

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

**ARB No.23 of 2019 (O&M)
Date of Decision: 09.11.2022**

GURBAX SINGH

.....Petitioner

Vs

STATE OF PUNJAB AND ORS.

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Shashi Bhushan Gautam, Advocate
for the petitioner.

Mr. Sanjeev Soni, Addl. A.G., Punjab.

Mr. Ashish Grover, Advocate
for respondents No.2 and 3.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') for appointment of an independent Arbitrator to adjudicate the dispute arising out of contract agreement.

[2]. The tenders for the work were invited by the respondents by notice dated 10.04.2012. The petitioner was the lowest tenderer and successfully got the assignment. The

allotment letter was issued on 24.05.2012 for Rs.46,60,930/- with a time limit of 9 months to be reckoned from the date of issue of allotment letter.

[3]. The dispute has arisen between the parties on account of suspension and cancellation of work assignment vide letter dated 21.03.2016 under Clause 31.3 of the Standard Bidding Document on the ground that the contract agreement was not signed between the parties within 28 days of the date of allotment as required under clause 30.3 of Standard Bidding document and also on account of non-deposit of performance security in the shape of bank guarantee for an amount equivalent to 5% of the contract amount. The security/earnest money was not forfeited in the order. While cancelling the allotment letter, respondent No.3 had overlooked the fact that the contract agreement had already been executed between the parties on an appropriate stamp paper. Demarcations were not done by the respondent No.3. The bank guarantee was required to be submitted at the time of release of payment of work done as per conditions of allotment letter.

[4]. Since the work could not be commenced due to its suspension by respondent No.3, therefore, the question of making any payment did not arise and no occasion arise for submitting the performance security in the shape of bank

guarantee. The performance security was not deposited by the petitioner as the same had to be deposited at the time of payment of first running bill, therefore, the petitioner should have been afforded an opportunity of being heard on the issue of deposit of performance guarantee by way of serving a notice upon him before ordering cancellation of work.

[5]. According to learned counsel for the petitioner, cancellation of allotment of work without issuing any notice of 14 days was illegal. The petitioner has raised 7 disputes for different amounts. The disputes as enumerated by the petitioner are reproduced hereasunder:-

- I) *Dispute No.I: Refund of Bid security amounting to Rs.52,370/- illegally withheld by respondent-3.*
- II) *Dispute No.II: Compensation for the huge loss suffered on account of expenditure on idle skilled and unskilled labour which remained deployed on the work due to ill planning of the department.*
- III) *Dispute No.III: Compensation for the huge loss suffered on account of expenditure on idle machinery and operational manpower which remained deployed on the work due to ill planning of the department.*
- IV) *Dispute No.IV: Compensation for the huge loss suffered on account of cost of collection of sizeable quantity of stone metal and coarse sand*

brought from Pathankot quarry which was washed away with the passage of time and could not be salvaged.

- V) *Dispute No.V: Loss of profit @ 15% of the contract amount as the work allotted could not be executed due to sheer ill planning of the department and our client deprived of earning a legitimate profit of 15% of total contract amount.*
- VI) *Dispute No.VI: Losses and damages on account of long waiting period of four years @ 20% of the contract amount.*
- VII) *Loss on account of overhead expenses.*
- VIII) *Dispute No.VII: 18% interest on the amounts of above disputes from the date of their arising till the date of their actual realization.”*

[6]. Learned counsel for the petitioner with reference to first page of the agreement submits that both the parties had signed the first page of the agreement. Even as per reply filed by the respondents, there is no denial to the fact that first page of the agreement was not signed by the respondents.

[7]. Learned counsel for respondents No.2 and 3 however disputes that even after signing of the first page of the agreement, complete agreement was not signed by the petitioner, nor the work was ever started.

[8]. Per contra, learned counsel for the petitioner submits that the petitioner has material to show that he had started the work assignment, but owing to the suspension of the work at the first instance and thereafter cancelling the work assignment, the petitioner had suffered huge losses. According to Section 7(4)(b) of the Arbitration and Conciliation Act, 1996, an agreement can be culled out from an exchange of letters, telex, telegrams or other means of communication which provide a record of agreement. In support of his contention, learned counsel by placing reliance upon **Govind Rubber Limited vs. Louids Dreyfus Commodities Asia Private Limited, (2015) 13 SCC 477** further submits that the agreement even if not signed by the parties can be culled out from the correspondence between the parties. The Court has to adopt a pragmatic approach particularly in the light of signing of first page of agreement by the parties. The communication of the parties has to be appreciated in the light of signing of first page of the agreement.

[9]. I have considered the submissions made by learned counsel for the parties.

[10]. The appointment of official Arbitrator has already been deprecated by the Hon'ble Apex Court. Reference can be made to **TRF Limited vs. Energo Engineering Projects Limited,**

(2017) 8 SCC 377; Bharat Broadband Network Limited vs. United Telecoms Limited, (2019) 5 SCC 755; Perkins Eastman Architects DPC and another vs. HSCC (India) Limited, (2020) 20 SCC 760 and Ellora Paper Mills Limited vs. State of Madhya Pradesh, (2022) 3 SCC 1. The issue as regards start of work assignment or suspension and cancellation of the same would fall under disputed area for which the parties can lead evidence before the Arbitrator in accordance with law. In Bharat Sanchar Nigam Ltd. and another vs. M/s Nortel Networks India Private Limited, 2021(2) RCR (Civil) 337 the Hon'ble Apex Court has held that even in case of slightest doubt, the matter has to be referred to the Arbitrator. The plea as regards limitation, if any, raised by the respondent, would be considered by the Arbitrator in accordance with law.

[11]. Keeping in view the facts and circumstances of the case, I hereby appoint Sh. Anil Kumar Singh Panwar, Distt. & Sessions Judge (Retd.) # 508, Sector 6, Panchkula, Mob. No.9671122666 as the sole Arbitrator, to resolve the dispute/difference between the parties. The appointment of the Arbitrator shall be subject to the declaration to be made by him as required under Section 12 of Arbitration and Conciliation Act, 1996 in respect of his independence and impartiality to settle

the dispute between the parties.

[12]. The Arbitrator would complete the proceedings within the specified time in terms of Section 29-A of the said Act. The Arbitrator shall be paid fee in accordance with the IVth Schedule of the Act as amended from time to time. The fee shall be borne by both the parties equally.

[13]. Venue of the Arbitration shall be the place to be disclosed by the Arbitrator according to his convenience.

[14]. A copy of this order be dispatched to the Arbitrator at the following address:-

Sh. Anil Kumar Singh Panwar, Distt. & Sessions Judge (Retd.)
508, Sector 6, Panchkula, Mob. No.9671122666

[15]. Petition stands disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

November 09, 2022

Atik

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No