



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

**FAO-CARB-4-2017 (O&M)
Date of Decision:27.01.2026**

SHIRKE CONSTRUCTION EQUIPMENT PVT LTD.APPELLANT(S)

VERSUS

RANJIT SAGAR DAM PROJECT AND ANOTHERRESPONDENT(S)

**CORAM:- HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE ROHIT KAPOOR**

Present: Mr. Amit Jhanji, Senior Advocate assisted by
Mr. Ankur Saigal, Advocate
Mr. Nilesh Bhardwaj, Advocate
Mr. Dushyant Singh, Advocate
Mr. P. Barva, Advocate
Mr. Shashank Shekhar Sharma, Advocate
for the appellant.

Mr. A. K. Goel, Additional Advocate General, Punjab.

ASHWANI KUMAR MISHRA, J. (Oral)

1. This appeal is instituted under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, '*the Act of 1996*'), assailing the arbitral award dated 24.06.2013 passed by the learned Arbitrator-cum-Chief Engineer, Ranjit Sagar Dam Corporation, Irrigation Works, Punjab (for short, '*Chief Engineer*') as well as the order dated 23.08.2017 passed by the Additional District Judge, Commercial Court, Pathankot, in Arbitration Case No.8 dated 13.02.2015, whereby the appellant's objections to the arbitral award under Section 34 of the Act of 1996 were rejected.

2. Shorn of unnecessary details, the facts of the case are that a contract was awarded in favour of the appellant on 31.01.1991 for the

design, manufacture, supply, erection and commissioning of four electric tower cranes by the respondent-Ranjit Sagar Dam Project, Shahpurkandi Township, District Pathankot, Punjab. The purchase order issued by the Chief Purchase Officer of the respondent contained Clause 20, which provided for reference of disputes to arbitration. Clause 20 reads as under:-

“20. Arbitration

In the event of any question Dispute or difference arising under these conditions or any special condition of contract or in connection with the contract, the same shall be referred to the said arbitration of the Chief Engineer, Ranjit Sagar Dam Construction. The award of arbitrator shall be final & binding on the parties to the contract.”

3. The tender documents (general instructions, terms and conditions to be observed by tenderers) also contained Clause 27 providing for dispute to be referred to the Arbitrator. The appellant commenced the work of erection of Electric Tower Cranes in the premises of the respondent. During the course of such erection, an incident occurred on 30.08.1994 while erecting third crane in which 12 workers lost their lives. It appears that correspondence ensued between the parties in respect of appellant's liability to pay compensation to the deceased workers. It transpires that the appellant refuted its liability to pay any damages for the loss of lives of 12 workers *vide* its letter(s) dated 17.04.1995, 05.03.1996, 17.05.1996 and 13.06.1996.

4. There is nothing on record to indicate that any dispute relating to the liability to pay compensation to the 12 workers was

referred to arbitration. However, the appellant received a letter from the Chief Engineer of the respondent, purportedly acting in his capacity as an Arbitrator, calling upon the appellant to appear on 24.03.1998 at 3:00 p.m. The said letter from the Chief Engineer reads as under:-

“No.0212-671612

18.03.1998

*From
The Chief Engineer/RSDC,
Irrigation Works, Punjab,
Shahpurkandi Township*

*M/S SHIRKE CONSTRUCTION
EQUIPMENTS LTD.
72-76, MUNDHWA
PUNE-411 036*

*Sub: Accident to tower crane at Dam site spillway
area on 30-8-94 replacement thereof and
compensation to the bereaved families.*

*As per Clause No.20 of the A.I.
No.739-49/CPO/PR-4296 AII/1566 dated 31-1-1991 issued
by Chief Purchase Officer in your favour and also as per
clause No.27 of tender documents (General Instructions,
terms & conditions to be observed by tenderers) it is
mentioned that, “In the event of any question, dispute or
difference arising under these conditions or any special
condition or contract, the same shall be referred to the sole
arbitration of the Chief Engineer/RSDC and it shall be final
& binding on the parties under the provision of the Indian
Arbitration Act, 1940 and of the rules thereunder”. I, Chief
Engineer/RSDC, Administration being Arbitrator in this
case, inform you that you attend my office chamber at
Shahpurkandi on 24-3-1998 at 3.00 P.M. to put your case
on the above said subject.*

Your attendance on the above said date and time may be confirmed by return fax/telegram.

