

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Arb. Case No. 957 of 2024
Date of decision : 07.08.2026.

*Tej Singh Thakur**.....Petitioner*

Versus

Bharat Sanchar Nigam Ltd. & another ..Respondents

Coram:

The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.

Whether approved for reporting? Yes.

For the Petitioner: Mr. Surya Chauhan, Advocate.

For the Respondents: Mr. Rajiv Jiwan, Senior Advocate with Mr. Hitender Verma, Advocate.

G.S. Sandhawalia, Chief Justice

The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for appointment of an Arbitrator.

2. The dispute allegedly arises from the Award Letter, on the basis of which Agreement

(Annexure P-1) was executed 15.05.2009 for the work for excavation of trenching, laying of U/G of cable and other associated works in Baru Sahib Pararn Section-II OFC route awarded to the petitioner by the respondents.

3. The claim of the petitioner is that the outstanding amount of Rs.9,70,900/- has not been settled since 2009, apart from the interest on profits, loss of business and other related claims.

4. Clause 17 of the Agreement in question forms the basis on which the appointment of an Arbitrator is sought.

5. Reliance has been placed upon the Legal Notice dated 01.03.2016 (Annexure P-2), wherein the respondents had been put on notice for the appointment of an independent person as the sole arbitrator to adjudicate the dispute which have arisen between the parties. A perusal of the notice would go on to show that the said amount had been withheld since the year 2009.

6. Apparently, on an earlier occasion, Arbitration Case bearing No. 67 of 2016, titled as **Tej Singh Thakur Vs. Bharat Sanchar Bhawan & another**, had been filed for the same relief, which had been decided on 20.09.2016, when Shri L.N. Sharma, a retired District & Sessions Judge, was appointed as an Arbitrator to adjudicate the dispute between the parties. The said Arbitrator, vide order dated 02.03.2017, was on the verge of announcing the award, had passed an order based on the statement of the present petitioner that he wanted to withdraw the claim petition with permission to file a fresh petition, as per law, keeping in view the provisions of Section 32(2)a) of the Act. Accordingly, the Arbitration Application was dismissed as withdrawn, granting the aforesaid liberty. The said order dated 02.03.2017 reads as under:

"The present arbitration case has been received from the Hon'ble High Court H.P. vide order dated 20th September, 2016 passed in Arb. case No.76 of 2016, whereby I have been

appointed as sole arbitrator in this case. After receiving the direction, both the parties were summoned for 22.11.2016 Both the parties have filed their respective claim.

After completing the proceedings in the case and hearing the parties, it was listed for announcing the award on 2.3.2017. The petitioner/claimant has moved an application that he wants to withdraw his claim petition, which he has filed before the Arbitrator as per his application and statement recorded separately. The petitioner has stated that he wants to withdraw the present claim petition with the permission to file fresh petition as per law. The Id Counsel appearing for the respondents has opposed his statement only to the extent that the petitioner be not permitted to file fresh petition.

As per provision contained under section 32(2)(a) of the Arbitration and Conciliation Act, 1996 as claim petition has been withdrawn by the claimant, the arbitration proceedings stands terminated. The claimant is at liberty to file fresh claim petition, if admissible under law.

Announced in the presence of the parties and singed copy of this order has been supplied to both the parties free of cost. Let the file be submitted to the Hon'ble Court for further action."

7. It has accordingly been averred that the petitioner had never abandoned his claim, but had withdrawn the earlier petition with liberty to file a fresh petition as per the aforesaid provisions of the Act. In such circumstances, the present petition had been filed on 24.11.2024.

8. In the reply filed by the respondents, it has been stated that the present petitioner has approached this Court after a lapse of more than 15 years, which amounts to an abuse of the process of law. The work was to be completed within fourteen weeks from 15.05.2009 and he had failed to complete it within the stipulated period. It has also been mentioned that the final bill was never submitted, irregularities were found in the work and even the CBI had investigated the matter. Following the investigation, it was found that the contractor as well as the junior Telecom Officer and the SDO, B.S.N.L., in connivance with the contractors, had wrongly submitted the acceptance and testing

reports as well as the completion reports.

