



ARB-432-2022

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

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ARB-432-2022

Date of decision: 23.08.2024

M/S GURINDER SINGH CONTRACTOR ...PETITIONER
VS.
THE STATE OF PUNJAB AND OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. R.K. Girdhar, Advocate
for the petitioner.

Mr. Anil Bansal, DAG, Punjab.

SUVIR SEHGAL J. (ORAL)

1. By way of present petition filed under Section 11 read with Section 12 of the Arbitration and Conciliation Act, 1996, (for short 'the Act'), petitioner has approached this Court for appointment of an independent Arbitrator to decide his claim.

2. Counsel for the petitioner submits that the petitioner was awarded work of construction of converting Banur Canal System from non-perennial to perennial by constructing its banks and agreement dated 10.05.2016, Annexure A-1, was entered into between the parties. He submits that the work was duly completed, but some payments were withheld, forcing the petitioner to approach this Court by filing CWP-20894-2021. He submits that by order dated 12.10.2021, Annexure A-4, this Court directed the respondents to consider and decide one of the representations submitted by the petitioner. He submits that a speaking order dated 12.11.2021, Annexure A-5, was passed, whereby

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respondents conceded that an amount of Rs.4,50,41,115/- is due, which was disbursed on 12.01.2022. Counsel submits that as the petitioner was entitled to interest on the delayed payment and other charges, he exhausted the pre-reference mechanism as provided under Clause 25 of the General Conditions of Contract before invoking the arbitration clause vide letter dated 05.07.2022, Annexure A-12. Counsel submits that by their communication dated 31.08.2022, Annexure A-13, respondents proposed three names for appointment of an Arbitrator, which are not acceptable to the petitioner.

3. Upon notice by this Court, respondents have filed a reply, wherein it has been submitted that the entire payment due has been made to the petitioner. A stand has been taken that in terms of the instructions to the contractor and the conditions of the contract, petitioner is not entitled to any interest on the delayed payment. It has been submitted that by communication dated 03.11.2022, Annexure R-3, another name was proposed for appointment as Arbitrator. An objection has been raised by the State counsel that the petitioner is required to make a pre-deposit of 10% of the amount claimed as per sub-clause (ix) of Arbitration Clause 25.

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

5. The proposal sent by the respondents vide communication , Annexure A-3, cannot be accepted as he is a former bureaucrat, who had served the Government of Punjab and is ineligible to be appointed as an Arbitrator in view of Section 12(5) of the Act. As to whether the

petitioner is entitled to claim interest on the delayed payment is a matter, which will be determined by the Arbitrator. Respondents vide their communication, Annexure A-13, have proposed three names for appointment of an Arbitrator, which are not acceptable to the petitioner as they are all ex-officials of the State of Punjab. This Court, therefore, has no hesitation in accepting the prayer made in the petition.

6. Petition is allowed. Mr. Justice (Retd.) Vivek Puri, a former judge of this Court, House No.237, Sector 16-A, Chandigarh, Mobile No.8558800190, is requested to act as a sole Arbitrator to adjudicate the dispute between the parties.

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

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

9. It is clarified that this reference has been made to the learned Arbitrator subject to petitioner's complying with all the requirements of the agreement including pre-deposit, if required or as ordered by the learned Arbitrator.

10. A request letter alongwith a copy of this order be sent to Mr. Justice (Retd.) Vivek Puri.

23.08.2024

(SUVIR SEHGAL)
JUDGE

sheetal

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