*Executive Engineer/RSDC, for
Chief Engineer/RSDC,
(ARBITRATOR)
Irrigation Works, Punjab,
Shahpurkandi Township. ”*

5. The letter of 18.03.1998 was objected to by the appellant vide its letter dated 21.03.1998, which is extracted hereinafter:-

“Ref: SCEL:LEG:ADD:98/2291 Date: 21.03.1998

BY REGD. A. D./BY FAX 01870-53282

UNDER PROTEST AND WITHOUT PREJUDICE TO OUR RIGHTS

*Chief Engineer/RSDC
(ARBITRATOR)
Irrigation Works, Punjab,
Shahpurkandi Township*

*Sub: Accident to tower crane at Dam site spillway area on
30.8.94 replacement thereof and compensation to the
bereaved families.*

Dear Sir,

*In reply to your Fax letter no.1387/90/3RSW/98 dated
18.3.98 which we are surprised to receive we state that the
appointment as also the reference is unilateral, wrongful and
illegal and not in terms with provisions of the agreement vis-
a-vis the Arbitration and Conciliation Act, 1996.*

*Arbitration requires existence of a dispute in the first place.
The dispute in the present case is not understood.*

*As a matter of fact in view of clear cut contract provisions
subsequently modified by the conduct of the parties,
according to us there exists no dispute which needs to be
referred for arbitration.*

*Your goodself being head of concerned department and the
aggrieved party cannot act as an arbitrator under the*

provision of the new law.

We therefore do not find it necessary to attend the hearing.

This is so particularly in the light of the fact we have not heard from the consignee of any intention to refer to arbitration any dispute or even existence of any dispute much less about reference being made to you by the party.

In view of the above facts and circumstances it becomes crystal clear that you have become both the prosecutor and the judge of your cause & case.

You will appreciate that by so doing you have misconducted yourself and rendered unfit to function as an arbitrator who is expected to be impartial and independent third person.

In conclusion, we state that there exists no valid subsisting agreement, there exists no valid arbitration clause under the new law or any dispute between the parties and reference of such a dispute by either party to the agreement to an arbitrator, each of these being without prejudice to one another.

We therefore pray that you drop the alleged proceedings and refrain yourself from functioning in any manner as an arbitrator.

Thanking you,

*Yours faithfully
for SHIRKE CONSTRUCTION EQUIPMENTS LTD.*

-Sd-

*A. D. DANGE
AUTHORISED SIGNATORY*

copy to:-

*1. Chief Engineer/RSDC (F-III)
Irrigation Works, Pb., Shahpurkandi*

2. Financial Adviser & Chief

Accounts Officer, RSD-Shahpurkandi

*3. Chief Purchase Officer,
RSD-Shahpurkandi”*

6. After objections were filed by the appellant to the notice issued by the Arbitrator, the Arbitrator did not proceed with the matter. Instead, Arbitration Case No. 22 dated 18.12.1999 was instituted by the respondent before the learned District Judge, Gurdaspur. The said case remained pending and was ultimately dismissed on 04.04.2007 by the District Judge, Gurdaspur, who framed the following issues for consideration in the matter:-

- “1. Whether the dispute has arisen between the parties for adjudicating the same under arbitration act and for appointment of the arbitrator?OPP*
- 2. Whether petition is beyond limitation?OPR*
- 3. Whether present petition is not maintainable?OPR*
- 4. Relief.”*

7. Issue Nos. 2 and 3 were not pressed by the appellant before the District Judge, Gurdaspur. Issue No. 1 was considered by the District Judge, Gurdaspur, who observed as under in paragraph 9 of the judgment dated 04.04.2007:-

“Surinder Krishanarao appearing on behalf of the respondent company also admitted that there contract amongst the parties and the contract is dated 31.1.1991. Surinder Krishnarao stated that there were two contracts of the same day but he has not brought the copy of the second contract. There was only one order for erection of cranes and as per contract, four complete cranes were to be supplied to the department. In case of any dispute, matter was to be

referred to the arbitrator. Lastly admitted that there was only one contract but the contract was of two parts. As per first part, parts of the cranes were to be supplied and as per second part, crane was to be erected. So from the oral as well as documentary evidence on the file, there was a contract dated 31.1.1991 amongst the parties. In case of any dispute regarding payment, erection, commissioning etc. dispute was to be referred to the arbitrator. As per applicant, there was only one contract whereas according to the respondent, contract was one but of two parts. While erecting third crane, there was an incident. As per clause no.20 of the contract, any dispute arising of the contract, the same was referable to the sole arbitrator or Chief Engineer/R.S.D.C. and award of the arbitrator shall be final and binding on both the parties to the contract but in the present case, on per contract, arbitrator was not appointed. Firstly arbitrator is required to be appointed as contract After award by the arbitrator, aggrieved party was expected to challenge the same under law but the Punjab State through Chief Engineer moved an application for appointment of an impartial arbitrator. No authority was cited by learned counsel for the applicant that without appointment of arbitrator as per agreement, impartial arbitrator is to be appointed by the Court Issue is accordingly decided against the applicant.”

