

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

AA No.5/2018

Reserved on: 06.02.2026
Pronounced on: 13.02.2026
Uploaded on: 13.02.2026

M/s H.P.Singh & Co.Petitioner(s)

Through:- Mr. Amit Gupta, Sr. Advocate with
M/s Sumit Moza, Abhay Tandon &
Pratyush Sharma, Advocates

Versus

1. Union of India
Through Chief Engineer,
Construction Northern Railways, Kashmir Gate,
Delhi.
2. General Manager, Constructions
Northern Railways Baroda House, New Delhi.
3. Deputy Chief Engineer
Northern Railway, Construction,
Northern Railways, Pathankot
4. Chief Administrative Officer
Construction Northern Railway,
Head Quarter Kashmir Gate, New Delhi.

...Respondent(s)

Through: Mr. Harshwardhan Gupta, CGSC

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1. This is a petition under Section 11 of the Jammu & Kashmir Arbitration and Conciliation Act, 1997 [“the Act”] for appointment of an independent arbitral tribunal/arbitrator to settle and adjudicate upon the disputes arising out of a contract

entered into between the parties, in terms of agreement No.26-A/c/Dy.CE/C/PTK dated 15.07.2009. In terms of an order of allotment dated 14.08.2007 issued by respondent No.3, acting for and on behalf of the President of India, work of loading, leading, unloading and stacking of railway material from Delhi, Uttar Pradesh, Haryana, Punjab, Uttranchal, Jammu & Kashmir and Rajasthan was allotted to the petitioner for a period of six months for an amount of Rs.1,41,28,309.75. The date of completion of the work was initially 13.02.2008 but the same was subsequently extended upto 30.09.2009.

2. It is alleged that the railways did not provide any work order so as to enable the petitioner to execute the contract in time despite the fact that acceptance letter was issued to the petitioner in the year 2007. It is submitted that the work could be started by the petitioner only in the month of August, 2008 and, accordingly, the contract period was further extended. The contract was formalized by execution of a formal agreement between the parties on 15.07.2009. It is further alleged that, though, the contract was allotted for a period of only six months, it came to be extended for more than ten years. The petitioner claims that he could execute only 50% of the work, as a result, suffered huge losses. It is, thus, case of the petitioner that due to acts of omission and commission committed by the respondents from time to time, he was not allowed to execute the contract in

terms of the agreement executed and was even forced to renew his performance guarantee, which was to the tune of Rs.2,14,960/- and TRD of Rs. 7,06,500/-. It is submitted that apart from the performance guarantee, the security deposit of the petitioner to the tune of rupees five percent of the contract value amounting approximately to Rs.4,91,456/- was illegally retained by the respondents during the currency of the contract.

3. Without going much into the allegations made by the petitioner in the petition, suffice it to say that a serious dispute between the parties, arising out of the contract, arose between the parties. In these circumstances, the petitioner claims that he approached the respondents for appointment of an arbitrator in terms of Clause 64(1) of the General Conditions of Contract vide letter dated 04.09.2017. The respondents refused to refer the dispute to the arbitrator in terms of the arbitration clause aforesaid on the ground that the petitioner was not entitled to invoke the arbitration clause after having signed the “Supplementary Agreement” and “No Claim Certificate” vide communication dated 27.11.2017.
4. Faced with the refusal on the part of the respondents to refer the dispute to arbitration in terms of Clause 64(1) of the General Conditions of Contract, the petitioner filed the instant petition seeking intervention of the Lord Chief Justice or his nominee to appoint an independent Arbitral Tribunal/Arbitrator to

adjudicate and determine the disputes that had arisen between the parties.

5. The petition is contested by the respondents. In the written objections filed on behalf of the respondents, it is *inter alia* contended by the respondents that the arbitration clause is not invokable for the reason that the petitioner has, in lieu of full and final settlement, signed a supplementary agreement along with the final bill and has received all the due payments. It is submitted that in view of the submission of 'No Claim Certificate' dated 15.06.2017 by the petitioner, no arbitrator, in terms of the arbitration clause, could be appointed as no arbitral dispute has arisen between the parties.

