

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

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**ARB-506-2023 (O&M).
Date of Decision: 21.02.2024.**

M/S GAANESH KARTIKEY CONSTRUCTION PVT. LTD.

... Petitioner(s)

Versus

**CHIEF ENGINEER (HQ), PUNJAB PUBLIC WORKS
DEPARTMENT AND ANOTHER**

... Respondent(s)

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

Present: Mr. Dheeraj Mahajan, Advocate, for the petitioner.

Mr. Saurav Verma, Addl. A.G. Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

The prayer in the present petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 is for seeking appointment of an independent sole arbitrator in relation to the dispute between the parties arising out of the contract agreement with regard to the work namely “work of construction of High Level Bridge (single span 38 mtr. c/c of bearing) on Sirhind Feeder and High-Level Bridge (Single Span 75 mtr c/c of bearing) on Rajasthan Feeder Crossing Faridkot Bir Chahal Road at RD 1.55 and 1.62 including approaches, diversion road, widening of road, RD 0.72 to 3.00 KM (5.50 mtr to 7.00 mtr) and dismantling of existing bridges.”

Learned counsel for the petitioner contends that the above said work had been allotted to the petitioner vide letter No.6210 dated 05.03.2019 pursuant to the E-tender floated by the respondent authorities. An agreement No.38/2018-2019 was also executed between the parties. Clause 25 of the above said DNIT contains a Dispute Resolution Mechanism and provided for resolution thereof by way of arbitration. It is contended by the counsel for the petitioner that the lawful payments due towards the petitioner have been wrongly withheld by illegal imposition of penalties and without considering the work already executed by the petitioner. Consequently, a dispute arose between the parties for which a legal notice dated 01.04.2022 was sent by the petitioner for release of the payment which was denied by the respondents vide its response dated 15.06.2022. A legal notice was again sent on 05.04.2023, but no response thereto was filed whereupon a final notice for invocation of arbitration was sent on 09.08.2023. A reply was thereafter sent by the respondent Department on 30.08.2023 as per which the petitioner was required to go to the Dispute Review Expert before seeking reference of the dispute to the arbitrator. The said prayer was thus declined. The petitioner responded to the above said query vide communication dated 16.09.2023 pointing out that there is no Dispute Review Expert/Committee nominated/appointed by the respondent Department in terms of the contract agreement and despite request having been submitted by the petitioner leaving the petitioner with no option but to invoke the arbitration clause. It is argued that even though the respondents have raised an objection against invocation of the arbitration clause by means of institution of the present petition by referring

to the initial process of settlement through Dispute Review Expert, however, the Department has not constituted the Dispute Review Expert so far.

Learned State counsel, on instruction from Dalvir Singh, Sub Divisional Engineer, PWD (B&R) Faridkot does not dispute that a Dispute Review Expert has not been appointed but undertakes that such Expert would be appointed and the dispute raised by the petitioner shall be referred to the Dispute Review Expert in terms of the agreement executed between the parties within a period of 30 days of the receipt of the certified copy of this order.

The present writ petition is accordingly disposed of in terms of the undertaking made by the respondent State for referring the dispute to the Dispute Review Expert as per the agreement executed between the parties.

Needless to mention that the parties shall have their right to proceed further if their grievances subsist against the decision taken by the Dispute Review Expert in terms of the agreement executed.

It is further directed that upon reference of the dispute to the Dispute Review Expert such Expert shall make every endeavour to ensure that the dispute is settled and a decision is taken within the time span as agreed to between the parties and so provided in the agreement.

February 21, 2024
raj arora

(VINOD S. BHARDWAJ
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No