IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Arb. Case No.597 of 2024 and Arb. Case No.759 of 2024
Decided on: 16.10.2026

Arb. Case No.597 of 2024

Divisional Manager, Himachal Pradesh State Forest Development Corporation Limited **.....Petitioner**

Versus

Sh. Uttam Ram (deceased) through LRs and Others **.....Respondents**

Arb. Case No.759 of 2024

Divisional Manager, Himachal Pradesh State Forest Development Corporation Limited **.....Petitioner**

Versus

Roop Dutt **.....Respondent**

Coram:

The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.
Whether approved for reporting?

For the petitioner(s): Ms. Kiran Dhiman, Advocate, in both the appeal(s).

For the respondent(s): Mr. Jagat Pal, Advocate, respondent Nos.1 to 8, in Arb. Case No.597 of 2024.

Respondent Nos.9 to 13 proceeded against ex-parte in Arb. Case No.597 of 2024.

Mr. Sunil Kumar, Advocate, for the respondent in Arb. Case No.759 of 2024.

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G.S. Sandhawalia, Chief Justice.

By way of a common order, both the petitions are being decided together, as they involve a common question of law and the petitioner-Corporation is the same in both the matters.

2. The whole issue is whether a fresh petition would be maintainable after the earlier arbitral award was set aside on the grounds that the Arbitrator appointed was an employee of the Coproation and prior permission was not obtained from the Court concerned. The petitioner-Corporation thus had never sought permission to initiate fresh proceedings from the Court concerned.

3. The factual matrix of ***Arbitration Case No.597 of 2024,*** titled as ***Divisional Manager, Himachal Pradesh State Forest Development Corporation Limited Vs. Uttam Ram (deceased) through LRs*** reads as under:-

4. The petitioner-Corporation seeks the appointment of an Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act, 1996'). The dispute allegedly arose from an agreement dated 25.04.1995 **(Annexure P-1)** executed between the petitioner and the predecessor-in-interest of the respondent, namely-Uttam Ram (deceased), who was the Contractor, for the execution of certain works. The dispute arose between the parties in the year 1999, and the matter was referred to

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arbitration by invoking clause 27 of the agreement. After the completion of pleadings, an award dated 30.03.2016 was passed by the Arbitrator, who was an employee of the petitioner-Corporation, specifically serving as the Divisional Manager, Himachal Pradesh State Forest Development Corporation Limited, Forest Working Division, Sundernagar, Himachal Pradesh.

5. The legal heirs of the Contractor had challenged the award dated 30.03.2016 by filing a petition under Section 34 of 'the Act, 1996' before the District Judge, Mandi, District Mandi, Himachal Pradesh. The petition was allowed on 04.05.2023 **(Annexure P-3),** and the award of Rs.23,43,775/- was declared *non-est*. This declaration was based on the fact that the award was pronounced after the 2015 Amendment Act came into effect. Resultantly, statutory ineligibility was attached to the Arbitrator, even though the agreement was executed and the proceedings commenced before the amendment of the Act.

6. Reliance was placed upon the judgments of the Apex Court in ***TRF Ltd. Vs. Energo Engineering Projects Limited (2017) 8 SCC 377, Bharat Broadband Network Limited Vs. United Telecoms Limited (2019) 15 SCC 755,*** and ***Haryana Space Application Centre (HARSAC) & Ors. Vs. M/s Pan India Consultants Pvt. Ltd. (2021) 3 SCC 103*** and because the Arbitrator

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was ineligible to be appointed, the award was rendered unenforceable.

7. The said order dated 04.05.2023 **(Annexure P-3)** was passed by the District Judge, Mandi, District Mandi, Himachal Pradesh, and as such, was never challenged by filing any other proceedings or by seeking leave to initiate fresh proceedings.

8. Thereafter, the petition bearing ***CWP No. 9807 of 2023,*** titled as ***Divisional Manager H.P. State Forest Development Corporation Ltd. Vs. Uttam Ram (deceased) through LRs Sushma Thakur and others,*** was filed praying for the appointment of an Arbitrator. On 19.12.2023, a learned Single Judge of this Court has held the petition to be non-maintainable and allowed it to be withdrawn, granting liberty to the petitioner to file an appropriate petition under the relevant Statute for the appointment of an Arbitrator.

9. Resultantly, the present petition has been filed on 26.05.2024. The said petition has thus been opposed on the ground that, after a lapse of more than twenty-six years from the execution of the work, the petitioner has no legal right to file a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator. In the eventuality of the order dated 04.05.2023 **(Annexure P-3),** passed by the District Judge, District

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Mandi, Himachal Pradesh, being made absolute between the parties, therefore, the petition filed by the petitioner is stated to be hopelessly time-barred and is liable to be dismissed.

10. In the replication filed by the petitioner, the plea taken by the petitioner-Corporation is that the proceeding/action for recovery against the respondent was continuous so the limitation could not come in the way.