8. The application filed by the respondent for appointment of an impartial Arbitrator consequently came to be rejected. The order of the District Judge, Gurdaspur dated 04.04.2007 has attained finality as it was never challenged in any further proceedings.

9. It transpires that, after the rejection of the respondent's application for appointment of an impartial Arbitrator, the Arbitrator-cum-Chief Engineer, acting as Arbitrator, issued a further notice dated 23.07.2007 calling upon the applicant to attend his office for adjudication of the dispute. The said notice dated 23.07.2007 is reproduced hereinafter:-

"From

*Arbitrator cum
Chief Engineer/RSDC
Irrigation Works, Punjab
Shahpurkandi*

Fax No.01870-263262

To

*M/S Shirke Construction Equipment Pvt Ltd.,
72-76 Mundhwa,
Pune-411036.*

*Sub:- Arbitration in respect of dispute arising out of
contract No.739-49/CPO/PR-4296/A-II/556 dated
31.1.91.*

*Chief Purchase Officer, Central Purchase
Organization, RSD Shahpurkandi has informed regarding
dispute with your firm for execution of contract
No.739-49/CPO/PR-4296/A-II/556 dated 31.1.91 awarded in
your favour.*

*As per clause 20 of the subject cited contract issued
by Chief Purchase Officer "In the event of any question,
dispute or difference arising under these conditions or any
special condition of contract or in connection with this
contract, the same shall be referred to the sole arbitration of
the CE/RSDC. The award of the arbitrator shall be final and
binding on the parties to the contract", I, Chief
Engineer/RSDC Administration being Arbitrator in this case*

inform you that you attend my Office Chamber at Sinchai Bhawan Sector-18, Chandigarh on 27.07.2007 at 10.30 PM to defend your case on the above cited subject. Telephone No. 0172-2724042.

*-Sd-
Arbitrator cum
Chief Engineer/RSDC
Irrigation Works, Punjab
Shahpurkandi
Telephone No.0172-2724042*

CC:-

Applicant, Chief Purchase Officer, Central Purchase Organization, RSD Shahpurkandi. He should attend the proceedings before the arbitrator on the said date and time.”

10. The appellant objected to the proceedings before the Arbitrator on the ground that no dispute had been referred to arbitration and that, in view of the order passed by the District Judge, Gurdaspur, the previously appointed Arbitrator, who had been appointed unilaterally, could not proceed with the matter.

11. An objection was also filed under Section 16 of the Act of 1996, requesting the Arbitrator to recuse himself from the proceedings on the ground that he was not competent or empowered to adjudicate the alleged dispute. The Arbitrator, however, proceeded further in the matter and ultimately delivered his award, which is assailed in the present proceedings.

12. Before the Arbitrator, several issues were framed in the matter. Issue Nos.1 and 6 are relevant for the purposes of present appeal and are reproduced hereinafter:-

“1. Whether arbitration has been invoked without following mandatory provisions of the Arbitrator and Conciliation Act, 1996? (OPR).

6. Whether the claims are barred by limitation? (OPR).”

13. The first issue pressed before the Arbitrator pertained to the invocation of the mandatory provisions for arbitration under the Act of 1996. The second issue related to the claims being barred by limitation. Both these issues were rejected by the Arbitrator. The challenge to such adjudication in proceedings under Section 34 of the Act of 1996 was also rejected. Consequently, these two aspects alone are pressed before us on behalf of the present appellant.

14. Learned Senior Counsel for the appellant argues that, in fact, no dispute had arisen between the parties and that no dispute was ever referred to the Arbitrator. He submits that neither under the provisions of the Indian Arbitration Act, 1940 (for short, ‘the Act of 1940’), nor under the provisions of the Act of 1996, had any arbitration proceedings commenced, and therefore the award rendered by the Arbitrator is wholly without jurisdiction. Learned Senior Counsel for the appellant further contends that these aspects were specifically urged before the Arbitrator as well as the Commercial Court; however, neither forum adjudicated the controversy in its correct perspective.

15. Learned Senior Counsel for the appellant places reliance upon a judgment passed by the Delhi High Court in *Alupro Buildings*

System Pvt. Ltd. vs. Ozone Overseas Pvt. Ltd., (2017) SCC Online Del 7228, where the question was raised with regard to the mandatory implication of a notice under Section 21 of the Act of 1996. The issue for consideration was noticed in paragraph Nos.23 & 25 of the judgment, which are reproduced as under:-

“23. While the above ground is by itself sufficient to invalidate the impugned Award, the Court proposes to also examine the next ground whether the Respondent could have, without invoking the arbitration clause and issuing a notice to the Petitioner under Section 21 of the Act filed claims directly before an Arbitrator appointed unilaterally by it?”

