

(2026:HHC:33242)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Arb. Case No.622 of 2024
Reserved on: 24.07.2026
Pronounced on: 07.08.2026
Uploaded on: 10.08.2026

State of Himachal Pradesh and AnotherPetitioners

Versus

M/s Sun Shine Const.Respondent

Coram:

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

For the petitioners: Mr. Navlesh Verma, Additional Advocate General.

For the respondent: Mr. Suneet Mohan Goel, Senior Advocate with Mr. Vivek Negi and Mr. Vishwas Kaushal, Advocates.

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') by the petitioners-State for appointment of an Arbitrator regarding the work which was awarded to the respondent-Contractor on 28.01.2006 for a consideration of Rs.52,00,000/-. It is submitted that due to the slow progress of the work, the Contract was ultimately rescinded vide letter dated 25.08.2007. Thereafter, the work was re-awarded to another Contractor under Agreement No.69

of 2007-08 for a consideration of Rs.79,90,000/-, and the difference in the amount, totaling Rs.32,24,216/-, was required to be recovered from the respondent-Contractor.

2. The matter had allegedly been referred to arbitration, and the Chief Engineer (HZ), HPPWD, Hamirpur had appointed the Superintending Engineer, Arbitration Circle, HPPWD, Solan, as an arbitrator to adjudicate the claims and disputes that had arisen between the parties. An order dated 03.09.2011 (**Annexure R-I**), came to be passed, wherein the arbitrator questioned the validity of his own appointment in the absence of the respondent-Contractor. The said arbitrator concluded that there was nothing on record to show that a request had been made to the Superintending Engineer to appoint an arbitrator as per clause 65 of the contract agreement. While referring to Section 21 of 'the Act', he further concluded that a prior request by one party seeking arbitration is a mandatory prerequisite before an arbitrator can be validly appointed. Since, no such request had been made, the appointment was held to be invalid, and the case was dismissed under Section 16 of 'the Act'.

3. Instead of serving the requisite notice, the second appointment was made on 27.04.2015 and the second Arbitrator closed the proceedings on 15.01.2021 in view of the earlier order passed on 03.09.2011 (**Annexure R-I**).

4. Subsequently, a time-barred arbitration application bearing OMP(M) No.27 of 2022 was filed by the petitioners-State seeking condonation of delay of ten years, eight months, and seventy-eight days in filing an appeal against the first order dated 03.09.2011 (**Annexure R-I**). This application was dismissed on 29.05.2023, by the learned Single Judge of this Court. The learned Single Judge had also noted that the subsequent closure of proceedings dated 15.01.2025 was already the subject matter of an appeal in Arbitration Case No. 2 of 2021, titled ***State of H.P. & another Vs. M/s Sun Shine Const.*** Resultantly, the inordinate delay was not condoned by holding that merely because certain observations were made in the subsequent proceedings, it would not suffice to condone the delay.

5. Thus, it is apparent that the order dated 03.09.2011 (**Annexure R-I**) became final. However, the petitioner's had also suffered another order against them on 22.06.2023 (**Annexure P-3**), wherein a challenge raised to the second order closing the proceedings on 15.01.2021 by the second Arbitrator was upheld by dismissing the appeal. The Coordinate Bench had also noticed that the second time as well, no notice had been issued while appointing the Arbitrator for referring the dispute. After noting that the first order itself had been upheld by the Coordinate Bench of this Court on

29.05.2023, the appeal was consequently dismissed on 22.06.2023.

In such circumstances, the present petition was filed on 08.04.2024.

6. Counsel for the petitioners-State has argued that in the second order passed by the learned Single Judge on 22.06.2023, the appellants were held entitled to avail appropriate remedy, as permissible under the law. However, it is admitted that prior to filing the petition under Section 11(6) of 'the Act', no notice was served under Section 21 of 'the Act'. Consequently, the petition suffers from the same defect third time over.

7. To overcome this, since the matter was contested by filing a reply, the respondent pointed out that repeated references cannot be made and the petitions must be dismissed.

8. Counsel for the petitioners-State has tried to justify that because the petition under Section 11(6) of 'the Act' suffered from certain procedural legal defects, liberty was sought to withdraw it and file a fresh petition by filing a rejoinder and OMP No.1421 of 2025. The respondent has opposed this on the same grounds.

9. In their reply to OMP No.1421 of 2025, the respondent had pointed out that once the Arbitrator had ruled on his own jurisdiction under Section 16 of 'the Act', that order was upheld. Thereafter, the second Arbitrator had terminated the proceedings on 15.01.2021, and that order was also upheld by the Coordinate Bench

of this Court. Therefore, the matter is hit by the principle of *res judicata*, in view of the judgments passed by the learned Single Judge of this Court. As this is the 5th round of litigation on the same subject, a valuable right has accrued to the respondent which cannot be taken away.

