



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Arb. Case No. 923 of 2023Date of decision: 20.04.2024

Pawan Sahni & others ...Petitioners*Versus**Satish Sharma & others* ...Respondents

*Coram:***The Hon'ble Mr. Justice M.S. Ramachandra Rao, Chief Justice***Whether approved for reporting?*¹

For the petitioners : Mr. Navneet Kumar Bhalla, Advocate.

For the respondents: Mr. Sudhir Thakur, Senior Advocate with Mr. Karun Negi, Advocate, for respondents no. 1 & 2.

Mr. Neeraj Gupta, Senior Advocate with Ms. Parul Negi, Advocate, for respondent no. 5.

M.S. Ramachandra Rao, Chief Justice (*Oral*)

This Application is filed under Section 14 of the Arbitration and Conciliation Act, 1996, (for short 'the Act) by the applicants herein, to declare the mandate of the Arbitrator-5th respondent to be terminated.

2. Respondents no. 1 & 2 had filed an application under Section 11 of the Act before this Court, which was registered as

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?*

Arbitration Case No. 69/2019 and the 5th respondent was appointed as an Arbitrator by the then Chief Justice of this Court vide order dt. 28.10.2022 to adjudicate the dispute between the parties.

3. Thereafter, the Arbitrator submitted his declaration as required under Section 12 of the Act as per the 5th & 6th Schedule of the Act on 16.01.2023.

4. The Arbitrator then issued notice for appearance dt. 16.01.2023 to the parties before him and they appeared before him on 09.02.2023.

5. Subsequently, statement of claim was filed by respondents no. 1 & 2 and statement of defence was also filed by the applicants and the 5th respondent.

6. This application has been moved by the applicants under Section 14 of the Act making certain allegations against the Arbitrator imputing relationship of respondent no. 1 with the Arbitrator, the details of which are not necessary to be mentioned in this order.

7. Essentially, the complaint of applicants is that on account of the alleged relationship of the 5th respondent-Arbitrator

with the 1st respondent, the Arbitrator is unable to perform his function in view of Section 14 read with 7th Schedule of the Act.

8. It is important to point out that whatever apprehension the applicants had against the 5th respondent for acting as an Arbitrator, had not been put to the said Arbitrator, as mandated by Section 13(2) of the Act, by issuing a written statement of the reasons for challenging his mandate.

9. Thus, the learned Arbitrator, who is the 5th respondent, had no occasion to dispute the claims of the applicants. He has since filed a reply strenuously denying the allegations against him leveled by the applicants and contending that there is no such close relationship as is being attributed to him with the 1st respondent by the applicants.

10. It is stated by the learned Arbitrator that he is voluntarily withdrawing from the office of the Arbitrator in the pending Arbitration proceedings between the parties, though he has no personal interest in any party.

11. Learned Counsel for respondents no. 1 & 2 has also strongly refuted the allegations leveled by the applicants against the 5th respondent.

12. It is unfortunate that parties seek to impute motives etc. to learned Arbitrators without even giving any opportunity to the Arbitrators, as required by Section 13(2) of the Act, to rebut such allegations which may be false and thereby embarrass the Arbitrators.

13. I do not deem it appropriate to deal with the allegations leveled by the applicants against the Arbitrator in light of the stand taken by the Arbitrator that he does not wish to continue as an Arbitrator. But I am of the view that it is not open to a party to presume for himself any disqualification, which may be incurred by an Arbitrator under the 7th Schedule of the Act, and straightway approach the Court without giving an opportunity to the Arbitrator to rebut the same, as has been done in the instant case.

14. Arbitrators like retired High Court Judges who hold high office, ought not to be put in such an embarrassing position by parties forcing them to defend their reputation in Courts. It would give a handle to unscrupulous litigants who perceive for whatever reason that an Arbitrator may hold against them, to make such allegations without any basis and embarrass the Arbitrators

by filing applications under Section 14 of the Act to replace them on a mere apprehension without any basis.

15. While recording my strong disapproval to the conduct of the applicants in this case, in view of the stand taken by the 5th respondent that he does not wish to continue as an Arbitrator, I deem it appropriate to appoint Shri B.S. Walia, former Judge of the Punjab and Haryana High Court, as an Arbitrator in place of the 5th respondent, to resolve the dispute between the parties, after his disclosure in writing is obtained in terms of Section 11(8) of the Act, and only after receipt thereof, shall his appointment, as an Arbitrator, come into force.

16. On his giving consent to arbitrate the dispute between the parties as an Arbitrator, Shri B.S. Walia, former Judge of the Punjab and Haryana High Court, Office Address: #27, Sector 4A, Chandigarh, shall enter into reference, and shall pass an award in accordance with law.

17. It is further directed that from the fees fixed by the said Arbitrator, the applicants shall pay Rs.4,65,000/- on behalf of respondents no. 1 to 4 to the Arbitrator, now appointed, in addition

to their share of the fee, which the said Arbitrator may ask them to pay.

18. It is stated by the learned Counsel on both sides that the time limit for appointing an Arbitrator under Section 29(A) of the Act has expired. But in view of the present order, the time period is extended for a further period of 12 months from the Date Justice B.S. Walia enters upon the Reference.

19. Copy of this order be forwarded to the learned Counsel for the parties as also to the learned Arbitrator. The learned Arbitrator so appointed shall be entitled to fee as per stipulation contained in 4th Schedule appended to the Arbitration and Conciliation Act, 1996.

20. The Application is disposed of accordingly alongwith pending application(s), if any.

(M.S. Ramachandra Rao)
Chief Justice

April 20, 2024
(hemlata)

High Court of H.P. ◊