

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDI GARH

ARB-241-2015 (O&M)
Date of decision: - 02.12.2016

M/s Indermohan Singh & Contractors

... Petitioner

Versus

Christian Medical College, Ludhiana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE S. J. VAZIFDAR, CHIEF JUSTICE

Present: - Mr. P.S. Rana, Advocate,
for the petitioner.

Mr. Bhri gu Dutt Sharma, Advocate,
Mr. R.S. Mattu, Advocate,
for the respondents.

* * * *

S. J. VAZIFDAR, C. J. (ORAL)

This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 for the appointment of an arbitrator.

2. The respondents deny the existence of an agreement in writing between the parties. Their contention is that even if the work was done by the petitioner, the claim would be one on quantum merit and not under a written contract.

3. An agreement dated 11.01.2003 was entered into between respondent No. 1 and M/s PCA International, an architects firm. The agreement recites that respondent No. 1 was desirous of carrying out the planning, design and construction for the purpose of renovation, retrofitting and augmentation of institutional campus involving hospital and/or college and residential areas. The second recital states that the architect was willing to provide consultancy for architectural and allied services for planning, design, implementation, supervision, retrofitting, if required, and augmentation of the hospital campus and renovation and

upgradation of the Cardiology services and Nephrology services areas of respondent No. 1. The recitals, therefore, do not restrict the scope of the architect's work only to Cardiology and Nephrology service areas of respondent No. 1. This is clearer still from the operative part of the agreement which expressly states that the architect would render, inter alia, services in connection with and in regard to planning, design, implementation and supervision of construction of housing complex for senior faculty which is the work that has been executed by the petitioner.

4. Clause (I) of the agreement reads as under:-

"(I) Assist the owner in selection of contractors, inviting tenders for various trades, preparing comparative statements and submitting assessment reports and recommendations thereon, assisting the owner to conduct negotiations, if desired by the owner, with the tenderers, preparing contract documents for tenders."

This clause does not permit the architect to enter into an agreement on behalf of the respondents. It merely entitles the architect to assist the respondents in selecting a suitable contractor for carrying out the said work.

5. A Notice Inviting Tenders (NIT) was allegedly issued by the architect on behalf of the respondents. I use the word 'allegedly' consciously for the respondents contend that they did not issue the NIT. The respondents, in fact, contend that even the architect did not issue the NIT. Clause 6 of the NIT reads as under:-

"6. The Tender Documents shall be signed on each page by the Tenderer or his duly authorized representative."

The table of contents in the NIT refers, inter alia, to Annexure 'C': 'Articles of Agreement'. The 'Articles of Agreement', therefore, form a part of the contract or tender documents. The proforma of the 'Articles of Agreement' is

annexed to the tender documents. Clause 8 thereof reads as under: -

"8. Arbitration: All dispute or differences whatsoever arising between the parties out of or relating to the construction, meaning and operation or effect of this contract or the breach thereof shall be settled by arbitration in accordance with the Arbitration & Conciliation Act, 1996 and the award made in pursuance thereof shall be binding on the parties. Venue of such arbitration shall be in Ludhiana."

6. The petitioner under cover of an undated letter submitted the tender documents alongwith the demand draft/pay order. The pay order is dated 23.05.2006. The letter, therefore, was presumably written around that time. It is important to note that the letter was addressed to the Director, CMC Hospital, Ludhiana. There were disputes between respondent No. 1 and this very Director, who is respondent No. 2. The said architect is the sole proprietorship firm of the father-in-law of the Director of respondent No. 1.

7. The petitioner's case is that thereafter the architect issued a Letter of Intent (LoI) in favour of the petitioner dated 24.08.2006. The opening paragraph refers to the tender submitted by the petitioner dated 23.05.2006 in response to the NIT dated 28.04.2006. The NIT dated 28.04.2006 has, however, not been produced by the petitioner. The LoI refers to discussions held with the petitioner at a meeting held on 13.06.2006. The LoI concludes as under: -

"7. All other terms and conditions are to be as given in the Notice Inviting Tender & Tender Documents. These supercede all conditions given by you in your letters on page A-9 dated 19.06.2006 and page A-10 dated 23.05.2006. Any misprint in the Tender document will be corrected at the time of signing the detailed agreement.

We have been authorized by the Christian Medical College and Hospital Society to issue you this letter of intent. The letter of intent is being issued to you for you to start mobilizing. Detailed agreement between CMC and you will be prepared in due course and signed. It is again reiterated that all terms and conditions as given in the N.I.T. except where specifically modified as in this letter shall be applicable and any & all conditions put forth by you in your correspondence/communications as noted above shall stand superceded.

You are requested to sign two copies of this letter in lieu of your acceptance of the offer."

8. If indeed an agreement is held to have been entered into between the parties, the arbitration clause would be binding between them by virtue of the doctrine of incorporation. It is important to note that a copy of the above letter was forwarded to respondent No. 1. Thereafter, the work was carried out by the petitioner. The petitioner was paid an aggregate amount of ₹1.35 crores towards its four running bills which were raised upto 29.11.2007. The architect's services were thereafter terminated and a new architect was appointed. The petitioner, however, continued the work. Running bills were submitted from time to time upto the fourteenth running bill dated 24.11.2011. The petitioner's demand for the balance consideration having been rejected, the petitioner by a letter dated 25.08.2014 invoked the arbitration clause. As I mentioned earlier, if the agreement is established, the arbitration clause would stand incorporated therein. The only question is whether the parties had entered into an agreement.

9. In my view, the parties had entered into an agreement. The Lol dated 24.08.2006, though signed by the architect, was forwarded to the respondents. Admittedly, the

petitioner did work pursuant to the same. The respondents did not prevent it from doing so. The respondents, therefore, agreed to the terms and conditions of the Lol read with the tender documents.

10. It was not necessary for the agreement to be signed. It is sufficient if it is in writing. The issue as to whether there was any collusion between the erstwhile Director of respondent No. 1 and as to whether the petitioner derived any unfair benefit or advantage on account thereof as also whether the petitioner on account thereof would not be entitled to any payment would be decided by the arbitrator. Indeed, if the respondents have a claim against the petitioner including for any excess amounts paid or on account of the terms and conditions of the agreement being unfair, they would also be entitled to raise their claims before the arbitrator. The petitioner has no objection to the same and consents to the same.

11. In these circumstances and subject to what is stated above, the petition is disposed of by appointing Sh. Balbir Singh Mehndiratta, a retired District & Sessions Judge, Punjab, now residing at H. No. 5802-B, Sector-38 West, Chandigarh/H.No. 2509, Sunny Enclave, Kharar, District SAS Nagar - 140301, as the sole arbitrator.

(S. J. VAZIFDAR)
CHIEF JUSTICE

02.12.2016

Amodh

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