25. A plain reading of the above provision indicates that except where the parties have agreed to the contrary, the date of commencement of arbitration proceedings would be the date on which the recipient of the notice (the Petitioner herein) receives from the claimant a request for referring the dispute to arbitration. The object behind the provision is not difficult to discern. The party to the arbitration agreement against whom a claim is made, should know what the claims are. It is possible that in response to the notice, the recipient of the notice may accept some of the claims either wholly or in part, and the disputes between the parties may thus get narrowed down. That is one aspect of the matter. The other is that such a notice provides an opportunity to the recipient of the notice to point out if some of the claims are time barred, or barred by any law or untenable in fact and/or that there are counter-claims and so on.”

16. The Court ultimately held as under in paragraph No.30 of

the judgment:-

“30. Considering that the running theme of the Act is the consent or agreement between the parties at every stage, Section 21 performs an important function of forging such consensus on several aspects viz. the scope of the disputes, the determination of which disputes remain unresolved; of which disputes are time-barred; of identification of the claims and counter-claims and most importantly, on the choice of arbitrator. Thus, the inescapable conclusion on a proper interpretation of Section 21 of the Act is that in the absence of an agreement to the contrary, the notice under Section 21 of the Act by the claimant invoking the arbitration clause, preceding the reference of disputes to arbitration, is mandatory. In other words, without such notice, the arbitration proceedings that are commenced would be unsustainable in law.”

17. The judgment of the Delhi High Court in **Alupro Buildings System Pvt. Ltd. (supra)** has been approved by the Hon’ble Supreme Court in **Adavya Projects Pvt. Ltd vs. M/s Vishal Structurals Pvt Ltd & Others, 2025 INSC 506**. The Hon’ble Supreme Court has held as under in paragraph Nos.30.1 & 30.2 of the judgment:-

“30.1 The decision in Alupro Building Systems (supra) has been relied on by the High Court in its impugned order to hold that the notice under Section 21 is a mandatory requirement before a person can be made party to arbitral proceedings.

30.2 While we agree with the decision insofar as holding that the notice under Section 21 is mandatory, unless the contract provides otherwise, we do not agree with the conclusion that non-service of such notice on a party

nullifies the arbitral tribunal's jurisdiction over him. The purpose of the Section 21 notice is clear by fixing the date of commencement of arbitration, it enables the calculation of limitation and it is a necessary precondition for filing an application under Section 11 of the ACA. The other purposes served by such notice of informing the respondent about the claims, giving the respondents an opportunity to admit and contest claims and raise counter-claims, and to object to proposed arbitrators are only incidental and secondary. We have already held that the contents of the notice do not restrict the claims, and any objections regarding limitation and maintainability can be raised before the arbitral tribunal, and the ACA provides mechanisms for challenging the appointment of arbitrators on various grounds. Hence, while a Section 21 notice may perform these functions, it is not the primary or only mechanism envisaged by the ACA.”

18. The Supreme Court although approved the reasoning of the Delhi High Court yet on facts it was found that a notice under Section 21 was in fact issued and therefore the claim was not non-suited on such ground. However, on the principles of law, the reasoning assigned by the Delhi High Court has not been doubted by the Supreme Court.

19. On the question of relief, learned Senior Counsel for the appellant has placed reliance upon the catena of judgments to contend that limitation is the facet of public policy and arbitral award which is hit by limitation deserves to be set aside. The judgments are reproduced as under:-

“(i) Pathapati Subba Reddy vs. The Special Dy. Collector (LA), (2024) 12 SCC 336

- (ii) *Major (Retd.) Inder Singh Rekhi vs. Delhi Development Authority, (1988) 2 SCC 338*
- (iii) *Bharat Sanchar Nigam Limited vs. Norte, (2021) 5 SCC 738*
- (iv) *Chennai Water Desalination Ltd vs. Chennai Metropolitan Water Supply and Sewerage Board, (2021) SCC Online Mad 9077.”*

20. Learned State counsel, on the other hand, argues that the arbitration proceedings commenced with the issuance of notice by the Arbitrator on 18.03.1998, and that since the limited objection under Section 16 was confined to the substitution of the new Arbitrator, the legality of the commencement of the arbitration proceedings is not open to examination at this stage.

