

A HARYANA SPACE APPLICATION CENTRE (HARSAC) &  
ANR.

v.

M/S PAN INDIA CONSULTANTS PVT. LTD.

B (Civil Appeal No. 131 of 2021)

JANUARY 20, 2021

**[L. NAGESWARA RAO, INDU MALHOTRA AND  
AJAY RASTOGI, JJ.]**

C *Arbitration and Conciliation Act, 1996 – s.12(5) r/w Seventh  
Schedule – Appointment of Principal Secretary, Government of  
Haryana as nominee arbitrator of appellant-company (HARSAC),  
a Nodal Agency of Government of Haryana – Validity of – Held:  
s.12(5) of the Act (as amended by the 2015 Amendment Act) provides  
D that notwithstanding any prior agreement to the contrary, any person  
whose relationship with the parties, or counsel, falls within any of  
the categories specified in the Seventh Schedule, shall be ineligible  
to be appointed as an arbitrator – s.12(5) read with the Seventh  
Schedule is a mandatory and non-derogable provision of the Act –  
Principal Secretary to the Government of Haryana would be  
E ineligible to be appointed as an arbitrator, since he would have a  
controlling influence on the Appellant-company being a nodal  
agency of the State – In exercise of powers u/s.29A(6) of the Act  
(as amended), a former judge of Supreme Court, appointed as the  
substitute arbitrator, who shall conduct the proceedings in  
F continuation from the stage arrived at, and pass award within 6  
months.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 131 of  
2021.

G From the Judgment and Order dated 24.08.2020 of the High Court  
of Punjab & Haryana at Chandigarh in CR No. 3 of 2020(O&M).

Hemant Gupta, AAG, Alok Sharma, Ms. Payal Gupta, Ms. Sunakshi  
Gupta, Tushar Sharma Sanjay Kumar Visen, Kaushik Laik, Angad Mehta  
Advs. for the appearing parties.

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The Order of the Court was passed by A

**INDU MALHOTRA, J.**

1. The Appellant No. 1 / HARSAC, Department of Science & Technology, Government of Haryana is the nodal agency for Geographic Information System (“GIS”) Application and Remote Sensing for the Government of Haryana. The Ministry of Rural Development, Department of Land Resources designated HARSAC as the nodal agency for the State of Haryana. HARSAC invited Request for Proposal in September 2010 from qualified vendors for the modernisation of Land Record (including digitisation of cadastral Maps, Integration with records and management of old revenue documents). HARSAC vide Letter dated 28.02.2011 awarded the contract to the Respondent – Pan India Consultants Pvt. Ltd, and three other vendors for works specified in the allotment letter. In pursuance thereof, Service Level Agreements were executed between the parties. B C

Clause 6.11 of the Service Level Agreement dated 29.03.2011 in the present case contains an arbitration clause, which reads as under : D

“6.11 Resolution of Dispute

HARSAC, Haryana and the Vendor shall make every effort to resolve amicably, by direct informal negotiation, any disagreement or dispute arising between them under or in connection with the contract. If after, thirty days from the commencement of such informal negotiations, HARSAC, Haryana and the Vendor are unable to resolve amicably a contract dispute; either party may require that the dispute be referred for resolution by formal arbitration. E F

All question, disputes or differences arising under and out of or in connection with the contract, shall be referred to two Arbitrators one arbitrator to be nominated by HARSAC, Haryana and the other two to be nominated by the Vendor. In the case of the said Arbitrators not agreeing, then the matter will be referred to an umpire to be appointed by the Arbitrators in writing before proceeding with the reference. The award of the arbitrators, and in the event of their not agreeing, the award G

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A of the Umpire appointed by them shall be final and binding on the parties. The arbitration and reconciliation act 1996 shall apply to the arbitration proceedings and the venue & jurisdiction of the arbitration shall be in the State of Haryana.”

B 2. As per HARSAC, the Respondent failed to complete the work assigned within the period specified i.e. 31.12.2011, and was delaying the entire project. Even though two extensions were granted till 31.07.2012, and later extended upto 31.12.2013, the Respondent failed to complete the work. This led to the invocation of the Performance Bank Guarantee by HARSAC vide letter dated 18.03.2014.

C 3. The Respondent challenged this action by filing Civil Suit bearing CS (OS) No. 886 of 2014 before the Delhi High Court. The High Court disposed of the Suit, directing the Respondent–Contractor to keep the bank guarantees alive, and HARSAC was directed not to encash the bank guarantees, pending resolution of the disputes amicably or by an arbitral tribunal constituted by the parties.

D 4. HARSAC invoked the arbitration clause contained in the Service Level Agreement, and appointed Shri. Anurag Rastogi, IAS, Principal Secretary to Government of Haryana as their nominee arbitrator.

E The Respondent appointed Justice Rajive Bhalla (Retd.) as their nominee arbitrator on 14.09.2016.

On 14.09.2016, the arbitral tribunal stood constituted.

F 5. The Respondent / Pan India Consultants filed an Application for appointment of the presiding arbitrator under Section 10(1) of the Arbitration and Conciliation Act, 1996 before the arbitral tribunal. The tribunal vide Order dated 22.05.2017 declined the request for appointment of the third arbitrator at this stage, and reserved its right to nominate the third arbitrator in case of disagreement between the two arbitrators.

G 6. On 03.08.2018, the arbitral tribunal in its 28<sup>th</sup> sitting, recorded in the proceedings that the arguments were heard, and the matter was reserved for passing the Award.

