

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Arbitration Case No.321 of 2017 (O&M)  
DATE OF DECISION: 25.01.2019

MGCPL-SHARMA (Joint Venture)

....Applicant

versus

State of Punjab and others

.....Respondents

**CORAM:- HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE**

Present: Mr. Dheeraj Mahajan, Advocate for the applicant  
Shri Shreesh Gupta, Sr. DAG, Punjab

..

**KRISHNA MURARI, CHIEF JUSTICE** (Oral) :

CM-26636-CII-2018:

Reply is permitted to be taken on record subject to all just exceptions.

C.M. stands disposed of.

ARB-321-2017:

This is an application under section 11 (6) of the Arbitration and Conciliation Act, 1996, as amended by the Arbitration and Conciliation (Amendment) Act, 2015 for appointment of an independent Arbitral Tribunal.

Learned counsel for the parties do not dispute the fact that there is a contract between the parties which contains an arbitration clause. However, Shri Shreesh Gupta, Senior Deputy Advocate General appearing for State of Punjab, referring to clause 25(v) of the agreement, contends that Superintending Engineer of the PWD (B&R), Punjab, has been nominated to be appointed as a sole Arbitrator to resolve the disputes between the parties.

However, since clause 25(ix) of the agreement between the parties provides that the provisions of the Arbitration and Conciliation Act, 1996 or any other statutory provision thereunder or modification thereof and for the time being enforced shall apply to the arbitration proceedings. In such view of the matter, the amendment made in the Act by incorporating Section 12(5) by the Act No. 3 of 2016, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator. Thus, the Superintendent Engineer, PWD (B&R), Punjab appointed by the respondents would not be competent to function as the arbitrator.

Thus, an independent arbitrator needs to be appointed in exercise of the powers conferred upon me by Section 11 of the Act. Accordingly, I hereby appoint Mr. Justice Madan B.Lokur, a former Judge of the Supreme Court of India, (# A-26, First Floor, Gulmohar Park, New Delhi,) as arbitrator. The fee may be settled by the parties and the arbitrator.

**(KRISHNA MURARI)**  
**CHIEF JUSTICE**

25.01.2019  
Parkash/ravinder

NOTE:

Whether speaking/non-speaking: Speaking  
Whether reportable: YES/NO