11. The factual matrix in ***Arbitration Case No.759 of 2024,*** titled as ***Divisional Manger, H.P. State Forest Development Corporation Ltd. Vs. Roop Dutt*** are as under:-

12. The petitioner-Corporation seeks the appointment of an Arbitrator under Section 11(6) of 'the Act, 1996', under similar circumstances. This is on the ground that, as per the agreement dated 25.03.2008 **(Annexure P-1),** any dispute arising between the parties is to be referred to arbitration in view of clause 36 of the agreement. The dispute pertains to the fact that the respondent has never paid compensation to the tune of Rs.40,310/-.

13. On an earlier occasion, the matter was referred to arbitration on 12.12.2016, and an Award was passed on 01.02.2017 **(Annexure P-3)** by the official of the petitioner-Corporation, namely the Director (South), HPSFDC Ltd. Shimla. The Award granted a

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sum of Rs. 38,204/- along with interest at the rate of 12% per annum from the date of filing the claim petition, i.e., 23.12.2011.

14. An execution application was subsequently filed under Section 36 of 'the Act, 1996', for enforcement of the Arbitral Award dated 01.02.2017 before the District Judge, Solan, District Solan, Himachal Pradesh. However, the award was held to be nonest by the District Judge, Solan, and was not executable in view of the law laid down by the Apex Court in similar terms, including the judgment in ***Rafique Bibi (dead) by LRs Vs. Sayed Waliuddin (dead) by LRs and others (2004) 1 SCC 287.***

15. The said decision of the District Judge, Solan, was challenged by the petitioner-Corporation in ***CMPMO No. 62 of 2023,*** titled as ***Divisional Manager, H.P. State Forest Development Corporation Ltd. Vs. Roop Dutt,*** which was decided along with a bunch of two other cases on 11.05.2023 **(Annexure P-5)** by the learned Single Judge of this Court. The learned Single Judge did not choose to interfere with the order passed by the District Judge, Solan, and dismissed the petitions. No permission was given by the learned Single Judge to initiate fresh proceedings, nor was any such prayer made by the petitioner-Corporation.

16. Accordingly, ***CWP No.9810 of 2023,*** titled as ***Divisional Manager, H.P. State Forest Development Corporation Ltd. Vs.***

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Sh. Roop Dutt, was filed seeking the appointment of an Arbitrator. This petition was subsequently withdrawn on 19.12.2023, with liberty granted to the petitioner to file an appropriate petition under the relevant Statute for appointment of an Arbitrator.

Reasoning to dismiss:-

17. It is in such circumstances, counsel for the respondents has relied upon an earlier order passed by the undersigned on 11.09.2026 in ***Arb. Case No.772 of 2024,*** titled as ***Divisional Manager Himachal Pradesh SFDC Limited Vs. Prem Lal*****.** In that case, keeping in view the fact that the principle of *res judicata* applies and a fresh application would not lie to adjudicate the same dispute, it was held that necessary permission should have been sought from the Court concerned to take recourse to fresh proceedings by serving a notice and initiating the process for the appointment of an Arbitrator. Furthermore, it was noticed that because the Arbitrator was an employee of the Corporation appointed by the Managing Director, they should have terminated the proceedings rather than moving ahead and passing an Award on 11.12.2017, in that case given that the legal position had already been settled by the judgment rendered on 03.07.2017 in ***TRF Limited Vs. Energo Engineering Projects Limited (2017) 8 SCC 377.***

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18. In the present cases, though the awards were passed prior to the passing of the judgment in the ***TRF Limited case*** *(supra),* the issue remains that the executing Court has held that the awards are not executable and that no permission was obtained to file a petition under Section 11(6) of 'the Act, 1996' rather, a writ petition was filed under Article 226 of the Constitution of India, which was not maintainable.

19. In Arbitration Case No.759 of 2024, it is to be noticed that ***CMPMO No.62 of 2023,*** titled as ***Divisional Manager, H.P. State Forest Development Corporation Ltd. Vs. Roop Dutt*****,** had also been filed by the petitioner-Corporation against the order of the District Judge, Solan, Himachal Pradesh. However, no permission was obtained to initiate appropriate proceedings under Section 11(6) of 'the Act', meaning the defect remains uncured. The filing of a writ petition would not create a fresh cause of action. Therefore, this Court is of the considered opinion that the issue has already become final and binding *inter se* the parties, as the petitioner-Corporation has been unsuccessful in execution proceedings and the respondents are entitled to the fruits of that litigation and cannot be foisted to another round of litigation by way of the appointment of an Arbitrator.

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20. Resultantly, no grounds have been made out to allow the applications under Section 11(6) of 'the Act, 1996', and both petitions stand dismissed accordingly.

21. Pending miscellaneous application(s), if any, shall also stand disposed off.

(G.S. Sandhawalia)
Chief Justice

16th October, 2026
(Munish Thakur)

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