

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Arb P No.75/2023

Reserved on:21.11.2024.

Pronounced on: 11.12.2024.

Avtar Krishan Suri Age 65
S/o Nanak Chand Suri
R/o Near Bus Stand Katra,
Proprietor Maha Shakti Industries
Near Bus Stand Katra

....Petitioner(s)/Appellant(s)

Through :- Mr. Pranav Kohli, Senior Advocate with
Mr. Vastav Sharma, Advocate.

V/s

The Estate Manager,
J&K Small Scale Industries Development
Corporation Ltd.
R/o IID Center Battal Ballian
Udhampur-182126

....Respondent(s)

Through :- Mr. Ravinder Gupta, AAG

CORAM: HON'BLE THE CHIEF JUSTICE

ORDER

1. The present petition has been filed by the petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 for the appointment of an independent Arbitrator.
2. Brief facts, which lead to the filing of the present petition, are that vide DICU/403-06 dated 21.04.2006, the General Manager, District Industries Center, Udhampur sanctioned the allotment of 04 kanals of undeveloped land in IID Center, Battal Ballian, Udhampur. On 06.05.2006, respondent issued a formal Allotment of land Letter of Intent (LOI) vide letter No.SICOP/PM/IID/82/25 dated 06.05.2006 for the allotment of 04 kanals of land and the petitioner was asked to deposit Rs.30,000/- per kanal as premium and advance ground rent of

Rs.22,080/-. The petitioner deposited the amount of Rs. 1,42,080/- on 06.05.2006 itself.

3. It is averred in the petition that the Plot No.25 in IID Center (Phase-III), Battal Ballian Udhampur was allotted to the petitioner through letter no. SICOP/PM/IID/190/57 dated 30.05.2006, but the actual physical possession of the plot was never handed over to the petitioner, because the plot no. 25 has never been traceable nor identifiable on spot in the industrial estate. The possession was thus only on papers and not on ground. However, respondent remained non-responsive with respect to the Plot no.25 and it was only in December 2020 that the Estate Manager, SICOP Udhampur vide letter no. SICOP/EM(U)/IID/190/1364-67 dated 07.12.2020 conveyed that the plot no.25-B has been allotted to the petitioner instead of Plot no.25. It has also been told that the petitioner has failed to set up a unit in plot no.25-B and therefore the allotment would be cancelled.

4. It is mentioned in the petition that the lease deed of Plot no.25-B was executed on 21.04.2022 in favour of the petitioner for an initial period of 40 years and can be extendable further for 40 more years, but not extendable beyond 99 years.

5. To the utter dismay of the petitioner, the petitioner came to know that the General Manager, District Industries Center, Udhampur has already issued an order no.DIC/U/2620-23 dated 04.01.2022 whereby the petitioner was directed to operationise the unit by or before 30.06.2022, otherwise the proceedings for cancellation of the allotment of the leased land shall be initiated for retrieval of the leased land. The petitioner is aggrieved of the communication dated 04.01.2022 because the land was not leased till issuance of communication dated 04.01.2022.

6. It is noteworthy that the petitioner vide cheque no.64168 dated 31.03.2022 already deposited an amount of Rs.2,63,506/- towards the ground rent from 2007 till 2025.
7. The site plan for setting up of the unit was approved in favour of the petitioner on 27.06.2022 only 2 days before the deadline was set by the General Manager, District Industries Center, Udhampur for establishment of the unit. That the petitioner requested the General Manager, District Industries Center, Udhampur through communication dated 03.09.2022 for extension of time to set up the industrial unit by requesting that since the possession of new plot no.25-B was handed over on 17.05.2022.
8. Further averred in the petition that the respondent has now issued a communication no. SICOP/EMU/IID/190/1527-30 dated 20.03.2023 whereby the petitioner has been informed that his lease has been cancelled and that the land shall be retrieved immediately. Though the land in question /dispute is still in the exclusive possession of the petitioner.
9. It is contended in the petition that the petitioner has filed the section 9 petition before the learned Principal and District Judge Udhampur, whereby the learned court granted the interim protection and stayed the operation of the order dated SICOP/EMU/IID/190/1527-30 dated 20.03.2023 which was issued by respondent.
10. It is averred in the petition that an independent arbitrator is required to be appointed in this case because in the present case, the Managing Director/Chairman Industrial Development Corporation is nominated as arbitrator in terms of the lease deed executed between the parties which is against

