

220

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

ARB No.14 of 2016(O&M)

Date of Decision: 29.10.2022

M/s S.K. Construction Company

.....Petitioner

Vs

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Yogesh Goel, Advocate and
Mr. Lakshay Goel, Advocate
for the petitioner.

Mr. Shobit Phutela, Advocate
for the Union of India.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has filed the present petition under Section 11(6) read with Section 11(8) of the Arbitration and Conciliation Act, 1996 for appointment of an arbitral Tribunal.

[2]. Petitioner is a registered partnership firm and has undertaken construction of industrial shed for testing of metro coaches of approximately 12 meters x 90 meters for cost of Rs.1,35,57,267/-. The contract was awarded to the petitioner on

the basis of acceptance of its bid submitted upon invitation of tender by the respondents for the aforesaid work.

[3]. The agreement was executed on 25.09.2007. As per terms and conditions of the contract agreement, the project work was to be completed on or before 26.04.2008.

[4]. According to the learned counsel for the petitioner, after allocation of work and execution of contract agreement, the respondents stopped the work from time to time without assigning any reason and even failed to supply the approved drawings in time and that ultimately resulted in huge losses to the petitioner due to delay in execution of work. The date for completion of work was extended upto 31.01.2010 vide letter dated 24.10.2009 issued by the respondents. Petitioner again approached the respondents for extension of time for the reasons mentioned in the application. Respondents did not pay any heed to the request of the petitioner and issued a notice as per Clause 62 of the General Conditions of Contract to make good the progress and threatened to terminate the contract.

[5]. Faced with that situation, the petitioner had filed a civil suit for permanent injunction, restraining the authorities from terminating the contract.

[6]. During pendency of the civil suit, respondent authorities

terminated the contract in terms of Clause 62 of the General Conditions of Contract vide letter dated 29.01.2010 despite the fact that the petitioner was required to complete the work upto 31.01.2010. Petitioner was not allowed even to lift the raw material lying at the site as the gate passes were not issued by the authorities.

[7]. Vide order dated 10.06.2010 passed by the Civil Judge (Junior Division), Ludhiana, the parties were referred to the Arbitrator as per terms of the agreement. Thereafter, the petitioner approached the respondent authorities for appointment of Arbitrator, but of no avail. Petitioner filed written representation dated 15.02.2011 for appointment of Arbitrator, but the respondents did not appoint any Arbitrator.

[8]. Learned counsel for the petitioner submits that vide letter dated 16.05.2011, the respondent authorities issued the letter in the context of appointment of arbitral Tribunal, consisting of Sh. D.S. Jangpangi, Chief Material Manager, HSQ, Rail Coach Factor, Kapurthala, Sh. Ajit Singh, Dy. Chief Mechanical Engineer/Design, Rail Coach Factory, Kapurthala and Ms. Manjit Kaur, Dy. Financial Adviser & Chief Accounts Officer-I, Rail Coach Factory, Kapurthala. The aforesaid arbitral Tribunal was requested to enter upon the reference and publish the intelligible award. Thereafter, aforesaid composition of

arbitral Tribunal was changed vide letter dated 17.08.2011, thereby appointing Sh. Ajit Singh, Dy. Chief Mechanical Engineer/Design, Rail Coach Factory, Kapurthala, Ms. Manjit Kaur, Dy. Financial Advisor & Chief Accounts Officer-I, Rail Coach Factory, Kapurthala and Sh. B.L. Bairwa, Dy. CCMT, Rail Coach Factory, Kapurthala. The earlier composition was changed only to the extent of replacing Sh. D.S. Jangpangi with Sh. B.L. Bairwa. The aforesaid composition of arbitral Tribunal also did not work and the respondents again vide letter dated 10.03.2014, changed the composition of arbitral Tribunal, thereby introducing Sh. R.P. Sharma, Sh. Rajesh Gupta and Mrs. Manjit Kaur in the arbitral Tribunal. Even thereafter, the composition was again changed vide letter dated 21.09.2015, thereby introducing Sh. Mupinder Singh, Sh. Pasang Chhering and Mrs. Manjit Kaur in the arbitral Tribunal for doing the needful. Ultimately, out of the aforesaid three persons, Sh. Pasang Chhering sought exemption from his duties as co-Arbitrator.

