

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

Reserved on 21.10.2022

ARB No.160 of 2022(O&M)
Date of Decision: 28.10.2022

M/s S.R. Engineering Construction

-Petitioner

Versus

Union of India and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Petitioner/Ghanshyam Dass Dhiman-in-person.

Mr. Arun Gossain, Sr. Panel Counsel
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an independent Arbitrator to adjudicate the dispute arising out of the contract agreement.

[2]. Petitioner/Ghanshyam Dass Dhiman-in-person

submitted that the dispute has arisen during currency of the contract. After completion of the contract, the appointment of the Arbitrator was sought by the petitioner. Respondent No.2 appointed number of arbitrators within a span of 14 years, but they failed to adjudicate upon the disputes. Before appointment of 9th Arbitrator, the petitioner approached the High Court for appointment of an independent Arbitrator on failure of several earlier arbitrators to adjudicate the dispute.

[3]. Arbitration Case No.140 of 2013 was decided by this Court on 22.11.2013, thereby appointing sole Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties. The award was published, but dispute of payment of audited final bill was left as the same was in the custody of the respondents. The Arbitrator while considering claim No.11 had observed that this claim cannot be considered till audited final bill is placed and examined. The claimant can raise dispute, if any, after the audited final bill is received. Even the Department failed to take any action for production of audited final bill before the Arbitrator. The contractor could not be paid the amount accordingly.

[4]. Petitioner again requested the respondent(s) for supply of audited final bill and refund of additional security, but the same was not entertained by the respondent(s). The work

was completed by the petitioner, but the necessary completion certificate was not issued by the respondent(s). The matter was ultimately referred by the High Court to the Arbitrator. Not only the disputes were pending between the parties, but future tenders of the petitioner were also banned by the respondent(s) till the settlement of disputes by means of arbitration. The Arbitrator had published the arbitral award on 16.05.2015, but claim No.11 regarding payment of final bill could not be adjudicated in the absence of furnishing audited final bill by the respondent(s), which was in the custody of the respondent(s). The audited final bill was not presented despite directions issued by the Arbitrator. Due to the defaults and non-corporation by the respondent(s), the Arbitrator could not decide the same and ultimately had to leave claim No.11 with a liberty to the claimant to raise dispute, if any, after audited final bill is received. The petitioner has also staked its claim regarding claim No.10 for the release of additional security deposits in the shape of Special Term Deposit Receipt (STDR), but till date, the said STDR has not been released being illegally withheld by the respondents. Future tenders of the petitioner were also banned in an arbitrary manner. Petitioner has also requested respondent No.3 to release STDR which was in the custody of respondent No.3 and also copy of audited final bill duly checked

by PCDA Western Command, Chandigarh.

[5]. The aforesaid request was sent to respondent No.3 by registered post, but admittedly, the said communication has not been replied by the respondents. Petitioner has sought second reference in view of negligence, default and non-corporation by the respondent-Department before the Arbitrator for non-production of audited final bill and non-payment of STDR, resulting in unnecessary proceedings.

[6]. The case was taken up by this Court on 26.04.2022. Learned counsel for the respondents appeared on the basis of advance notice and sought time in the context whether the audited final bill as mentioned in the award dated 16.05.2015 (Claim No.11), has been issued or not. Thereafter, learned counsel for the respondents sought more time on 22.08.2022. The case was further adjourned on 17.10.2022 and 19.10.2022. No reply has been filed by the respondents despite having appeared on the basis of advance notice on 26.04.2022.

[7]. During course of arguments, only objection raised by the learned counsel for the respondents is that the matter cannot be referred to the Arbitrator second time. Reference has been made to **Special Leave to Appeal (C) No.10722 of 2022** tilted **M/s Tantia Constructions Limited Vs. Union of India** decided on 15.07.2022.

[8]. Perusal of the aforesaid order would show that in the cited case, it was not in dispute that earlier the dispute was referred for arbitration and Arbitrator had passed an award on the basis of claims made therein. Thereafter, fresh arbitration proceeding was sought to be initiated with respect to some other claims after payment of final bill. In that context, the Hon'ble Apex Court has held that there cannot be two arbitration proceedings with respect to the same contract/transaction.

[9]. In the instant case, claim No.11 was in respect of Rs.4,38,029/- at the relevant time and was never decided by the Arbitrator, rather, the same was deferred with a liberty to the claimant/petitioner to raise dispute, if any, after audited final bill is received. Since the respondents did not produce the audited final bill before the Arbitrator, therefore, no adjudication could be done by the Arbitrator on the said issue. So far as claim No.10 is concerned, an award of Rs.1,00,000/- has already been made, therefore, this claim cannot be considered in these proceedings.

[10]. In view of non-adjudication of claim No.11, there cannot be any doubt that qua claim No.11, the matter was never adjudicated by the earlier Arbitrator. For claim No.11, reference to the Arbitrator would be the first attempt for adjudication of dispute between the parties. The plea regarding limitation

cannot be gone into as the liberty was given by the Arbitrator to seek adjudication in respect of claim No.11 and also the letter dated 27.05.2015 was never replied by the respondents. Even the present petition has not been replied by the respondents and the factual foundation laid in this petition has gone unrebutted.

[11]. In view of above, there exists a *bona fide* dispute between the parties, which needs to be referred to an independent Arbitrator for adjudication.

[12]. For the reasons recorded hereinabove, this petition is allowed and Ms. Rupinder Kaur Thind, Advocate, House No.333/334, Advocates Enclave, Sector-49-A, Chandigarh, Mobile No.9988820504 is appointed 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.

[13]. The Arbitrator would complete the proceedings within the specified time in terms of Section 29-A of the 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.

[14]. The venue of the Arbitration shall be the place to be disclosed by the Arbitrator according to his convenience.

[15]. A copy of this order be dispatched to Ms. Rupinder Kaur Thind, Advocate, at the following address:-

House No.333/334, Advocates Enclave, Sector-49-A,

Chandigarh,

Mobile No.9988820504.

28.10.2022
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No