10. Counsel for the petitioners-State has argued that in view of the principles laid down under Order 23 Rule 3 of the Code of Civil Procedure (CPC), the Court may grant permission to withdraw the petition and file a fresh one. This is on the ground that no adjudication has taken place thus so far. Furthermore, while dismissing Arbitration Appeal No.2 of 2021 (**Annexure P-3**), the Coordinate Bench had granted the right to file a petition, if permissible under the law. In support of this argument, reliance was placed upon the judgment passed by the Apex Court in ***Hulas Rai Baij Nath Vs. Firm K. B. Bass & Co., AIR 1968 SC 111.***

11. Learned Senior Counsel appearing for the respondent, on the other hand has placed reliance upon the judgments passed by the Apex Court in ***Dani Wooltex Corporation Vs. Sheil Properties Pvt. Ltd., (2024) 7 SCC 1*** and ***Rajiv Gaddh Vs. Subodh Prakash, 2026 SCC OnLine SC 507***, in support of the contention that once there is an abandonment, a litigant cannot be permitted to abuse the process of the Court by filing fresh proceedings on the

same cause of action, and that the subsequent application filed by the respondent was not maintainable.

12. It is pointed out that the notice could have been sent after the first proceedings were closed on 03.09.2011, which was not done. The litigation was dragged on for ten years, and an appeal was filed against the said order. In the intervening period, the second arbitrator was appointed on 27.04.2015 without serving any notice and the proceedings were closed on 15.01.2021. The present petition has again been filed without issuing a notice, and now an effort is being made to withdraw it and file a fresh one after the issuance of a notice under Section 21 of the 'Act'.

13. It is submitted that a huge liability would accrue merely on account of the interest liability and since vested rights have accrued, the benefit must go to the litigant against whom the said claim has become stale. Accordingly, it is submitted that the respondent cannot be prejudiced by the inaction of the petitioners-State regarding the interest liability for the amount now sought to be recovered.

14. After hearing the counsel for the parties, this Court is of the considered opinion that the petitioners-State cannot take advantage of its own fault. A perusal of the subsequent order dated 15.01.2021 would go on to show that due to the observations made

therein that the petitioners-State should have filed an appeal and that the Chief Engineer was not the competent authority to appoint another arbitrator once an order had been passed under Section 16(2) of 'the Act' as liberty was there to approach the Court of competent jurisdiction for the appointment of an arbitrator, if permissible under the law, the time barred appeal was filed by the State. The relevant part of the first order dated 03.09.2011 **(Annexure R-I)** reads as under:-

"It is evident from the above section that before appointment of arbitrator there must be a request from one party seeking arbitration to other party for appointment of arbitrator. But as discussed in the above para no such request has been made by the claimant/EE to the respondent/contractor for appointment of arbitrator. Therefore, the appointment made by the Chief Engineer (HZ) HPPWD Hamirpur vide letter No.11904-07 dated 19.01.2011 is not valid. Accordingly, this Arbitral Tribunal has no valid jurisdiction to adjudicate upon this case and the case is dismissed under Section 16 of the Arbitration and Conciliation Act, 1996."

15. Similarly, the relevant part of the second order dated 15.01.2021, closing the proceedings as such by the second appointed Arbitrator reads as under:-

"In view of above legal facts, the aggrieved party namely, the Claimant/Executive Engineer was required to go for appeal before the competent Court in the matter of challenge of decision on tribunal. Under these circumstances, Chief Engineer was not the proper authority to adjudicate the reasonability

of decision of Arbitrator Under Section 16 (2) of the Arbitration Act, 1996. Thus the case is decided in favour of Respondent/Contractor. However the Claimant Executive Engineer is at liberty to approach the competent Court or original jurisdiction for appointment of arbitrator, if permissible under the law."