21. In reply, learned Senior Counsel for the appellant has invited our attention to the reply filed on behalf of the appellant to the Statement of Claim (for short, ‘SOC’) wherein a preliminary objection has been taken to the commencement and maintainability of arbitral proceedings. Paragraph Nos.A, E and F of the preliminary objection are relevant and are reproduced:-

“A) This Respondent has not heard/received any communication from the Claimant of their intention to refer the dispute to arbitration, or even existence of any dispute much less about reference being made to Arbitrator. The present Arbitration proceeding has not filed under the appropriate sections of the Arbitration and Conciliation Act 1996 which has come into effect on 16 08.1996. Therefore statement of claim of Claimant without following mandatory provisions of the Arbitration and Conciliation

Act 1996 is not at all maintainable in the eyes of law and the same deserves to be dismissed/ rejected.

E) That appointment of Chief Engineer RSD Project Shahpur Khandi as an Arbitrator is unilateral, wrongful and illegal and not in terms with the provisions of the contract agreement vis-à-vis the Arbitration & Conciliation Act 1996. Moreover the then Chief Engineer has filed an application for appointment of an impartial Arbitrator before Hon'ble District Court Gurdaspur to resolve the dispute. However the Hon'ble Court was pleased to dismiss the said application of the Claimant vide order dated 04/04/2007. In view of this also this tribunal is not having jurisdiction to resolve the present dispute.

F) That the Claimant's claim is based on the accident occurred on 30/08/1994 and the claim filed for damages/losses caused due to accident dated 30/08/1994 and the statement of claim filed on 31/10/2007. Limitation Act is applicable to Arbitration Proceeding and Claimant has filed present statement of claim beyond the period of Limitation. Therefore the statement of claim of Claimant is not maintainable as per provisions of section 3 of Limitation Act. Thus the statement of claim dated 31/10/2007 is barred by law of Limitation, hence deserves to be dismissed/rejected on the point of limitation.

22. The undisputed facts of the case clearly reflect that the contract in favour of the appellant for the erection, design, and manufacture of four electric tower cranes was awarded on 31.01.1991.

The contract was in the form of a purchase order containing Clause 20,

under which any dispute between the parties was required to be referred to arbitration. It is also undisputed that, during the course of erection of the electric tower cranes, an accident occurred on 30.08.1994 in which twelve persons lost their lives. Both the award of the contract and the incident dated 30.08.1994 occurred during the currency of the Act of 1940.

23. We have perused the records with the assistance of learned counsel for the respective parties, which do not contain any reference of a dispute to arbitration. The only material available on record is the notice issued by the Arbitrator on 18.03.1998. This notice, issued by the Chief Engineer, required the appellant to appear on 24.03.1998.

24. The question therefore falls for determination is whether the notice issued by the Arbitrator on 18.03.1998 can be construed as a reference of the dispute to arbitration within the meaning of Clause 20 of the purchase order? Consequent to the aforesaid question arises whether any valid reference was made by the parties to the Arbitrator, or whether the arbitration proceedings were commenced in accordance with the provisions of the Act of 1996? The last question urged before us would be as to whether the claim of the respondent(s) is barred under the provisions of the Indian Limitation Act, 1963 (for short, '1963 Act')?

25. On the first issue framed by the Arbitrator, he has noted the contention of the appellant, which specifically raised a question on the aforesaid aspect. The Arbitrator has recorded the following finding on Issue No. 1:-

“.....I have gone through the contents of the letters dated 18.03.1998 and 21.03.1998. I do not agree with the contention of the respondent that letter dated 18.03.1998 had been issued by the Executive Engineer. In fact, the said letter was issued by the Chief Engineer, RSDC. Further, it was very clearly mentioned in the stamp for signature that the Chief Engineer, RSDC was the Arbitrator, Further, in the body of the letter, it was stated as under:

"I, Chief Engineer /RSDC, Administration being Arbitrator in this case, inform you that you attend my office chamber at Shahpurkandi on 24.03.1998 at 3.00 p.m. to put your case on the above said subject.

The above said letter of the Chief Engineer is a clear pointer to the fact that the arbitration proceedings had been set in motion on 18.03.1998. In this connection, it would also be worthwhile to refer to the evidence of the witness of the respondent (Q.No. 59) wherein the witness stated in clear and categorical terms as under:

"The Arbitrator was appointed on 18.03.1998"

In the light of the categorical admission of the respondent as mentioned above, it is no longer available to the respondent to state that the proceedings had been commenced without following the provisions of the Act. The respondent has selectively quoted from the order of the District Judge, Gurdaspur. The reference to page 7 of the order is out of place since Issue Nos. 2 and 3 were not pressed by the respondent before the District Judge. Therefore, whatever observations have been made thereunder cannot be read as a verdict of the court. In fact, the ratio of the judgment is that it is the Chief Engineer, RSDC, who is the Arbitrator in terms of clause 20 of the contract. It is quite possible that letter dated 18.03.1998 written by the Chief Engineer

entering upon reference in the present proceedings may not have been brought to the notice of the Court during the proceedings in the case filed by the claimant. Since the said letter has been relied upon by the respondent itself, the Arbitrator is bound to take cognizance of the same. Letter dated 18.03.1998, read with the evidence of the respondent, leads to the obvious inference that the Arbitrator was appointed on 18.03.1998.

