

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

2024-PHHC-090257



ARB No. 21 of 2018
Date of Decision:29.07.2024

**M/S WALIA CONSTRUCTION COMPANY THROUGH ITS PARTNER
SIMRANJIT SINGH**

....Petitioner

vs.

UNION OF INDIA AND ORS

....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Dheeraj Mahajan, Advocate
for the applicant

Mr. Shobit Phutela, Senior Panel Counsel
for Union of India

JAGMOHAN BANSAL, J. (ORAL)

1. The applicant through instant application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") is seeking appointment of an Arbitrator to adjudicate the dispute between the parties.
2. The applicant was allotted work of Shifting of Border Security Fencing close to International Border in Gurdaspur sector by respondent. Pursuant to allotment of tender, an agreement was executed between the parties wherein there was an arbitration clause. A dispute erupted between the parties and applicant served notice(s) upon different authorities including notice dated 08.03.2017 which was served upon Chief Engineer. The



respondent did not make appointment of an Arbitrator within 30 days from the date of demand notice, thus, applicant has approached this Court in terms of Section 11(6) of 1996 Act.

3. Mr. Shobit Phutela, Senior Panel Counsel for Union of India submits that respondent has already made appointment of an Arbitrator, thus, there is no need on the part of this Court to make further appointment of an Arbitrator.

4. Mr. Dheeraj Mahajan, Advocate submits that as per Section 21 read with Section 11 of 1996 Act, the respondent was bound to make appointment of an Arbitrator within 30 days from the date of demand notice. Few days, at the most, could be condoned/ignored, however, there is delay of more than two years on the part of respondent which cannot be ignored.

5. I have heard counsel for the parties and perused the record with their able assistance.

6. There is no dispute qua existence of arbitration clause and dispute between the parties. The sole objection of respondent is that an Arbitrator has already been appointed. The applicant served notice upon respondent on 08.03.2017. The instant application was filed before this Court on 22.01.2018 and notice to respondent came to be issued on 16.02.2018. During the pendency of present application, the respondent made appointment of an Arbitrator on 20.09.2019 which is invalid in view of mandate of Sections 11 & 21 of 1996 Act.



7. In view of above facts and findings, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed.

8. Mr. Chief Justice (Retd.) Jaswant Singh, Resident of House No. 197, Sector 19-A, Chandigarh. 160019 is requested to act as an Arbitrator to adjudicate the dispute between the parties. He is further requested to comply with mandate of Section 12 of 1996 Act before proceeding further.

9. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended.

10. Parties are directed to appear before the learned Arbitrator on the date, time and place to be fixed by the Arbitrator at his convenience.

11. Needless to mention, parties will be at liberty to raise all the claims/defences/counter claims/pleas including that of limitation before the Arbitrator. Any observation made hereinabove will not be binding on the learned Arbitrator.

12. A copy of this order be sent to Mr. Chief Justice (Retd.) Jaswant Singh.

13. Pending Misc. Application, if any shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

29.07.2024
paramjit

Whether speaking/reasoned:	Yes	
Whether reportable:		No