[9]. Faced with that situation, a new arbitrator was sought to be appointed in his place.

[10]. The respondent-Department suggested four names to the petitioner for selecting two Arbitrators out of the aforesaid four names. The respondent-Department has suggested

following names:-

1. Sh. P.K. Verma, Sr. EDPM, RCF/Kapurthala.
2. Sh. Baljit Singh, Dy. CMM(G), RCF/Kapurthala.
3. Sh. R.S. Beeka, Dy. CME(Fur.), RCF/Kapurthala
4. Sh. Gurjit Singh, Dy. CME (Plg.), RCF/Kapurthala.

[11]. Petitioner did not respond to the aforesaid proposal of the respondent Department and preferred to file this petition for appointment of arbitral panel of independent Arbitrators.

[12]. The petitioner has tentatively valued its claim to the tune of Rs.70 lacs subject to final adjudication to be done by the Arbitrator.

[13]. The existence of arbitration clause in the agreement is not in dispute.

[14]. The objection raised by the petitioner was in the context of incompetence of the officer of the department to conduct any arbitral proceedings in view of ratio laid down in **TRF Limited vs. Energo Engineering Projects Limited, (2017) 8 SCC 377;** **Bharat Broadband Network Limited vs. United Telecoms Limited, (2019) 5 SCC 755;** **Perkins Eastman Architects DPC and another vs. HSCC (India) Limited, (2020) 20 SCC 760** and **Ellora Paper Mills Limited vs. State of Madhya**

Pradesh, (2022) 3 SCC 1. Para No.54 of **TRF Limited's** case (supra) reads as under:-

“54. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity nor the individual respectability. We are only concerned with the authority or the power of the Managing Director. By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the plinth. Or to put it differently, once the identity of the Managing Director as the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated. Therefore, the view expressed by the High Court is not sustainable and we say so.”

[15]. On a pointed query put to the learned counsel for the respondents, he submits that a panel from the departmental

persons be appointed in view of Clause 64 (3)(a)(ii) of the General Conditions of Contract.

[16]. Perusal of the facts on record would show that numerous attempts made by the Department in appointing different Arbitrators in the arbitral Tribunal have not fructified. Learned counsel for the petitioner submits that in order to prevent unnecessary costs of litigation and valuable time, a single Arbitrator be appointed.

[17]. Keeping in view the total amount involved in this case and also in view of the fact that appointment of departmental persons is deprecated by the Hon'ble Apex Court in the aforesaid judgments, therefore, I deem it appropriate to appoint a sole Arbitrator so as to ward off costs of arbitral proceedings while appointing panel of three Arbitrators.

[18]. In view of facts and circumstances of the case, I deem it appropriate to appoint Sh. Bua Jee Sansi, Addl., District and Sessions Judge (Retd.), House No.59. Tara Singh Avenue, Basti Bawa Khel Kapurthala Road Jalandhar, Mobile No.9417759600 as the sole Arbitrator, to resolve the dispute/difference between the parties. The appointment of the Arbitrator shall be subject to the declaration to be made by him as required under Section 12 of Arbitration and Conciliation Act, 1996 in respect of his independence and impartiality to settle

the dispute between the parties.

[19]. The Arbitrator would complete the proceedings within the specified time in terms of Section 29-A of the Act. The Arbitrator shall be paid fee in accordance with the IVth Schedule of the Act as amended from time to time. The fee shall be borne by both the parties equally.

[20]. The venue of the Arbitration shall be the place to be disclosed by the Arbitrator as per his convenience.

[21]. A copy of this order be dispatched to the Arbitrator at the following address:-

Sh. Bua Jee Sansi, Addl., District and Sessions Judge
(Retd.).

House No.59. Tara Singh Avenue, Basti Bawa Khel
Kapurthala Road Jalandhar,

Mobile No.9417759600

[22]. Petition stands disposed of accordingly.

29.10.2022

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No