16. The contents of **Annexure P-4** dated 13.12.2023, the notice issued before filing the present petition reads as under:-

*"With reference to the subject cited matter and Arbitration Appeal No.2 of 2021 which has been dismissed by the Hon'ble High Court H.P. Shimla on 22.06.2023, it is to inform you that the HPPWD Department has decided to take the matter of recovery from you pertaining to the work "C/o 50.00 mtrs span centre to centre of wearing pre stressed cement concrete box grider bridge over Dugh Khad on Karnehra Fagoti road at RD. 5/120 (Award L. No. Vide letter No.1573-77 dated 24-04-2007) before the Arbitrator once again to settle the disputes. Hence the Department is going to file a petition for appointment of a Ld. Arbitrator in the matter of recovery in the Hon'ble High Court of Himachal Pradesh, Shimla.
This is for your kind information please."*

17. It is not disputed that an application bearing OMP No. 1421 of 2025 has also been filed to withdraw the petition and file a fresh one, admitting that the notice dated 13.12.2023 is not as per 'the Act' and the prayer as such was made with liberty to file a fresh petition after issuing notice under Section 11(6) of the Act. The said prayer reads as under:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be passed to

permit the applicants to withdraw the present Arbitration Case No.622 of 2024 titled State of Himachal Pradesh and others Vs. M/s Sunshine Constructions with the liberty to the applicants to file a fresh petition after issuing notice under Section 11(6) of the Arbitration and Conciliation Act, 1996, in the interest of justice."

18. A perusal of the notice issued on 13.12.2023 (**Annexure P-4**) would go on to show that, in sum and substance, the respondent-Contractor was put on notice that the present petition would be filed before this Court for the appointment of an Arbitrator. The argument raised by the counsel for the respondent-Contractor that the petition is maintainable only if the Section 21 notice under 'the Act' explicitly nominates an arbitrator, and is otherwise not maintainable in the absence of such a specific notice, is entirely without any merits.

19. The Apex Court recently, in **M/s Bhagheeratha Engineering Limited v. State of Kerala (2026) 5 SCC 758**, has held that the non-issuance of a notice under Section 21 of 'the Act', would not be fatal to pursuing a claim before an arbitrator. Accordingly, the Court clarified that issuing a Section 21 notice is not a mandatory prerequisite prior to the commencement of arbitration. Instead, it serves a limited procedural purpose, determining the commencement of the dispute for reckoning the limitation period. It operates purely as a statutory mechanism to ascertain the exact

initiation date. Resultantly, the Apex Court had allowed the appeal and set aside the High Court's order, which had invalidated the arbitral award solely on the ground that a Section 21 notice had not been issued. The State of Kerala had argued that this notice was a mandatory requirement, asserting that both parties to an arbitration agreement have a right to be informed of the dispute before the Arbitral Tribunal is constituted. In such circumstances, this Court is of the considered opinion that the State's application to withdraw the present petition with liberty to file a fresh one on the same cause of action is entirely without any basis. Resultantly, no permission is required and this case has to be decided strictly on its merits.

20. Learned Senior Counsel for the respondent-Contractor is well-justified in placing reliance upon the judgment passed by the Apex Court in ***Rajiv Gaddh Vs. Subodh Parkash (2026) INSC 302***, wherein a sole arbitrator had been appointed by the High Court vide order dated 08.11.2024. It was noticed that there were three agreements between the parties, and it was held that if a party either abandons a suit or part of a claim, or withdraws the same without the leave of the Court, that party is precluded from instituting a fresh suit in respect of such subject matter or part of the claim. It was noticed that the respondent had not participated in the earlier proceedings and it was evident that the respondent had abandoned the

proceedings. Accordingly, it was held that the subsequent application filed under Section 11(6) of 'the Act' was based on the same cause of action, was barred, and a litigant cannot be permitted to abuse the process of the court by filing fresh proceedings on the same cause of action.

21. Resultantly, it was held that the second application was not maintainable, and the order appointing the arbitrator, keeping in view the earlier round of litigation, was set aside. Reference had been made to the earlier round of litigation, whereby the respondent chose not to put in an appearance and instead questioned the arbitral authority, leading the Apex Court to come to this conclusion. The relevant paragraph of the said judgment reads as under:-

***“17.** In the present case, the respondent himself by a notice dated 06.05.2015 had invoked the arbitration clause contained in the agreements dated 02.04.2013 and had filed a petition on 03.07.2015 under Section 11(6) of the Act. The High Court, on the application of the respondent, appointed an Arbitrator. From the communication dated 29.08.2019 sent by sole respondent to the Arbitrator informing him that he would not participate in the proceeding, it is evident that respondent had abandoned the proceeding.*

***18.** Now, we may examine whether the subsequent petition filed by the respondent was based on a different cause of action. It is noteworthy that auction of 'the Hoshiarpur Land' by Jammu & Kashmir Bank was held in 2005. The owners of the land had challenged the same before the Debt Recovery Tribunal and the Debt Recovery Appellate Tribunal. The Writ Petition preferred by the owners of the land, namely, W.P.*

No.8412 of 2009, was dismissed by High Court of Judicature at Bombay vide judgment dated 30.09.2009, and the validity of the auction was upheld. Thereafter, the owners approached this Court by filing Civil Appeal No.1599 of 2011. During the pendency of the aforesaid Civil Appeal, the appellant and the respondent entered into three agreements on 02.04.2013. The respondent, during the pendency of the Civil Appeal filed by the owner of the land, invoked the arbitration clause by issuing a notice on 06.05.2015. The Civil Appeal preferred by the owners of the land was dismissed on 09.07.2021 by this Court.