prohibition contained in Section 12(5) of Arbitration and Conciliation Act, 1996 read with Schedule 7 thereof.

11. In support of his contentions, learned counsel for the petitioner has relied upon judgment of the Supreme Court in the case of *Central Organization for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Company* reported as **2024 SCC OnLine SC 3219**.

12. In view of amended Section 12(5) of the Arbitration and Conciliation Act, 1996 read with the Seventh Schedule and in view of the judgment referred supra, learned senior counsel further submitted that an independent arbitrator is required to be appointed by this court. Hence, the present petition.

13. On the other hand, Mr. Ravinder Gupta, learned AAG, though not filed his objections to the present petition, submitted that it is clearly mentioned that all the terms and conditions of lease deed dated 21.04.2022 executed by the petitioner with the department shall be binding upon the contractor and in the same lease deed, there is a clause 41, which talks of referring of any doubt, dispute, question or difference to the Sole Arbitration of the Managing Director/Chairman Industrial Development Corporation for arbitration under the Jammu and Kashmir Arbitration and Reconciliation Act. Hence, the present petition is required to be dismissed out-rightly.

14. Heard Mr. Pranav Kohli, learned senior counsel for the petitioner and Mr. Vishal Sharma, learned DSGI appearing for the respondent at length and perused the record.

15. The Supreme Court in the case titled "*Haryana Space Application Centre (HARSAC) & Anr. Vs. M/s Pan India Consultants Pvt. Ltd.*" reported as **2021 AIR (Supreme Court) 653** has observed in para 17, as:-

“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 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.

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

“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.”

(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.”

16. The Supreme Court in **Civil Appeal No. 7697 of 2021** titled as “**Ellora Paper Mills Limited vs. The State of Madhya Pradesh**” decided on 04.01.2022, has observed in para 3.1 as under:-

“3.1 It is submitted that in the aforesaid decision, this Court negated the submission that once the contractor participated in the arbitration proceedings before the Arbitral Tribunal by filing a statement of claim, thereafter it would not be open for him to approach the Court invoking sub-section (5) to Section 12 and pray for appointment of a fresh Arbitral Tribunal. It is submitted that unless and until there is an express agreement in writing to continue with the arbitration proceedings by the earlier Arbitral Tribunal, such an application to terminate the mandate of the earlier Arbitral Tribunal and to appoint a fresh arbitrator would be maintainable.”

17. In view of the facts and circumstances of the case and the above referred judgments passed by the Supreme Court and in view of amended Section 12(5) of the Arbitration and Conciliation Act, 1996 read with the Seventh Schedule, I am of the considered opinion that Clause 41 of the Lease Deed, which provides the Managing Director/Chairman of the department to be a sole arbitrator for adjudicating the claims/disputes between the petitioner and the department, would be against the law governing the field. Accordingly, this petition is allowed.

18. I, appoint **Mr. R. S. Jain, Retired District & Sessions Judge**, as sole Arbitrator in this case, who shall proceed in the matter in accordance with the provisions of the *Act* to make an award within the time provided in the *Act* itself, after charging the prescribed fee along with incidental expenses to be shared by the parties.

19. Parties may raise their claims and counter claims before the Id. Arbitrator.

20. Registry shall send the copy of this order to the arbitration appointed by this court today for information.

21. With the above observation and direction, the petition stands disposed of.

Jammu:
11.12.2024
Raj Kumar

(Tashi Rabstan)
Chief Justice