6. Having heard learned counsel for the parties and perused the material on record, following question arises for determination in this case:

"Whether the petitioner after having issued "No Claim Certificate" duly singed by him and execution of supplementary agreement dated 19.04.2017 can invoke arbitration clause i.e. Clause 64(1)(i) of General Conditions of Contract, 1999 and seek appointment of arbitrator to adjudicate the disputes arising out of the contract entered into between the parties?"

7. Before proceeding further to analyze the rival contentions of the parties, it would be appropriate to set out arbitration Clause i.e.

Clause 64(1)(i) of the General Conditions of Contract, which is set out below:

“64(1)(i) Demand for Arbitration-- In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by the Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway fails to make a decision within 120 days, then and in any such case, but except in any of the ‘excepted matters’ referred to in clause-63 of these conditions, the contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters, shall demand in writing that the dispute or difference be referred to arbitration.”

8. From a reading of the arbitration clause reproduced above, a dispute or difference between the parties as to construction or operation of the contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account except in respect of “excepted matters” referred to in Clause-63 of the General Conditions of Contract, is referable to arbitration as provided in the arbitration clause. ‘Excepted matters” mentioned in the arbitration clause in respect of which the parties cannot seek arbitration are referable to clause 63, which reads thus:

“63. Matters finally determined by the Railway.-- All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether

befoe or after the determination of the contract shall be referred by the contractor to the Railway and the railway shall within 120 days after receipt of the Contractor's representation make and notify decisions on all matters referred to by the contractors in writing provided that mattes for which provision has been made in clauses 8(a), 22(5), 39, 43, 45(a), 55, 55-A(5), 57, 57A, 61(1), 61(2) and 62(1)(b) of General Conditions of Contract or in any clause of the Special Conditions of the Contract shall be deemed as 'excepted matters' and decisions of the Railway authority, thereon shall be final and binding on the contractor provided further that 'excepted matters' shall sand specifically excluded from the purview of the arbitration clause and not be referred to arbitration."

9. From a reading of Clause 63, it clearly transpires that the matters for which provision has been made in Clauses 8(a), 22(5), 39, 43, 45(a), 55, 55-A(5), 57, 57A, 61(1), 61(2) and 62(1)(b) of General Conditions of Contract are deemed "excepted matters" and taken specifically out of the purview of the arbitration clause.
10. In the instant case, we are concerned with the matters for which provision has been made in Clause 43(2), which, for facility of reference is reproduced hereunder:-

"(2) Signing of "No Claim" Certificate.--- The Contractor shall not be entitled to make any claim whatsoever against the Railway under or by virtue of or arising out of this contract, nor shall the Railway entertain or consider any such claim, if made by the Contractor, after he shall have signed a "no Claim" Certificate in favour of the Railway in such form as shall be required by the Railway after he works are finally measured up. The Contractor shall be

debarred from disputing the correctness of the item covered by “No Claim” Certificate or demanding a clearance to arbitration in respect thereof.”

11. In view of the clear stipulation made in different clauses of the General Conditions of Contract, which are backed by the agreement executed between the parties in respect of the work in question, it is beyond pale of any discussion that where contractor has signed a ‘No Claim’ Certificate in favour of the Railways after the works are finally measured up, the contractor shall be debarred from disputing the correctness of the items covered by ‘No Claim Certificate’ or demanding reference to the arbitration in respect thereof.
12. The signing of ‘no claim certificate’ by the contractor in lieu of full and final settlement of his claim envisaged under Clause 43(2) of the General Conditions of Contract, is therefore, an excepted item in terms of Clause 63 and, therefore, not referable to arbitration under Clause 63 read with Clause 64(1)(i) of the General Conditions of Contract.
13. The petitioner has not disputed the execution of supplementary agreement dated 19.04.2017 nor has he disputed the ‘No Claim Certificate’ signed and issued by him dated 15.06.2017. It is also not seriously disputed by Mr. Amit Gupta, learned senior counsel appearing for the petitioner that execution of ‘no claim certificate’ after having received the payment offered by the

respondents is excepted matter and *prima facie* not arbitrable.