19. It is pertinent to note that the issue, which was sub judice, was with regard to validity of the auction. The dispute between the appellant and the respondent was not the subject matter of the Civil Appeal. Therefore, on dismissal of the Civil Appeal filed by the owner of the land, no fresh cause of action accrued to the respondent. Thus, it is axiomatic that the subsequent application filed under Section 11(6) was based on same cause of action and was barred on the principles contained in Order 23 Rule 1 of the code. A litigant cannot be permitted to abuse the process of Court to file a fresh proceeding again on the same cause of action. The bar contained in Order 23 Rule 1 of the Code which applies to proceeding under Section 11 of the Act is founded on Public Policy. For the aforementioned reasons, we hold that the subsequent application filed by the respondent was not maintainable.

20. Accordingly, the impugned order dated 08.11.2024, passed by the High Court is quashed and set aside. The appeal is allowed. There shall be no order as to costs."

22. The Apex Court in **HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad (2024) SCC OnLine SC 3190** has held that a Court is under an obligation to examine whether an application under

Section 11(6) of 'the Act' is time-barred. The Court must also determine whether the period spent pursuing earlier proceedings should be excluded, while dilating upon the purview of Order 23 Rule 1 of the Code of Civil Procedure (CPC). Resultantly, the Apex Court had concluded that once previous proceedings are withdrawn unconditionally, a second application on the same cause of action is not maintainable, as it violates public policy. It was accordingly held that while the law of limitation does not extinguish a right but merely bars the remedy, and though the power to condone delay exists under Section 5 of the Limitation Act, 1963, such delay should only be condoned in exceptional cases. This is particularly true, if multiple forums are approached to exploit procedural loopholes and prolong legal proceedings.

23. As noticed in the present case, the State chose not to assail the first order dated 03.09.2011 (**Annexure R-I**), rightly or wrongly, within the prescribed limitation period. Thereafter, its validity was upheld on account of a delay of ten years vide order dated 29.05.2023. The subsequent appointment of the Arbitrator, who chose to close the proceedings, in view of the earlier round of litigation was also approved by a Coordinate Bench of this Court vide its order dated 22.06.2023. Resultantly, this Court is of the

considered opinion that there is no ground to condone the delay or to exercise power under Section 14 of 'the Act'.

24. It is a matter of record also that the work had been awarded on 28.01.2006 and rescinded vide letter dated 25.08.2007, as per the claim of the petitioner itself. Without issuing any notice, the appointment had been made at the first stage by the Chief Engineer, and a request had been made by the Executive Engineer (claimant) to the Superintending Engineer for getting the arbitrator appointed on 31.12.2009. The appointment, as noticed above by the order dated 03.11.2021, would go on to show that the first appointment of the arbitrator was made on 19.01.2011, which itself is beyond the period of limitation of three years as the contract had been rescinded on 25.08.2007.

25. For the said reason, this Court is of the considered opinion that the claim was already stale, and reliance can be placed upon the judgments passed by the Apex Court in ***Vidya Drolia and Others Vs. Durga Trading Corporation (2021) 2 SCC 1*** and ***M/s Nortel Networks India Private Limited (2021) 5 SCC 798***, wherein it has been held that stale claims are not to be adjudicated upon, thus negating the right of the petitioner-State as a litigant.

26. Keeping in view the above, this Court is of the considered opinion that the matter has been finalized *inter se* the

parties, as the order has been upheld and the decisions of the two Coordinate Benches have affirmed the orders of the two Arbitrators closing the proceedings. The third petition is thus held to be time-barred, given that the dispute pertains to a contract awarded way back on 28.01.2006 and rescinded on 25.08.2007. No effort as such was made to approach the appointed Arbitrator, and the first appointment was only made on 19.01.2011, which was well beyond the three-year limitation period. Furthermore, that Arbitrator also chose to close the proceedings.

27. In such circumstances, the respondent-Contractor as such cannot be foisted with the belated litigation that originated two decades ago at the time of the award of the Contract. Resultantly, for the aforesaid reasons, the present petition is dismissed, along with any pending miscellaneous applications, which also stand disposed of.

(G.S. Sandhawalia)
Chief Justice

7th August, 2026
(Munish Thakur)