

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Arbitration Case No. 107 of 2013(O&M)
Date of Decision: 12.02.2014

M/s Amit Builders

..Petitioner

Versus

Union of India and others

..Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KISHAN KAUL, CHIEF JUSTICE.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present : Mr. SKS Bedi, Advocate, for the petitioner.
Mr. O.S.Batalvi, Advocate, for the respondents.

SANJAY KISHAN KAUL C.J. (Oral)

CM No. 2515 of 2014

Leave is granted to place on record replication to the written statement of the respondents and exemption is granted from filing certified copy of the annexures.

Application is accordingly allowed.

Arbitration Case No. 107 of 2013

This is one more matter dealing with the Government Departmental lethargy where Arbitrators after Arbitrators have been appointed without even commencing the arbitration proceedings and further setting at naught the very purpose for which the process of alternate dispute resolution through arbitration was adopted.

The dispute pertains to a tender invited for Artificers work (repair work for Allenby Lines at Ambala Cantt.) where the tender of the petitioner was accepted vide contract agreement No. GE(S)A-35/91-92. It is

the case of the petitioner that the contract was duly completed but the full payment was not made and thus the arbitration clause 70 of General Conditions of Contract was invoked vide a Claim Petition dated 06.03.1996 followed by a legal notice. Since no Arbitrator was appointed, the petitioner moved the Court of Civil Judge (Junior Division), Ambala for appointment of an Arbitrator and a direction was issued on 30.10.1998 to respondent No.3 to appoint an Arbitrator.

Thereafter the saga of appointments of Arbitrators one after the other started without any effective proceedings taking place and 7 Arbitrators are stated to have been appointed over almost 14 years with the stage of arbitration only being of exchange of respective statements of claims. 8th Arbitrator Shri R.K.Goel was appointed on 16.05.2012. However, the arbitration proceedings did not commence compelling the petitioner to file the present petition under Section 11(6) read with Section 12(c) of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the said Act') for appointment of a substitute Arbitrator.

Notice was issued on 25.10.2013 and after notice was served, Mr. Goel appears to have woken up by issuing notice entering upon the reference on 26.11.2013.

The submission of the petitioner is that seeing the past history coupled with no action of Shri R.K.Goel for a period of 1½ years to even commence the arbitration, it is necessary that this Court must exercise its jurisdiction to appoint an Arbitrator who can expeditiously resolve the controversy which is more than 15 years old.

I am in agreement with the submission of learned counsel for the petitioner. The respondents cannot be permitted to frustrate the arbitration proceedings in this manner. Nothing has been placed on record to

substantiate the plea of learned counsel for the respondents that the arbitration was delayed because of the petitioner. The letter of resignation can hardly be a material against the petitioner. Even if the conduct of Shri R.K.Goel is seen, he is also not proceeding for 1½ years with the arbitration. There must be an end to this dispute.

I am of the view that an Arbitrator is liable to be appointed by this Court in place of Shri R.K.Goel to ensure expeditious disposal of the arbitration proceedings.

It is suggested by learned counsels for the parties that a technical person posted in Chandigarh may be appointed where arbitration proceedings can be held. Accordingly, Mr. Kishanjeet Singh, Chief Engineer, Union Territory, Chandigarh, # 140, Sector 40-A, Chandigarh (Mobile No. 98142-16762) is appointed as sole Arbitrator to enter upon the reference and adjudicate the disputes inter-se the parties. The respondents will ensure that records of the previous proceedings are placed before him which are adopted by both the parties in arbitration proceedings. The fee of the Arbitrator will be as per the schedule of the High Court Rules.

Petition is accordingly allowed. Parties are left to bear their own costs.

A copy of this order be sent to the Arbitrator.

(SANJAY KISHAN KAUL)
CHIEF JUSTICE

12.02.2014
'ravinder'