His contention, however, is that the supplementary agreement as also ‘no claim certificate’ was signed by the petitioner under financial duress and, therefore, involuntary in nature.

14. Mr. Amit Gupta, however, raised a legal argument to come out of the disability to seek reference to arbitration and submits that the issue as to whether or not ‘no claim certificate’ was signed by the petitioner under financial duress is a question of fact, which needs to be left to be determined by the arbitrator. He would argue that once the Court is convinced with regard to the existence of arbitration agreement, other issues, more particularly the issues of facts, should be left to be determined by the arbitrator.

15. *Per contra*, Mr. Harshwardhan Gupta, learned counsel appearing for the respondents, would argue that in the instant case, there is *prima facie* material on record to show that ‘no claim certificate’ was issued by the petitioner voluntarily and under no duress and, therefore, an excepted matter. He would, therefore, argue that arbitration clause in respect of the excepted matter cannot be invoked nor arbitrator could be appointed to arbitrate disputes which are rendered non-existent by signing ‘no claim certificate’.

16. We have given thoughtful consideration to this aspect of the matter as well. Supplementary agreement between the parties, which is duly signed by the petitioner and the respondents, was executed on 19.04.2017 in which the parties agreed that in consideration of the payment already made, under the agreement, the Principal Agreement would stand finally discharged and all the terms and conditions including arbitration clause rescinded. By virtue of the supplementary agreement not only the parties agreed to supersede and rescind the principle agreement but they also agreed to rescind all terms and conditions thereof including arbitration clause. This was followed by a 'No Claim Certificate' issued on 15.06.2017. In lieu of release of earnest money and security deposit and issuance of completion certificate by the respondents and receipt of final payment of the contract in question, the petitioner executed an unconditional and unequivocal 'No Claim Certificate' for the said work.

17. We could not find any material or communication issued by the petitioner between 19.04.2017 to 15.06.2017 ruing the execution of supplementary agreement and discharge of the Principal Agreement including terms and conditions thereof including the arbitration clause. Rather, the petitioner with his eyes wide open acknowledged the receipt of final payment of the work and signed 'No Claim Certificate" unconditionally and

unequivocally. It is only after the petitioner got all the payments under the contract including his earnest money and security deposit etc, he raised the dispute by way of its communication dated 22.06.2017. However, as per reply affidavit submitted by the respondents, it was only on 04.09.2017 when the petitioner sent a communication to the respondents for appointment of arbitrator, which was duly replied by the respondents vide communication dated 27.11.2017.

18. Be that as it may, the petitioner has not placed on record any substantial evidence or material to demonstrate that signing of 'supplementary affidavit' and 'no claim certificate' by the petitioner was under financial duress or coercion by the respondents. On the contrary, the respondents have, by placing on record supplementary agreement dated 19.04.2017 and no claim certificate dated 15.06.2017, have clearly proved that the petitioner received the full and final payment under the contract voluntary and executed the supplementary agreement superseding the Principal Agreement along with terms and conditions thereof including arbitration clause. They have also successfully demonstrated that on receipt of full and final payment under the Contract and in lieu of release of earnest money and security deposit, the petitioner also executed 'No Claim Certificate" in terms of Clause 43(2) of the General Conditions of Contract.

19. That being the clear position emerging from the material on record, it is difficult to believe and accept the contention of the learned senior counsel appearing for the petitioner that the issue as to whether or not the supplementary agreement and no claim certificate were executed by the petitioner under financial duress are disputed questions of fact required to be referred to arbitration for determination.

20. Both sides have relied on respective case law to substantiate their contentions. However, it would be suffice to say that these proceedings have arisen under the J&K Arbitration and Conciliation Act, 1997, which did not contain provision like Subsection 6A, which was inserted in Section 11 of the Arbitration and Conciliation act, 1996 (“Central Act”) by an amendment Act of 2015. Section 6A, which was added by amendment reads thus:

“11(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.”

