

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

Arbitration Case No. 88 of 2013

Date of Decision: 13.12.2013

M/s Bhagwan Dass and sons

..Petitioner

Versus

Union of India and others

..Respondents

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

Present : Mr. SKS Bedi, Advocate, for the petitioner.  
Mr. Rupinder Khosla, Assistant Solicitor General of India,  
for respondent No.1.

**SANJAY KISHAN KAUL C.J.** (Oral)

Respondent No.2 i.e. Garrison Engineer (South) Ambala Division, Ambala Cantt invited tenders for repairs of its complex at Ambala Cantt. It was awarded to the petitioner on 22.12.2009. The disputes are stated to have arisen from the said contract which contains Arbitration Clause 70 in terms whereof sole arbitration is envisaged of an Engineer Officer to be appointed by the authority.

The petitioner invoked the arbitration clause and sought appointment of an Arbitrator as per letters dated 07.11.2012 and 23.11.2012 but to no avail resulting in filing of the present petition.

It is the say of the respondents that the final bill was drawn on completion of the work on 29.05.2010 and 'No Claim Certificate' has been issued by the petitioner on receipt of the cheque. Thus no amount is payable.

The second limb of the submission of learned counsel for the respondents is that if the petitioner was dis-satisfied with the final bill, there is only gate-way of 90 days to have the arbitration clause

invoked in view of clause 66 of the terms and conditions of the contract.

In the replication, the petitioner has annexed a letter dated 05.05.2011 of the respondents as Annexure P-5, in terms whereof it is recorded that the contractor had agreed to start the balance work. Annexure P-6 is the document purporting to be the full and final settlement which has been signed by the petitioner 'under protest'. Thus, it is the say of learned counsel for the petitioner that there was no final accord and satisfaction as payment was received under protest as is apparent from the endorsement made in the printed form.

On hearing learned counsels for the parties, I find no merit in the objection of learned counsel for the respondents. As to whether full accord and satisfaction has taken place or not and whether any dispute survives for reference of arbitration would depend on the facts of each case. There are number of judicial pronouncements analyzing this aspect. In the present case, however, there is a printed form which was required to be signed in the form of full accord and satisfaction but that was signed under protest by the petitioner as is apparent from the endorsement made thereon.

In **Chairman and M.D., N.T.P.C. Ltd. Vs. M/s Reshmi Constructions, Builders and Contractors, 2004(2) S.C.C. 663**, it has been held that an expression 'without prejudice' would mean no full and final acceptance. In the present case, the payment accepted is infact under protest and thus there can be no doubt about it.

As far as the plea of limitation is concerned, the clause only provides that after payment of the amount of the final bill payable, the contractor may reconsider his position in respect of disputed portion of the final bill and if he fails to do so within 90 days, his disputed claim shall be dealt with as provided in the contract. In the present case, there is no question of reconsideration of the position as the payment has been accepted by the petitioner under protest. Thus, the protest is made simultaneously at the stage of receiving payment under final bill and is thus within the period of 90 days but the respondents have not dealt with the issue.

The designated authority of the respondents having failed to appoint the Arbitrator even till date has lost the opportunity to make such appointment.

In view of the aforesaid the claims made by the petitioner are liable to be referred to arbitration. Accordingly, Mr. Satnam Singh, retired Chief Engineer, # 3156, Paradise Enclave, Sector 50-D, Chandigarh-160047 (Mobile No. 9872004111) is appointed as sole Arbitrator to enter upon the reference and adjudicate the disputes inter-se the parties. The fee of the Arbitrator will be governed by the High Court Rules. The venue of arbitration will be at Chandigarh.

Petition is accordingly allowed.

A copy of this order be sent to the Arbitrator.

(SANJAY KISHAN KAUL)  
CHIEF JUSTICE

**13.12.2013**

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