

Arbitration Case No. 538 of 2021

[1]

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Arbitration Case No. 538 of 2021

Date of decision: 12th January, 2023

Rajeev Kumar Goel

Petitioner

Versus

State of Haryana and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. P. S. Rana, Advocate for the petitioner.
Mr. Sharad Aggarwal, AAG, Haryana.

AVNEESH JHINGAN, J (Oral):

This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') for appointment of an arbitrator for adjudication of disputes between the parties.

The earlier petition filed under Section 11 of the Act was disposed of on 14.1.2020 by passing the following order and appointing Justice N. K. Sodhi, Chief Justice (Retd.):

“The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short – the Act) for appointment of an Arbitrator in a domestic commercial dispute.

It is not disputed that through an agreement the respondents awarded to the petitioner the work of designing, construction, erection, testing and commissioning of (i) Main Pumping Station (ii) construction of 4 MLD capacity Sewage Treatment based on Moving Bed Biological Reactor Technology (Attached Growth Process) complete in all respect including construction of sullage carrier (iii) approach roads, Panel Room, B. Wall Transformer, DG Set and all contingent Electrical, Mechanical, Piping and Instrumentation work and all other works contingent thereto including operation and maintenance for 12 months during defect liability period after

trial run of three months and five years thereafter at Nissing Town, District Karnal. It is further not disputed that such agreement contained clause 25-A as per which disputes between the parties were to be settled through the mode of Arbitration.

On disputes having arisen between the parties, in terms of the afore-referred clause 25-A of the agreement, the petitioner sent a legal notice dated 15.03.2018 to the respondents seeking appointment of an Arbitrator to settle the disputes between the them. The respondents responded to the aforesaid notice through their reply dated 04.04.2018 denying the petitioner's claims and his request for appointment of an Arbitrator, occasioning the filing of the present petition. After the filing of the present petition, the respondents did appoint an Arbitrator which could not be done as after the filing of the present petition, they forfeited their right to do so especially when the Arbitrator appointed by them was their own employee who in terms of Section 12(5) of the Act could not arbitrate the dispute between the parties.

After hearing learned counsel for the parties and with their consent, for adjudicating the disputes between them, Justice N.K. Sodhi, Chief Justice (Retd.), is appointed as the sole Arbitrator. However, such appointment would be subject to the declaration to be made by Justice N.K. Sodhi under Section 12 of the Act with regard to his independence and impartiality to settle the disputes between the parties.

The Arbitrator is requested to complete the proceedings within the time limit specified under Section 29A of the Act.

The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended or as may be mutually settled by the parties and the Arbitrator.

As per agreement expressed by learned counsel for the parties, for the sake of the convenience of their respective clients as also of the Arbitrator, the venue of the Arbitration shall be at Chandigarh Arbitration Centre, Chandigarh or at any other place convenient to all concerned.

A copy of the this order be forwarded to Justice N.K. Sodhi, Chief Justice (Retd.) at the given address:

H.No.36,

Sector-4,

Chandigarh.

Mobile No.9646124055.

After seeking the convenience of the Arbitrator, the parties are directed to appear before him on 31.01.2020 at 11 A.M. or any other date

suitable to all concerned.

The matter is disposed of in the above terms.”

The arbitrator resigned due to his ill-health.

The petitioner requests to appoint another arbitrator.

Accordingly, the present petition is disposed of by appointing Mr. Justice Paramjeet Singh Dhaliwal, former Judge of this Court, H. No. 2254, Sector 35-C, Chandigarh as the sole arbitrator subject to declaration to be made by him under Section 12 of the Act with regard to his independence and impartiality to settle the dispute between the parties.

The arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended. The fee of the arbitrator will be equally borne by both the parties.

The arbitrator is requested to complete the proceedings as per time limit specified under Section 29A of the Act.

It is clarified that the reference shall be subject to the petitioner's complying with all the requirements of the agreement including the condition of pre-deposit.

Copy of the order be sent to the appointed arbitrator.

[AVNEESH JHINGAN]
JUDGE

12th January, 2023
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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No