21. This amendment made in Section 11 was omitted by an Amendment Act of 2019 but Section 3 of the Amendment Act, 2019, insofar as it pertains to the omission has not yet been

brought into force. The position in respect of the Central Act is, therefore, that Section 6A continues to exist in the statute.

22. In that view of the matter, the position of Section 11 of the J&K Arbitration and Conciliation Act, 1997 in respect of question of law raised in this petition is the same as was obtaining before 23.10.2015 when Section 6A came to be inserted in section 11 of the Central Act and the legal position on the point is elaborately discussed and laid down by the Supreme Court in the case of ***Mayavti Trading Pvt. Ltd. v. Pradyuat Deb Burman, (2019) 8 SCC 714***. The Supreme Court took note of the position of law as it was existing prior to the insertion of Section 6A to Section 11 by the Amendment Act, 2015 and referred with advantage paragraph Nos. 20 and 21 of the judgment rendered in ***United India Insurance Company Limited v. Antique Art Exports Private Limited, (2019) 5 SCC 362***. Paragraph Nos. 20 and 21 of the judgment (supra) are set out herein below:-

“20. The submission of the learned counsel for the respondent that *after insertion of sub-section (6-A) to Section 11 of the Amendment Act, 2015 the jurisdiction of this Court is denuded and the limited mandate of the Court is to examine the factum of existence of an arbitration and relied on the judgment in *Duro Felguera, S.A. v. Gangavaram Port Ltd.* [(2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] The exposition in this decision is a general observation about the effect of the amended provisions which came to be examined under reference to six arbitrable agreements (five agreements for works and one corporate guarantee) and each agreement contains a provision for arbitration and there was serious dispute between the parties in reference to constitution of Arbitral Tribunal whether there has to be Arbitral Tribunal pertaining to each agreement. In the facts*

*and circumstances, this Court took note of sub-section (6-A) introduced by the Amendment Act, 2015 to Section 11 of the Act and in that context observed that the preliminary disputes are to be examined by the arbitrator and are not for the Court to be examined within the limited scope available for appointment of arbitrator under Section 11(6) of the Act. Suffice it to say that appointment of an arbitrator is a judicial power and is not a mere administrative function leaving some degree of judicial intervention; when it comes to the question to examine the existence of a *prima facie* arbitration agreement, it is always necessary to ensure that the dispute resolution process does not become unnecessarily protracted.*

*21. In the instant case, *prima facie* no dispute subsisted after the discharge voucher being signed by the respondent without any demur or protest and claim being finally settled with accord and satisfaction and after 11 weeks of the settlement of claim a letter was sent on 27-7-2016 for the first time raising a voice in the form of protest that the discharge voucher was signed under undue influence and coercion with no supportive *prima facie* evidence being placed on record in absence thereof, it must follow that the claim had been settled with accord and satisfaction leaving no arbitral dispute subsisting under the agreement to be referred to the arbitrator for adjudication.”*

23. The Supreme Court also held that the jurisdiction of the Chief Justice or his nominee considering an application under Section 11(6) need not be confined merely to the examination of existence of an arbitration agreement but could also extend getting into certain preliminary questions such as stale claims, accord and satisfaction having been reached etc etc. Hon'ble Supreme Court placed reliance on the judgment of **SBP & Co v. Patel Engineering Ltd. and another, (2005) 8 SCC 618** and **ONGC Mangalore Petrochemicals Limited v. ANS Constructions Limited and another, (2018) 3 SCC 373.** Paragraph No. 31 of the **ONGC Mangalore Petrochemicals Ltd (supra)** is relevant for our purpose and is set out below:-

