

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

ARB-171-2019 (O&M)
Date of decision : **July 20, 2022**

Qurban Ali

.....Applicant

Versus

**General Manager (Electrification), Northern Railways, New Delhi and
another**Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

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

Mr.Banni Thomas, Advocate for the respondents.

LISA GILL, J.

Prayer in this petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short – ‘the Act’) is for appointment of sole independent Arbitrator for resolution of disputes and differences arising out of Agreement dated 10.02.2016, Annexure P-1, executed between the parties.

Dispute between the parties arose out of allotment of work namely ‘Constructions of OHE/PSI Depot, AEE office, Staff Quarters 02 Unit TV-IV, 02 Units TV-III, 23 Units TV-1 (single/double storey) approach road etc. and other allied works including electrical wiring and cables laying works at Jarudanara on Meerut-Saharanpur Section in connection with Railway Electrification’. Work in question was allotted to the applicant vide Letter of Acceptance dated 07.12.2015 pursuant to notice inviting tender dated 25.08.2015. Work was to be completed by 06.12.2016, however, due to non-clearance of site, non approval of plans etc. it is

stated, work was completed by 10.12.2017 and completion certificate issued. Applicant-Company, it is submitted started and completed the work in right earnest, however, dispute arose between the parties. Legal notice dated 20.10.2018 is stated to have been submitted by the applicant raising various claims and requesting the respondent - authorities to release the payment due alongwith 18% interest. When the applicant's concerns were not addressed, legal notice dated 01.05.2019 is stated to have been served upon the respondents requesting for appointment of an Arbitrator. Present petition has been filed seeking appointment of independent Sole Arbitrator. It is submitted that as per clause 64 of the General Conditions of Contract, resolution of the dispute through arbitration is provided for, however, in terms of said provisions, an Arbitrator being the General Manager or Gazetted Officer of the Railway cannot be appointed as a Sole Arbitrator.

Learned counsel for the respondents while referring to the reply filed on behalf of the respondents submits that the applicant is estopped from raising the demand for appointment of a independent Sole Arbitrator as the applicant on 09.03.2018 himself accepted that he has no outstanding claim against the respondents for any work done qua the work order in question. Reference is also made to letter dated 23.03.2018 sent by the petitioner wherein the applicant states that he has no claim qua the respondent – Railways. Issuance of legal notice and filing of this petition, it is submitted, is an afterthought and should be dismissed.

Heard, learned counsel for the parties.

Allotment of work in question is a matter of record. It is apparent that dispute regarding payment arose between the parties. Reference to letter dated 23.03.2018 by learned counsel for the respondents whereby applicant is

stated to have requested Deputy Chief Engineer, Railways Electrification Ambala Cantt. to arrange for finalization of his final bill at the earliest is misplaced. Legal notice was issued immediately without much delay by the applicant on 20.10.2018 raising various claims and demand for appointment of Arbitrator was raised vide notice dated 01.05.2019. When no action was taken for appointment of Arbitrator by the respondents within thirty (30) days from issuance of notice, present petition was filed. Furthermore, in terms of Section 12(5) of the Arbitration Act and judgment of the Hon'ble Supreme Court in **TRF Limited vs. Energo Engineering Projects Limited (2017) 8 SCC 377** and **Perkins Eastman Architects DPC and another vs. H.S.C.C. (India) Limited (2019) SCC online Supreme Court 1517**, a party to the contract i.e. General Manager cannot be appointed unilaterally

Keeping in view of the facts and circumstances, there is no impediment to appointment of Sole Arbitrator.

Accordingly, Mr. Justice B.S. Mehandiratta, District and Sessions Judge (Retd.), is appointed as the Sole Arbitrator to resolve the dispute/differences between the parties. Appointment is subject to declaration to be made by the Arbitrator under Section 12 of the Act with regard to his independence and impartiality to settle the disputes between the parties. The Arbitrator to complete the proceedings within the time limit specified under Section 29-A of the Act. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended from time to time.

A copy of this order be dispatched to Mr. B.S. Mehendiratta, District and Sessions Judge (Retd.), at the following address:-

House No. 2509, Extension 6, Near Kidzee School, Old Sunny Enclave, Kharar, SAS Nagar, Mohali (Punjab).

Present petition is, accordingly, disposed of.

July 20, 2022

rts

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No