

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

**Reserved on 06.12.2022
ARB No.36 of 2022(O&M)
Date of Decision:25.01.2023**

M/s Dinesh Construction Company

.....Petitioner

Vs

**Executive Director, Punjab Heritage and Tourism Promotion
Board**

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Dheeraj Mahajan, Advocate
for the petitioner.

Mr. Dharam Vir Sharma, Sr. Advocate with
Ms. Sunder Kumari, Advocate
for the respondent.

RAJ MOHAN SINGH, J.
CM No.16940-CII of 2022

For the reasons mentioned in the application, the same is
allowed. Accompanying document is taken on record.

Main case

[1]. The petitioner has preferred this petition under Section
11(6) of the Arbitration and Conciliation Act, 1996 as amended

by the Arbitration and Conciliation (Amendment) Act 2015 (3 of 2016), 2019 for appointment of an independent Arbitrator/arbitral Tribunal to adjudicate the dispute between the parties arising out of contract agreement.

[2]. The petitioner-Company was allotted the work of construction and renovation of restaurant, toilet block, outer boundary, front parking, shops, kitchen, dormitory 4 no's guest room at Magnoliya Tourist Complex, G.T. Road, Kartarpur vide work allotment letter dated 13.06.2016. The aforesaid allotment was made in favour of the petitioner only after tendering rates and finding the rates of the petitioner to be the lowest one. Formal agreement was also entered into between the parties. The petitioner started the construction work and completed the work to the satisfaction of the respondent-Department. The petitioner always remained under impression that the respondent-Department shall fulfill the contractual obligations in time. The respondent-Department did not comply with the mandatory contractual obligations, but still the petitioner executed the work on 27.08.2019. The respondent-Department did not release the complete payments. Instead of making the payment to the petitioner on completion of work, the respondent-Department issued a letter dated 08.07.2020 to the petitioner, asking the petitioner to submit rate analysis of non-

BOQ items and further asked the petitioner to submit the final bill as per the proforma. The petitioner had also submitted its final bill, but the petitioner was unnecessarily asked to complete the formalities. The petitioner again submitted the final bill as per proforma given by the respondent, but still the payments were not released.

[3]. The petitioner served a legal notice dated 25.01.2021 for the release of payment towards final bill, but the needful was not done without disclosing any reason. Owing to the failure on behalf of the Department in releasing the estimated payment of final bill, the petitioner ventured to file CWP No.3670 of 2021, which was disposed of vide order dated 17.02.2021, directing the competent authority to take decision on the legal notice dated 25.01.2021 within the period of six weeks from 17.02.2021. It was directed that in case, there is no legal impediment and the work is found to have been executed to the satisfaction of the respondent and the amount is found payable, then the same be released to the petitioner immediately.

[4]. Thereafter, in order to shield its own lapse, the department made illegal deductions in unilateral manner without considering the relevant record and measurement book and only released part payment of Rs.18,40,116/- to the petitioner. Thereafter, the petitioner issued detailed legal notice dated

01.10.2021, highlighting the number of claims ranging from Claims No.1 to 5 for different amounts. On failure of the respondent to consider the claims of the petitioner within the stipulated period of 60 days, the petitioner invoked the arbitration clause and requested for appointment of an independent Arbitrator vide legal notice dated 01.12.2021.

[5]. The objection raised by the petitioner was in the context of incompetence of the departmental person to conduct any arbitral proceedings in view of ratio laid down in **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**. Para No.54 of **TRF Limited's** case (supra) reads as under:-

“54. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity nor the individual respectability. We are only concerned with the authority or the power of the Managing Director. By our analysis, we

are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the plinth. Or to put it differently, once the identity of the Managing Director as the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated. Therefore, the view expressed by the High Court is not sustainable and we say so.”

[6]. The petitioner has tentatively valued its claim to the tune of Rs.30 lacs excluding the claim of *mesne* profit as the same shall be subject to the calculations to be submitted before the Arbitrator.

[7]. In the written statement filed by the respondent-Department, the claim of the petitioner has been refuted, however, the payment made in pursuance of deductions carried out on 05.04.2021 and making payment of Rs.18,40,160/- are not in dispute.

[8]. Both the parties are at variance in respect of pending dues and a *bona fide* dispute exists between the parties. The

adjudication of the dispute as per arbitration clause, needs to be referred to the Arbitrator in terms of Clause-25 of the Contract-Agreement.

[9]. The assertion of the respondent-Department that the final payment was made on 05.04.2021/06.04.2021 shall be subject to material to be adduced by the parties before the Arbitrator. The payment of contractual value of the project shall also be subject to the adjudication by the Arbitrator.

[10]. In view of stand taken by both the parties, this petition is allowed and **Ms. Harsimrat Rai, Advocate, House No.401, GH-9, Sector-20, Panchkula, Mobile No.9915468877** 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.

[11]. 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.

[12]. The venue of the Arbitration shall be disclosed by the

Arbitrator as per his/her convenience.

[13]. A copy of this order be dispatched to the Arbitrator on

the following address:-

Ms. Harsimrat Rai, Advocate,

House No.401, GH-9, Sector-20, Panchkula,

Mobile No.9915468877

25.01.2023

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)

JUDGE

Yes/No

Yes/No