7. The Appellant addressed letter dated 07.01.2019 to the arbitral tribunal wherein it was stated that the arbitration proceedings had been pending for more than 1 ½ years since the date of first hearing on

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07.11.2016. That vide Order dated 25.01.2018, the tribunal had extended the period of arbitration by 3 months. Since the proceedings were not completed even within the extended period, time was again extended on 15.05.2018 for a further period of 3 months. The extended period also expired on 15.08.2018. The tribunal had even then not pronounced the Award till date. Since, the arbitral proceedings were not completed within the statutory period of 1 year as prescribed by the Arbitration and Conciliation Act, 1996 or the extended period of 6 months, the mandate of the arbitral tribunal would stand terminated. A B

8. On 08.02.2019, Justice Rajive Bhalla (Retd.), one of the arbitrators, in a letter addressed to the Respondent stated that after arguments were concluded, the Award was in the process of preparation, when a letter dated 07.01.2019 was received from the Director Land Record, Haryana, Panchkula, stating that the mandate of the tribunal stood terminated. However, this letter did not make reference to the clarification sought by the Respondents regarding the fee of the tribunal. It was stated by the arbitrator that : “ *The tribunal is ready to pronounce the award forthwith.*” C D

9. The Respondent / Contractor filed an Application under Section 29A(4) of the Arbitration Act being Arb. Case No. 431 of 2019 before the Additional District Judge, Chandigarh, wherein it was stated that the Award was ready to be pronounced, and the entire fee had been paid to the tribunal. It was contended that the Director Land Records had not paid their share of the fee, but were delaying the matter, and had erroneously claimed that the mandate of the tribunal stood terminated. It was prayed that the period for passing the arbitral award be extended. E

10. The Appellant herein opposed the Application and submitted that the Application under Section 29A(4) be dismissed since sufficient cause for granting extension had not been made out. F

11. The District Judge vide its Order dated 08.11.2019 granted an extension of time of 3 months to the tribunal to conclude the arbitration proceedings, and pronounce the Award. G

12. The Appellant herein filed Civil Revision Petition under Article 227 of the Constitution before the Punjab and Haryana High Court for setting aside the Order dated 08.11.2019 passed by the Additional District

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- A Judge, whereby an extension of time had been granted for passing the Award. It was submitted that the extension of time had been mutually agreed by both parties upto 15.08.2018. However, the tribunal failed to pronounce the Award even within this extended period, and did not show any inclination of doing so even on 07.01.2019, when the letter terminating the mandate of the tribunal was sent. The tribunal failed to pronounce the Award in a period of over 28 months from the date of constitution of the tribunal.

- C 13. The learned Single Judge of the High Court passed an Interim Order dated 31.07.2020 wherein it was observed that since the period of 3 months granted by the District Court had already elapsed, both parties were directed to obtain instructions for grant of a period of 3 months on account of the prevailing Pandemic. The tribunal would conduct the proceedings either virtually or physically.

- D 14. The Petition was heard on 24.08.2020, when the learned Additional Advocate General, Haryana opposed the extension of time. The High Court, in light of the current Pandemic, granted an extension of 4 months to enable the parties to conclude their arguments within 3 months, and a period of 1 month for the tribunal to pass the Award.

- E 15. Aggrieved by the said Order, HARSAC has filed the present Special Leave Petition. We have heard the learned Additional Advocate General appearing for HARSAC, and Mr. Angad Mehta for the Respondent- Contractor.

- F 16. We find that even though a period of over 4 years has elapsed since the constitution of the tribunal on 14.09.2016, the Award has not been pronounced so far, even though the tribunal had on two occasions i.e. 03.08.2018 in its 28<sup>th</sup> sitting, and thereafter in the letter dated 08.02.2019 addressed by the arbitrators, recorded that the tribunal was ready to pronounce the Award forthwith.

- G 17. We are of the view that the appointment of the Principal Secretary, Government of Haryana as the nominee arbitrator of HARSAC which is a Nodal Agency of the Government of Haryana, would be invalid under Section 12(5) of the Arbitration and Conciliation Act, 1996 read with the Seventh Schedule. Section 12(5) of the Arbitration

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Act, 1996 (as amended by the 2015 Amendment Act) provides that notwithstanding any prior agreement to the contrary, any person whose relationship with the parties, or counsel, falls within any of the categories specified in the Seventh Schedule, shall be ineligible to be appointed as an arbitrator. A

Item 5 of the Seventh Schedule of the Act reads as under : B

**“Arbitrator’s relationship with the parties or counsel**

5. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.” C

(emphasis supplied)

Section 12(5) read with the Seventh Schedule is a mandatory and non-derogable provision of the Act. In the facts of the present case, the Principal Secretary to the Government of Haryana would be ineligible to be appointed as an arbitrator, since he would have a controlling influence on the Appellant Company being a nodal agency of the State. D

18. The Counsel for both parties during the course of hearing have consented to the substitution of the existing tribunal, by the appointment of a Sole Arbitrator to complete the arbitral proceedings. E

In exercise of our power under Section 29A(6) of the Arbitration and Conciliation Act, 1996 (as amended), we hereby appoint Justice Kurian Joseph (Retd.), former judge of this Court, as the substitute arbitrator, who will conduct the proceedings in continuation from the stage arrived at, and pass the Award within a period of 6 months from the date of receipt of this Order. The Arbitrator may direct the parties to address final arguments and take him through the entire record of the case. F

The appointment of the Sole Arbitrator is subject to the declarations being made under Section 12 of the Arbitration and Conciliation Act, 1996 with respect to independence and impartiality, and the ability to devote sufficient time to complete the arbitration within the period of 6 months. G

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- A           The arbitrator will charge fees in accordance with the Fourth Schedule of the Arbitration and Conciliation Act, 1996. We direct both parties to equally share the fees payable to the Sole Arbitrator. The proceedings will be conducted either virtually, or at the seat of arbitration in the State of Haryana.
- B           The matter is disposed of accordingly. Pending applications, if any, stand disposed.

Devika Gujral

Matters disposed of.