Another aspect which is relevant to the present case is that it was incumbent upon the respondent to have filed an application under Section 16 of the Act challenging the jurisdiction of the Arbitrator if the appointment was not in accordance with the provisions of the contract.

Pursuant to letter dated 18.03.1998, I do not find any document on the record to show that an application had been filed under Section 16 of the Act. The only application filed in the present case was under Sections 15 and 16 of the Act, though the prayer made therein was not under Section 16. Moreover, the grouse in the said application was that the Arbitrator had no jurisdiction to hear the matter as the removal of the earlier Arbitrator had not been communicated to the respondent. There was not even a whisper of the appointment having not been made in terms of the contract. Law is now well-settled that unless an objection is taken under Section 16 of the Act challenging the jurisdiction of the Arbitrator, the same cannot be raised subsequently.

In view of my findings above, I hold that the Arbitrator had been appointed in accordance with the provisions of the contract as well as the Act. Moreover, in view of the admission made by the witness of the respondent, this issue no longer survives. I, therefore, decide the issue against the

respondent.”

26. Before the Commercial Court as well, this issue was specifically urged. In fact, the judgment of the Reference Court runs into 58 pages. Apart from referring to the facts and the arguments of the parties, the considerations on all twelve issues are contained in paragraph Nos.13 to 15, which are reproduced below:-

“13. This court is of the firm opinion that in this case there is no delay as the Shirke Company is blowing hot and cold in the same breadth. Previously before the Arbitrator, they had taken up the plea that there was no dispute in the year 1998 itself although the accident had taken place in 1994 as the matter was still under resolution between the parties and subsequently before this court the company has taken up the plea that the dispute arose in 1994 when the accident has taken place.

14. I have carefully perused the award. Due opportunity of hearing was given by the Arbitrator and this court is of the firm opinion that deciding of objections under section 34 of Arbitration and Conciliation Act is not like deciding an appeal. There has to be limited scope with the court deciding the objections regarding the arbitral award. Even if the Arbitrator has not appreciated the evidence properly, even if it is said for the sake of arguments, it is not a ground in itself to challenge the award of the Arbitrator. For challenging the award of the Arbitrator under section 34 of the Act it is that due opportunity was not given to the parties but from the perusal of the award it is apparent that due opportunity was given to the company and the report of the committee constituted for the purpose of deciding as to who was responsible for the lapse on account of which some of the

workmen died and Ranjit Sagar Dam had to pay the compensation was responsible. The period during which the committee was constituted or the correspondence continued till the Shirke company finally refused to admit its liability in terms of the findings of the committee came from that day onward the matter was required to be referred to the Arbitrator and in this regard I have seen the record and do not find that there is inordinate delay in referring the matter to the Arbitrator. I further do not find the award in any way in which the Arbitrator has misconducted himself in any manner. I do not find the arbitral award as in violation of any public policy rather I find that it was Shirke Construction Private Limited which was solely responsible in terms of the contract to provide the cranes from Pune to Ranjit Sagar Dam site and Ranjit Sagar Dam had not purchased just the parts of the cranes and had taken the responsibility to erect the crane of its own but it was Shirke Construction company which was responsible to provide the comprehensive insurance cover so that from the dispatch from Pune till its commissioning if anything goes wrong with the crane or it causes loss or damage to the person handling the crane the insurance cover could help both the parties to the contract to be rescued from the situation. Both from the perusal of the contract as well as even cross-examination of the representative of the company who continued to represent the company throughout this 14/ 15 years goes to show that Shirke Construction Company was solely responsible for providing comprehensive insurance and the comprehensive insurance is specifically dealt in VIII clause of contract which deals with the erection and commissioning and in para no.11 it is mentioned that the rates are FOR, departmental store and the material is to be dispatched fully

insured by the firm. The term fully insured means comprehensive insurance and it was further mentioned that firm shall be fully responsible for all transmit risk and claim thereof and purchaser will not be responsible for any claim. Furthermore the tower cranes can be said to be tower crane only when they are installed and as per the findings of the committee only four pins were installed instead of eight and the hydrolic jack machines which could bear the weight of the crane were incapable to bear such weight and the entire process of installation and erection was the responsibility of the Shirke construction Equipment Company and it was on account of their failure alone which has caused loss to Ranjit Sagar Dam.