“31. Admittedly, no-dues certificate was submitted by the contractee company on 21-9-2012 and on their request

completion certificate was issued by the appellant contractor. The contractee, after a gap of one month, that is, on 24-10-2012, withdrew the no-dues certificate on the grounds of coercion and duress and the claim for losses incurred during execution of the contract site was made vide letter dated 12-1- 2013, i.e. after a gap of 3 ½ (three-and-a-half) months whereas the final bill was settled on 10-10-2012. When the contractee accepted the final payment in full and final satisfaction of all its claims, there is no point in raising the claim for losses incurred during the execution of the contract at a belated stage which creates an iota of doubt as to why such claim was not settled at the time of submitting final bills that too in the absence of exercising duress or coercion on the contractee by the appellant contractor. In our considered view, the plea raised by the contractee company is bereft of any details and particulars, and cannot be anything but a bald assertion. In the circumstances, there was full and final settlement of the claim and there was really accord and satisfaction and in our view no arbitrable dispute existed so as to exercise power under Section 11 of the Act. The High Court was not, therefore, justified in exercising power under Section 11 of the Act.”

24. Aforesaid discussion on the law leaves no manner of doubt that law prior to 2015 Amendment, whereby Subsection 6A was inserted to the Central Act was clear and unequivocal. The Court exercising its jurisdiction under Section 11(6A) was not denuded of its power to go into whether accord and satisfaction had taken place. This legal position was, however, legislatively overruled by insertion of Subsection 6A to Section 11 by way of Amendment Act, 2015. Since no amendment ever took place in the J&K Arbitration and Conciliation Act, 1997, as such, the law laid down prior to 2015 Amendment to the Central Act would be the law governing the instant case. As is clarified by the Supreme Court in the case of **National Insurance Co. Ltd.**

v. Boghara Polyfab Pvt. Ltd., (2009) 1 SCC 26, the scope of intervention by the Court exercising jurisdiction under Section 11 of the Act is classified in three categories---

1. *First category contains the issues which the Chief Justice/ his designate will have to decide and these issues are:-*

- a) Whether the party making the application has approached the appropriate High Court?*
- b) Whether there is an arbitration agreement and whether the party who has applied under Section 11 of the Act, is a party to such an agreement?*

2. *The second category of issues which the Chief Justice/his designate may choose to decide are:*

- a) Whether the claim is a dead (long barred) claim or a live claim?*
- b) Whether the parties have concluded the contract/transaction by recording satisfaction of their mutual rights and obligations or by receiving the final payment without objection?*

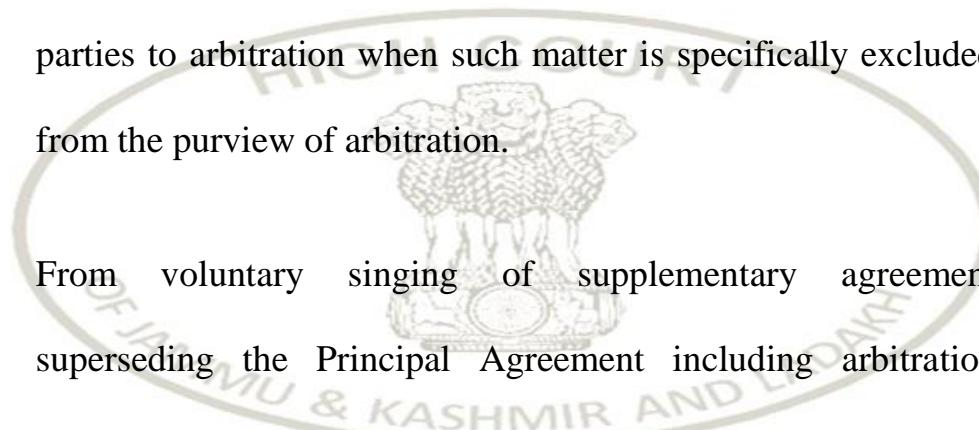
(Underlined by me)

3. *Third category of issues which the Chief Justice/his designate should leave exclusively to the arbitral tribunal:*

- a) Whether a claim falls within the arbitration clause (as for example, a matter which is reserved for final decision of a departmental authority and excepted or excluded from arbitration)?*
- b) Merits of any claim involved in the arbitration.*

