



ARB-421-2023 (O&M) & ARB-422-2023 (O&M)

-1-

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

150+260 (2 cases)

ARB-421-2023 (O&M)

Date of Decision: 07.07.2025

Ram Avtar Gupta

...Applicant

Versus

Haryana State Warehousing Corporation and another ...Respondents

And

ARB-422-2023 (O&M)

Ram Avtar Gupta

...Applicant

Versus

Haryana State Warehousing Corporation and another ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Nikhil Handu, Advocate and
Mr. Amit Kumar Gupta, Advocate for the applicant
Mr. Baldev Raj Mahajan, Senior Advocate with
Mr. Vishal Garg, Advocate (*through video conferencing*) and
Ms. Nikita Goel, Advocate for the respondents

JAGMOHAN BANSAL, J. (Oral)

1. As common issues are involved in the captioned petitions, with the consent of both sides, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from *ARB-421-2023*.

2. Through instant application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short '**1996 Act**'), the applicant is seeking appointment of an Arbitrator.



3. Pursuant to tender, the applicant was allotted work by the respondents. Thereafter, an agreement was executed. A dispute erupted between the parties.

4. Mr. Baldev Raj Mahajan, Senior Advocate submits that application of the applicant seeking appointment of arbitrator was rejected vide order dated 22.10.2016 by Executive Engineer, thus, instant application is barred by limitation. It is settled proposition of law that any party seeking appointment of Arbitrator must approach Court under Section 11 of 1996 Act within three years from the date of serving notice under Section 21 of 1996 Act. The claim of the applicant was rejected in October' 2016 whereas he filed first application in 2021 which was withdrawn with liberty to file afresh with better particulars in 2023. The instant application is hopelessly barred by limitation. As per Clause 25(A) of the Arbitration Agreement, in case arbitrator cannot be appointed by Managing Director, the parties were bound to approach Civil Court and no Arbitrator could be appointed.

5. I have heard the arguments of learned counsel for both sides and perused the record with their able assistance.

6. It is undisputed fact that parties entered into an agreement which comprises arbitration clause. Clause 25(A) deals with arbitration, the relevant portion whereof is reproduced as below: -

“Clause 25(A): (i) If any dispute or difference of any kind whatsoever shall arise between the HSWC/or authorized representative of HSWC and the contractor in connection with or arising out of the contract, or the execution of the work that is (i) whether



before its commencement or during the progress of the work or after its completion, (ii) and whether before or after the termination, abandonment or breach of the contract, it shall, in the first instance, be referred to, for being settled by the Executive Engineer-In-Charge of the work at that time and Executive Engineer-In-Charge shall within a period of sixty days after being requested, in writing, made by the contractor to do so, convey his decision to the contractor, and subject to arbitration as hereinafter provided, such decision in respect of every matter so referred, shall be final and binding upon the contractor. In case the work is already in progress, the contractor will proceed with the execution of the work on receipt of the decision by the Executive Engineer-In-charge as aforesaid, with all due diligence whether HSWC/or authorized representative of HSWC or contractor requires arbitration as hereinafter provided for, or not. If the Executive Engineer charge of the work has conveyed his decision to the contractor and no claim to arbitration has been filed with him by the contractor within a period of sixty days from the receipt of letter communicating the decision, the said decision shall be final and binding upon the contractor and will not be a subject matter of arbitration at all. If the Executive Engineer, In-charge of the work falls to convey his decision within a period of sixty



days, after being requested, as aforesaid, the contractor may, within further sixty days of the expiry of first sixty day's, after being requested, from the date on which request has been made to the Executive Engineer In-Charge request the Managing Director, HSWC that the matters in dispute be relevant to arbitration, as hereinafter provided.

- (ii) *All dispute or difference in respect of which the decision is not final and conclusive shall at the request, in writing, of either party, made in a communication sent through Registered A.D. Post, be referred to arbitration, to be nominated by designation by the Managing Director, HSWC at the relevant time. There will be no objection to any such appointment that the arbitrator so appointed is a Govt. servant/in service of HSWC or that he had to deal with the matters to which the contract relates in the course of his duties as a Govt. servant in service of HSWC he has expressed his views on all or any of the matter in dispute. The Arbitrator to whom the matters is originally referred being transferred or vacating his office, his successor-in-office, as such shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.*

Or In case the arbitrator nominated by the Managing Director, HSWC is unable or unwilling to act as arbitrator such for any



reason, whatsoever the Managing Director, HSWC shall be competent to appoint and nominate any other person, as arbitrator in his place and the arbitrator so appointed shall be entitled to proceed with the reference.

(iii) It is also a term of this arbitration agreement that no person other than a person appointed by the Managing Director, HSWC shall act as arbitrator and if for any reason that is not possible the matter shall not be referred to arbitration at all. In all cases where the aggregate amount awarded exceeds Rs. 25000/- the arbitrator must invariable give reasons for his award in respect of each claim and counter/claims separately.”

7. The work in question was completed on 15.10.2015. The applicant as per aforesaid clause, approached Executive Engineer in 2015 who rejected his application on 22.10.2016. He continued to file applications to Executive Engineer who kept on asking for documents with respect to his claims. The applicant submitted requisite documents. However, on behalf of Managing Director, Executive Engineer vide communication dated 05.09.2018 finally rejected request of the applicant. He filed *ARB No.551 of 2021* before this Court which vide order dated 16.05.2023 was dismissed as withdrawn with liberty to file afresh with better particulars. The respondent during the pendency of aforesaid arbitration application constituted a committee to consider claim of the petitioner.



The aforesaid chain of events indicates that matter always remained under consideration of the respondent. It is not a case of sleeping over the matter. The applicant was actively pursuing the matter. It cannot be concluded that there was delay on his part. In any case, all these questions need to be adjudicated by Arbitrator. Jurisdiction of this Court under Section 11 of 1996 Act is very limited.

8. Conditions to invoke power conferred by Section 11(6) of 1996 Act stand satisfied, thus, I hereby appoint a sole Arbitrator to adjudicate the dispute between the parties.

9. Mr. Justice L.N. Mittal, Former Judge of this Court, residing at House No.93, Sector 4, MDC, Panchkula- 134114, Mobile No.9780008127 is hereby appointed as a Sole Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory requirements. The learned Arbitrator is requested to comply with mandate of Section 12 of 1996 Act before proceeding further.

10. The parties at the first instance will appear before the Arbitrator on 22.07.2025 at 10:00 AM and thereafter, as directed by learned Arbitrator.

11. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the 1996 Act, as amended.

12. The Arbitrator is requested to complete the proceedings as per time limit specified under Section 29-A of the 1996 Act.

13. Needless to mention, parties would be at liberty to raise all the claims/defences/counter claims/pleas before the Arbitrator. Any observation made hereinabove will not be binding on the learned Arbitrator.



14. A request letter along with copy of this order be sent to Mr. Justice L.N. Mittal.

15. Pending application(s), if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

07.07.2025
Mohit Kumar

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