15 As such this Court is of the opinion that internal correspondence between the employees of Ranjit Sagar Dam with whom Shirke Construction company had no concern and if any correspondence was addressed between the department it did not absolve Shirke Construction company from its responsibility to discharge by way of supplying comprehensively insuring the cranes till installation and commissioning of tower crane. In totality therefore I find the objections as not maintainable and have been filed only to delay the process for recovery of amount for which the responsibility has been established by the Arbitrator in favour of Ranjit Sagar Dam. As such the objections are dismissed being without merit. Memo of costs be prepared. Arbitration file along with copy of this judgment be sent to the Arbitrator. File of objection petition be consigned to the record room.”

27. It is in the context of above facts that we propose to take up the issues formulated by us one by one.

28. The first issue raised is with regard to reference of dispute to the Arbitrator. Clause 20 of the Contract contains the Arbitration Clause and has been reproduced above. We have already observed that except for the letter of Chief Engineer dated 18.03.1998, there is no other document on record to indicate that any dispute between the parties had either arisen or was referred to Arbitrator for adjudication.

29. The notice dated 18.03.1998 was objected to by the appellant *vide* their letter dated 21.03.1998, which has already been extracted above. The letter of 21.03.1998 contains a specific objection regarding the non-accrual of any dispute as well as the absence of a reference of the dispute to the Arbitrator. This issue was not addressed by the Arbitrator at the time the objection was raised. In fact, instead of proceeding with the arbitration pursuant to the notice dated 18.03.1998, the respondent moved an application before the Court of the District Judge, Gurdaspur, seeking the appointment of an impartial Arbitrator. Although there is no specific reference to the provision under which the respondent invoked the jurisdiction of the District Judge, Gurdaspur by instituting Arbitration Case No. 22 of 18.12.1999, the only provision that can be reasonably traced for this purpose is Section 8 of the Act of 1940. Section 8 of the Act of 1940 reads as follows:

“8. Power of Court to appoint arbitrator or umpire .-(1) In any of the following cases,-

(a) where an arbitration agreement provides that the reference shall be to one or more arbitrators to be appointed by consent of the parties, and all the parties do not, after

differences have arisen, concur in the appointment or appointments; or

(b) if any appointed arbitrator or umpire neglects or refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be supplied, and the parties or the arbitrators, as the case may be, do not supply the vacancy; or

(c) where the parties or the arbitrators are required to appoint an umpire and do not appoint him; any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in the appointment or appointments or in supplying the vacancy.

(2) If the appointment is not made within fifteen clear days after the service of the said notice, the Court may, on the application of the party who gave the notice and after giving the other parties an opportunity of being heard, appoint an arbitrator or arbitrators or umpire, as the case may be, who shall have like power to act in the reference and to make an award as if he or they had been appointed by consent of all parties.”

30. The necessary condition for invoking the power under Section 8 of the Act of 1940 is the accrual of a dispute between the parties and the failure to appoint an Arbitrator in terms of the arbitration clause. Only if the parties fail to appoint an Arbitrator can the Court, on the application of the party who gave the notice, appoint an Arbitrator.

31. The District Judge, Gurdaspur while rejecting the application of the respondent on 04.04.2007 has categorically returned a finding that no Arbitrator in terms of Clause 20 of the Arbitration Clause was ever appointed. The order of the District Judge, Gurdaspur dated 04.04.2007 has attained finality *inter se* between the parties.

32. Once this position is accepted, it must be presumed that no

arbitration proceedings had actually commenced. This is for two reasons. Firstly, no dispute was notified by the respondent to the appellant, nor was any reference made of such a dispute to the Arbitrator. An Arbitrator can only proceed further in the matter once the dispute has been formally referred to them. Under the Act of 1940, the appointment of an Arbitrator can be made either by the consent of the parties or pursuant to an order passed by the Court under Sections 8 or 20 of the Act of 1940.

33. On the facts of the case, neither was any claim notified by the respondent to the appellant, nor was any reference made by the respondent to the Arbitrator. In the absence of such a reference, the initiation of arbitration proceedings was open to challenge. In fact, when the notice was issued by the Chief Engineer, acting as Arbitrator, on 18.03.1998, an objection was raised to the commencement of arbitration proceedings on the grounds set out in the objection dated 21.03.1998. The objections specifically included the lack of accrual of a dispute and the absence of a reference of the dispute to the Arbitrator. It was only thereafter that the respondent(s) approached the Civil Court, ostensibly under Section 8 of the Act of 1940, seeking the appointment of an impartial Arbitrator. This prayer was rejected on the ground that no reference had been made under Clause 20 of the Act of 1940.