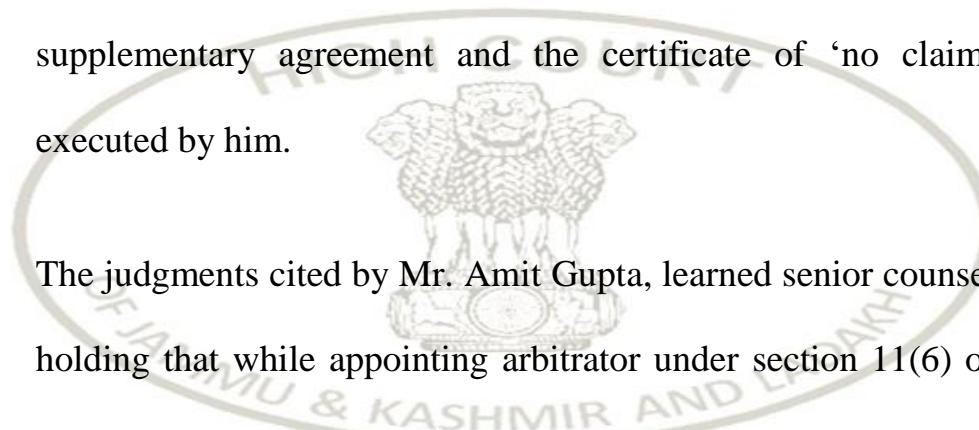
25. The instant case clearly falls in Clause (b) of second category of issues and, therefore, it lies in the discretion of the Chief Justice/his designate to either decide it himself or refer it to the

arbitrator for adjudication. Obviously, in a case where the issue with regard to recording of satisfaction of the mutual rights and obligation by the parties is a disputed question of fact requiring evidence for determination, it would be advisable to leave such matter to be determined by the arbitral tribunal. However, where there is no dispute with regard to the signing of/ acknowledgment of the discharge certificate/no claim certificate and it is clearly demonstrable that such discharge voucher/no claim certificate was signed by the party without any demur or protest, the Chief Justice/his designate would not refer the parties to arbitration when such matter is specifically excluded from the purview of arbitration.



26. From voluntary signing of supplementary agreement superseding the Principal Agreement including arbitration clause contained therein and subsequent signing of 'No Claim Certificate' without any demur or protest, it is abundantly clear that the dispute has been settled with accord and satisfaction leaving no arbitral dispute subsisting under the agreement to be referred to arbitrator for adjudication.
27. The petitioner, having executed the supplementary agreement to which we have referred hereinabove at more than one places and subsequently having issued 'No Claim Certificate' without any demur or protest, cannot be permitted to turn around and

raise the dispute that, too, after he has derived all the benefits under the supplementary agreement and the 'no claim certificate'. Permitting the petitioner to raise the dispute with regard to execution of these documents under financial duress or otherwise would be allowing the petitioner to approbate and reprobate. By executing these documents and, in lieu thereof, the petitioner not only received the final payment in respect of the work in question but also got the earnest money and security deposit released in his favour. He raised the dispute with the respondents only after receiving the benefits under the supplementary agreement and the certificate of 'no claim' executed by him.



28. The judgments cited by Mr. Amit Gupta, learned senior counsel holding that while appointing arbitrator under section 11(6) of the Act, the power and jurisdiction of the Chief Justice/his designate is limited only to the determining of existence of arbitration clause and all other questions should be left to be determined by the arbitrator only elucidate the exposition of law by the Supreme Court after insertion of Subsection 6A to Section 11 of the Arbitration and Conciliation Act, 1996 by 2015 Amendment Act.
29. I have stated it earlier and is reiterated here that provisions similar to Subsection 6A of Section 11 of the Central Act did

not exist in the J&K Arbitration and Conciliation Act, 1997 (now repealed) and, therefore, the law, as it was laid down by the Supreme Court, prior to 2015 Amendment, would govern the case on hand.

30. For the going reasons, I find this petition under section 11(6) of the J&K Arbitration and Conciliation Act, 1997 not maintainable and the same is, accordingly, dismissed.

(Sanjeev Kumar)
Judge

JAMMU
13.02.2026
Vinod, Secy

Whether the order is speaking : Yes
Whether the order is reportable: Yes

