prayer in the petition is for appointment of an Independent Arbitrator to adjudicate the disputes/differences and claims relating to work of construction of cement concrete roads/street at Rampura Phul Mandi, District Bathinda.

3. Learned counsel for the petitioner contends that the petitioner M/s Garg Construction Company, Bathinda had applied for and was allotted the work of construction of cement concrete roads/street at Rampura Phul Mandi, District Bathinda, vide allotment letter No.DE(C-1)/BT/2013/4982 dated 22.12.2011. The said work was to be completed within one month. As per the terms & conditions of the contract, there was an arbitration Clause 25-A for settlement of the disputes through arbitration. The valuation of the work was Rs. 4,39,380/-, however, the petitioner claims there was an enhancement in the scope of work.

4. The petitioner claims that the above said work was completed to the satisfaction of the competent authority-respondents on 21.01.2012. The final bill was thereafter submitted by the petitioner along with letter dated 22.10.2013 for release of the balance amount of Rs.2,90,987/- and security. Since the payment was not released, CWP-23916-2013 was filed before this Court, which was disposed of vide order dated 30.10.2013 directing the respondents to consider the representation dated 22.10.2013 and pass an appropriate order within a period of one month. Still, the full payment as was legally and contractually due to the applicant-petitioner/Company had not been made. A notice invoking Clause 25-A was thereafter sent by the petitioner to the respondents on 15.12.2014 for

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settlement of the disputes and payment of the pending amount. Despite the above said notice, the pending dues were not released.

5. A statement of claim dated 10.04.2015 was submitted by the petitioner as per Clause 25-A. As the said claim was not decided by the Superintending Engineer as per the mandate of the agreement, hence, arbitration case No.219 of 2018 was filed by the petitioner before the Additional District Judge, Bathinda, under Section 14 and 15 of the Arbitration and Conciliation Act, 1996. The same was decided vide order dated 02.02.2023 thereby terminating the mandate of the Sole Arbitrator and granting a liberty to the petitioner to get a fresh mandate for appointment of the Arbitrator for settlement of the disputes.

6. Hence, a fresh legal notice dated 14.03.2023 (Annexure A-5) was sent by the petitioner seeking appointment of an Independent Arbitrator to settle the dispute and differences and claims arising between the parties. No decision having been made on the said request, the present arbitration petition has been filed for nominating an Independent/Impartial Sole Arbitrator for adjudication of the claims.

7. Learned counsel for the respondents however argued that as per Clause 25-A of the agreement executed between the parties, the dispute was required to be referred for settlement to the Engineering Incharge within a period of 60 days and that the petitioner has not followed the procedure set out in the agreement. He further contends that there is infact no evidence to suggest there was any enhancement in the scope of work and that whatever amount was legally payable to the contractor already stands disbursed.

8. Rebutting the above said contention, learned counsel for the petitioner contends that the dispute in question had been earlier referred for settlement to the Superintending Engineer but no decision was taken thereupon, and thereafter, the arbitration had actually commenced but the said process was terminated by the Additional District Judge, Bathinda, and liberty was granted to the petitioner for seeking appointment of a fresh Arbitrator. It is contended that the procedure as prescribed under the agreement had been duly followed. He further submits that so far the issue of enhancement in the scope of work and the subsequent bill is concerned, the said issue can be decided by the Arbitrator along with all other objections that may be available to the respondents, against the claim raised.

9. Taking into consideration the facts which clearly show that the dispute in question had been referred for settlement to the Superintending Engineer but no decision was taken thereupon, despite the claim having been filed in 2015. The mandate having been terminated in the year February-2023, hence, it cannot be perceived that the procedure stipulated under Clause 25-A of the agreement executed between the parties had not been followed.

10. Evidently, the respondents are at lapse in not adjudicating the claim and/or pass an award. Moreover, a notice had again been sent by the petitioner on 14.03.2023 for appointment of an Independent Arbitrator but no decision had been taken. The dispute pertains to the year 2013 and is still at preliminary stage of being provided a Forum to raise all the issues. It is thus deemed fit to appointment of Advocate K.P. Singh, IPS (Retd.), PHD,

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LLM and LLB, (PH-2539/2020), H. No.15, Sector-2, Panchkula, Mobile No. 94160-04464, who is on the panel of Arbitrators, as the Sole Arbitrator to adjudicate the dispute in both the petitions.

11. The fee of the Arbitrator shall be determined in terms of the Schedule 4 of the Arbitration and Conciliation Act, 1996. The nominated Arbitrator shall furnish a declaration as mandated in Section 12 of the Arbitration and Conciliation Act, 1996 and the Schedule attached as regard non-alignment and affiliation to any of the parties.

12. The duration for completion of arbitration proceedings would be as mandated in Section 29-A of the Arbitration and Conciliation Act, 1996.

13. The venue of arbitration shall be Chandigarh Arbitration Centre, Chandigarh and without prejudice to the seat of arbitration and jurisdiction as agreed upon between the parties.

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

15. Both the petitions stand disposed of as aforesaid.

16. Copy of the order be sent to the appointed arbitrator.

(VINOD S. BHARDWAJ)
JUDGE

21.02.2024

Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No