

(2013) 10 P&H CK 0313

High Court Of Punjab And Haryana At Chandigarh

Case No: Arbitration Case No. 129 of 2013

Tibba Dana Sher Coop. L and C
Society

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: Oct. 11, 2013**Hon'ble Judges:** Sanjay Kishan Kaul, C.J**Bench:** Single Bench**Advocate:** Vivek Khatri, for the Appellant; H.S. Lalli, A.A.G., Haryana, for the Respondent

Judgement

Sanjay Kishan Kaul, C.J.

These five applications have been filed u/s 11(6) of the Arbitration and Conciliation Act, 1996 (for short "the said Act") arising out from different work contracts which are stated to be otherwise identical, though relating to the same task i.e. desilting of Ottu Lake for different areas. Three agreements are dated 17.06.2010 while two agreements are dated 10.06.2010. It is the case of the petitioner that the respondents authorities have failed to handover the clear site despite repeated requests and thus the petitioner sought termination of the contract which was objected to by the respondents.

2. The petitioner invoked clause 19.1 of the contract by addressing communication to the Engineer vide letter dated 19.02.2013 for claims to be released to him followed by a representation dated 04.03.2013. Since there was no response, the petitioner sought appointment of an adjudicator as per clause 19.2 of the contract vide letter dated 10.05.2013. It is at that stage a response dated 04.06.2013 was received from the Engineer rejecting the claims. The arbitration clause has thereafter been invoked vide separate legal notices dated 17.06.2013 in each of the five cases which were not replied to resulting in filing of these applications with identical facts.

3. Notice was issued on 06.09.2013 calling upon the respondents to file their replies within two weeks and the matter was adjourned for today. However, no replies have

been filed and thus these cases are of no reply.

4. In view of the aforesaid facts and circumstances, it is obvious that the disputes have arisen which are liable to be adjudicated upon. The Arbitrator as per clause 21.B of the contract had to be from the panel of the Superintending Engineers approved by the Department. Since the Arbitrator(s) had not been appointed within 30 days from the date of invocation of arbitration clause, the respondents have lost their right to appoint the Arbitrator(s) in view of the law enunciated by the Hon"ble Supreme Court in cases [Datar Switchgears Ltd. Vs. Tata Finance Ltd. and Another,](#) and [Bharat Sanchar Nigam Ltd. and Another Vs. Motorola India Pvt. Ltd.,](#) In view of the aforesaid facts and circumstances, Justice R.K. Nehru, a retired Judge of this Court, is appointed as sole Arbitrator to enter upon the references and adjudicate the disputes inter-se the parties. The fee of the Arbitrator will be governed by the High Court Rules.

Ordered accordingly.

All the petitions are allowed in the aforesaid terms leaving the parties to bear their own costs.

A copy of this order be sent to the Arbitrator.