

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Arbitration Case No.27 of 2005
DATE OF DECISION: March 30, 2007

M/S KARTAR SINGH & CO.

.....PETITIONER
through Mr. P.S.Rana,
Advocate.

VERSUS

PUNJAB STATE ELECTRICITY BOARD & OTHERS.

.....RESPONDENTS
through Mr. Govind Goel,
Advocate

CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN, CHIEF JUSTICE

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

VIJENDER JAIN, CHIEF JUSTICE (ORAL)

This petition has been filed under Section 11 of the Arbitration and Conciliation Act 1996, *inter-alia* praying for appointment of Sole Arbitrator to adjudicate the disputes and differences between the petitioner and the respondents, arisen out of the contract agreement dated 26.03.1993. The arbitration clause is admitted between the parties.

Learned counsel appearing for the petitioner has contended that following was the Arbitration Clause 2.39 in the agreement:-

"If at any time any question, dispute or difference whatsoever shall arise, between the purchaser/Board and the contractor/supplier, upon or in relation to or in connection with the purchase order/contract either party

may forth with give to the other, notice in writing of the existence of such question dispute or difference and the same shall be referred for sole arbitration of a nominee of the Purchaser Board, who shall give a reasoned/speaking awards. The award of the Sole Arbitrator shall be final and binding on the parties under the provisions of the Indian Arbitration Act 1948 and of the rules there-under. Any statutory amendment modification or re-enactment thereof for the time being enforce, shall be deemed to apply to and be incorporated in the Contract/Purchase order, it will not be objectionable if the Sole Arbitrator is an officer of the Board and he has expressed his views on all or any of the matters in question of dispute or difference.

b) Upon every or any such reference, the cost of and incidental to the reference and award respectively shall be in the discretion of the Sole Arbitrator so appointed who may determine the amount thereof or direct the same to be taxed as between solicitor and Client or as between party and party and shall direct by whom and to whom and in what manner the same is to be done and paid.

c) The work under the contract shall if reasonably possible, continued during the arbitration proceedings and no payment due or payable by the Purchaser/Board shall be with-held on account of such proceedings.”

It has been contended before me that the aforesaid arbitration clause was invoked by the petitioner on 07.11.1997 and thereafter the petitioner sent reminders to the respondents for appointment of the

Arbitrator in terms of the arbitration clause. The petitioner served a legal notice dated 17.08.2004 (Annexure P-15) on the respondents and, thereafter, yet another reminder was sent by the petitioner to the respondents. Having received neither any reply nor any acknowledgment, nor any vacancy having been supplied by the respondent, the petitioner did not have any other alternative, but to file a petition under Section 11 of the Arbitration and Conciliation Act, 1996 in this regard on 27.04.2005.

Learned counsel appearing for the respondents Mr. Govind Goel has contended that the petition is not maintainable as the same is time barred. It is contended by learned counsel for the respondents that as per Section 11 sub Section 5 of the Act, petitioner ought to have approached the Chief Justice to appoint an Arbitrator within thirty days i.e. On or before 06.12.1997. Having not done so, the petitioner cannot maintain its petition as the period of more than three years has elapsed from the time cause of action accrued in favour of the petitioner. In support of his contention, learned counsel for the respondents has placed reliance on the judgment **Major (Retd.) Inder Singh Rekhi v. Delhi Development Authority, AIR 1988 SC 1007, Unon of India v. M/s Momin Construction Company, AIR 1995 SC 1927 and Steel Authority of India Limited v. J.C.Budharaja, Government and Mining Contractor AIR 1999 SC 3275.** It has also been contended by Shri Goel that in terms of Article 137 of the Limitation Act, the right to apply had accrued to the petitioner after expiry of 30 days from the invocation of the arbitration clause on 07.11.1997., the petitioner ought to have filed a petition under Section 11 of the Arbitration and Conciliation Act, within three years from 07.12.1997. Having not done so, the petition is not maintainable and no Arbitrator can be appointed by this Court.

I have heard the arguments advance by the counsel for the parties. There is no force in the arguments raised by learned counsel for

the respondents. The Arbitration and Conciliation Act is a special Act. Section 43 of the said Act provide for limitation. Section 43(2) reads as follows:-

43. Limitations:- x x x x x x x x

(2) For the purpose of this section and the Limitation Act, 1963, an arbitration shall be deemed to have commenced on the date referred to in Section 21.

Section 21 of the Act is as follows:-

21. Commencement of arbitral proceedings:-

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

From the aforesaid provisions of law, the intention of the legislature is manifestly clear that the embargo for attracting the provisions of limitation is on a date when the arbitral proceedings in a dispute shall commence, on a request for that dispute to be referred to arbitration is received by the respondent. The legislature in its wisdom has not taken any other steps/ applications/ proceedings or other cause of action into consideration except when a request is made by a party to an agreement to refer any dispute is received by the respondent for the purpose of calculating the period of limitation. The request for invocation of the arbitration was made by the petitioner on 07.11.1997. When the request for invoking the arbitration agreement for constituting a Tribunal under the agreement was made by the petitioner to the respondents that invocation was within the period of limitation as contemplated under Section 43 read with Section 21 of the Arbitration Act. Therefore, the arguments raised by

the learned counsel for the respondents that the petition filed by the petitioner under Section 11 of the Arbitration and Conciliation Act suffers from delay is not well founded.

Coming to the arguments advanced by the learned counsel for the respondents that Section 11(5) of the Arbitration Act provides a period of limitation of 30 days in which the party has to file a petition after receipt of a request by one party from the other party is based on misunderstanding of the provision of Section 43 of the Act. As a matter of fact, 30 days period is envisaged in sub Section 5 of Section 11 is a period prescribed after invoking the arbitration clause by the other party to supply the vacancy as per the arbitration clause and no party can approach the Chief Justice or any person or institution designated by him before the expiry of period of 30 days, that means a party has to necessarily wait for the expiry of 30 days period after invocation of arbitration clause, so as to approach the chief Justice or his designate to supply the vacancy, in terms of arbitration clause. Sub Section 5 does not prescribe any embargo for filing the petition under Section 11 of the Arbitration and Conciliation Act. The limitation for filing of a petition under Section 11 is only prescribed under Section 43 of the Arbitration and Conciliation Act.

Let it be judged from a different angle. Arbitration Clause is admitted in agreement. The party invokes the said arbitration clause within the period of limitation, as has been done in the present case on 07.11.1997. Another party after having received the letter of invocation sits over the same and neither rejects the request for appointment of an Arbitrator nor appoints any Arbitrator and after a lapse of considerable time when a party seeks the aid of the Court by filing a petition under Section 11 of the Arbitration and Conciliation Act, on account of non-supply of vacancy by the opposite party, that limitation has expired, if this interpretation is given, then it will be totally nullifying the scheme of the Arbitration and

conciliation Act itself.

Therefore, there is no merit in the submission of the respondents. The respondents have failed to refer the petitioner's claim for adjudication pursuant to the arbitration clause and, thus, held themselves liable not to supply a vacancy of Arbitrator in the stipulated time.

Therefore, I appoint Justice A.L.Bahri,(retired Judge of Punjab & Haryana High Court) as Sole Arbitrator to adjudicate upon the dispute between the parties.

The Arbitrator shall fix his own fee.

Registry is directed to send a copy of this order to the Arbitrator.

Parties to appear before the Arbitrator on 04.05.2007 at 4.00 PM at the residence of the Arbitrator.

Petition stands disposed of.

March 30, 2007
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(VIJENDER JAIN)
CHIEF JUSTICE