34. Once that be the position in law, the only course available to the respondent was to have initiated fresh process for reference of dispute to Arbitrator. This is not what has actually happened in this case.

35. It transpires that, after the application of the respondent was

rejected by the District Judge, Gurdaspur, the Arbitrator who had earlier issued the notice dated 18.03.1998 proceeded with the matter. In fact, a subsequent officer carried the proceedings forward from that stage without addressing the issue of the legality of the reference of the dispute. The Arbitrator has, interestingly, observed that the letter dated 18.03.1998 of the Chief Engineer, which marked the commencement of the reference, may not have been brought to the notice of the Court. This observation, however, is not supported by any material on record. In fact, it is based on the mere supposition that the letter of 18.03.1998 was not placed before the Court. Such an observation cannot be accepted, inasmuch as the letter dated 18.03.1998 formed the very basis for the commencement of proceedings by the Arbitrator.

36. The District Judge, Gurdaspur noticed that as per Clause 20 of the Contract, the dispute was referable to the Chief Engineer but in fact, as per the Contract, the Arbitrator was not appointed. The Court has further observed that without appointment of Arbitrator as per the Agreement an impartial Arbitrator cannot be appointed. In such an exigency, it will have to be held by this Court that there was no valid arbitration till passing of the order by the District Judge, Gurdaspur on 04.04.2007. Even thereafter, Clause 20 of the Contract has not been invoked.

37. The records reveal that for the first time, SOC before the Arbitrator has been submitted in the year 2007. Such reference of dispute at best would mark commencement of reference to arbitration.

38. The Arbitrator has clearly recorded that, by a series of letters sent by the appellant in 1995 and 1996, the dispute had come into existence. The Arbitrator has also taken the date of commencement of the dispute to be 13.03.1996. Even if this date is assumed to be the date of commencement of the dispute, the reference to arbitration would have to be made within a period of three years. However, the first reference of the dispute, in the nature of a statement of claim, was made by the respondent only in 2007, which is well after the expiry of three years. It is undisputed that the provisions of the 1963 Act are applicable to the arbitration proceedings, and claims are required to be made within three years. The incident in question occurred on 30.08.1994. Although the appellant contended that the date of commencement of the dispute, at the earliest, would be 30.08.1994, even if we accept the Arbitrator's reasoning that the date of commencement was 13.06.1996, the claim made before the Arbitrator in 2007 is manifestly barred by limitation.

39. We may also take note of the fact that the parties have proceeded on the premise that the provisions of the Act of 1996 are applicable in the facts of the present case.

40. Once that be so, the commencement of arbitration proceedings would have to be in terms of Section 21. Section 21 clearly records the principle that arbitral proceedings in respect of dispute would commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

41. We have already noticed that except for the letter of the

Arbitrator dated 18.03.1996, there is no other material on record to show that any request for reference of dispute to arbitrator was received by the appellant.

42. In such circumstances, till 2007 there is no commencement of arbitration proceedings. The commencement of arbitration proceedings after 2007 would clearly be hit by the provisions of the 1963 Act.

43. The Arbitrator, as well as the Commercial Court, have completely failed to advert to the relevant aspects arising from the facts of the instant case. Whether the commencement of arbitration, resulting in the issuance of the notice dated 18.03.1998, was in accordance with the provisions of the Act, has been entirely omitted from consideration. We otherwise note that the respondents did not serve upon the appellants any notice regarding the accrual of a dispute, nor did they inform the appellant that any such dispute had been referred to arbitration. In the absence of such a reference, the issuance of the notice by the Arbitrator was clearly impermissible. After the application of the respondent for the appointment of an impartial Arbitrator was rejected, it was, therefore, not open to the Arbitrator to proceed with the matter, thereby effectively nullifying the order of the District Judge, Gurdaspur, dated 04.04.2007.

44. In such view of the matter, the award passed by the Arbitrator as well as its affirmance by the Commercial Court is found to be wholly without jurisdiction and otherwise suffers from patent perversity and consequently cannot be sustained.

45. The appeal consequently succeeds and is allowed. The

judgment and order dated 23.08.2017 passed by the learned Additional District Judge, Commercial Court, Pathankot is set aside. The objection of the appellant filed under Section 34 of the Act of 1996 to the arbitral award is upheld, and, accordingly, the award of the Arbitrator dated 24.06.2013 is set aside.

46. All pending miscellaneous application(s), if any, also stand disposed of.

[ASHWANI KUMAR MISHRA]
JUDGE

[ROHIT KAPOOR]
JUDGE

JANUARY 27, 2026
Rahul Joshi

- | | |
|------------------------------|--------|
| 1. Whether Speaking/reasoned | Yes/No |
| 2. Whether Reportable | Yes/No |