Thereafter, the matter was put up for trial before the Special Judge, Shimla. The claim of Rs.28,94,172/- as made, has thus been rebutted. It has further been averred that the security amount was lying with the BSNL, but the same could not be released as the work was not complete. Reference was also made to the above-referred earlier Arbitration Application, which was withdrawn, stating that the respondents-BSNL had already paid Rs.25,000/- to the Arbitrator, as directed by this Court. Therefore, there is no reason to appoint an arbitrator as the assigned work had not been completed. It has further been averred that one bill which had been submitted, had been paid to the petitioner-contractor wrongly, which was to be deposited back, but he failed to do so.

9. In the rejoinder(*sic* replication), it has been stated that liberty had been granted to the petitioner to approach this Court as an oral assurance had been made by the respondents that

the pending payment would be made to the petitioner, but they failed to do so.

10. Keeping in view the above, the sole question which arises for consideration before this Court is that having withdrawn the arbitration proceedings on an earlier date and having abandoned the claim, whether the petitioner is entitled to initiate a fresh round of litigation or the petition is time-barred for the claim in question.

11. As noticed above, the work was to be completed within 14 weeks from 15.05.2009 and having failed to do so, the notice was issued way back on 01.03.2016. The Arbitrator had been duly appointed and thereafter, on account as such, the withdrawal of the arbitration proceedings had been done on 02.03.2017.

12. The present petition has been filed after an inordinate delay of eight years and there is an apparent abandonment of the claim.

13. In ***Rajiv Gaddh Vs. Subodh Parkash (2026) INSC 302***, the Apex Court has held that where there is an abandonment of the claim after the matter had been earlier referred to an arbitrator, another arbitrator cannot be appointed again.

14. Similarly, reliance can be placed upon the judgment passed by the Apex Court in ***HPCL Bio-Fuels Ltd. Versus Shahaji Bhanudas Bhad, 2024 SCC OnLine SC 3190***, wherein it has been held that if no liberty is given to file a fresh application at the time of withdrawal of the first application, a second application would not lie.

15. In the present case, liberty had been granted by the Arbitrator, but the question is whether the claim had become time-barred and after eight years, a fresh petition could be filed. The aforesaid judgment also dealt with the said issue - whether a time-barred claim as such is sustainable and whether the provisions of Sections 5 and Section 14 of the Limitation Act would come into play. It was

accordingly held that the object behind having a prescribed limitation period is to ensure that there is certainty and finality to the litigation and assurance to the opposite party that it will not be subject to an indefinite period of liability and that limitation does not extinguish the right, but only bars the remedy. As the proceedings had been abandoned after being withdrawing from the first Arbitrator for eight years, this Court is of the opinion that at this belated stage, the second application would not be maintainable.

16. In ***Bharat Sanchar Nigam Limited & another versus Nortel Networks India, Private Limited, 2021 (5) 738***, it has been held that time-barred claim as such is not liable to be referred. Regarding the period of limitation following the failure to appoint the arbitrator, the first notice having been served way back on 01.03.2016 and the Arbitrator having been appointed, and upon the subsequent withdrawal of the arbitration proceedings, the statute of limitation as such would

come into play. Resultantly, the respondents as such cannot be put to a disadvantage, keeping in view the law laid down by three-Judge Bench of the Apex Court in ***Vidya Drolia Vs. Durga Trading Corporation, (2021) (2) SCC 1.***

17. Keeping in view the above, the present petition is not liable to be allowed, as per the settled position of law. Hence, the same is dismissed under the peculiar facts and circumstances.

18. Pending application(s), if any, also stands disposed of.

(G.S. Sandhawalia)
Chief Justice.

August 07, 2026
(hemlata)