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1995. He had also undergone actual sentence for more than 7½ years and with remission more than 10 years. In this manner also the petitioner becomes eligible for his pre-mature release. The conditions for pre-mature release contained in the instructions dated 6th March, 1995 (Annexure P-4) are applicable irrespective of the question if a person has been convicted of more than one murder.

(11) The case of the petitioner may be considered in accordance with the conditions of the instructions dated 24th June, 1995, (Annexure P-2) or 8th July, 1991 (Annexure P-3) or 6th March, 1995 (Annexure P-4), but the necessary result is that he becomes eligible for pre-mature release. The rejection of his case solely on the ground that he had committed triple murder is quite foreign to the said instructions. In these circumstances, the order dated 2nd August, 1995 (Annexure P-5) is wholly illegal, arbitrary and violative of Articles 14, 19 and 21 of the Constitution of India.

(12) As a result of the above discussion, this petition is allowed. Order dated 2nd August, 1995 (Annexure P-5) passed by the respondents, is hereby quashed. The respondents are directed to re-consider the case of the petitioner for his pre-mature release in the light of the observations made hereinbefore within a period of one month from the date of the receipt/production of a copy of this order.

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*J.S.T.*

*Before N.K. Sodhi, J.*

STATE OF PUNJAB & OTHERS,—*Petitioners*

*versus*

M/S PARMAR CONSTRUCTION CO. & ANOTHER,—  
*Respondents*

C.R. No. 1200 of 96

12th May, 1997

*Arbitration Act, 1940—Section 12—Appointment of Arbitrator—Agreement between parties provides for arbitration clause to settle any dispute—Contractor raised dispute and matter referred to arbitration—Arbitrator fixed various dates and recorded evidence—Thereafter on promotion as Chief Engineer failed to continue as Arbitrator—Contractor moved the Court for revoking*

*power of Arbitrator and for appointing new one—Application allowed—Challenge to order appointing new arbitrator on ground that new Arbitrator could only be appointed by the Chief Engineer—Order of trial Court upheld—Chief Engineer not competent to appoint new Arbitrator.*

*Held*, that I find no merit in the Contention of the learned State counsel. According to Section 12(2) of the Act, when the authority of an arbitrator is revoked by leave of the Court, the Court may, on the application of any party, appoint a person to act as sole arbitrator in place of the person displaced. This is precisely what the trial Court has done.

(Para 4)

*Further held*, that when the authority of an arbitrator has been revoked by the Court the latter has two opinions before it: (i) either to appoint a sole arbitrator in place of the person displaced, or (ii) order that the arbitration agreement shall cease to have effect with reference to the differences referred. The trial Court in the present case exercised the first option and appointed Shri S.S. Mongia as the sole arbitrator in place of Shri Sham Lal Garg. It is, thus, clear that the Chief Engineer in terms of the arbitration clause could not appoint a fresh arbitrator after the authority of Shri Sham Lal Garg had been revoked by the court as such a power is vested only with the court.

(Para 5)

H.S. Sidhu, AAG Punjab, *for the Petitioner.*

P.C. Markanda, Advocate with Mr. Naresh Markanda,  
*Advocate for the Respondent.*

## JUDGMENT

*N.K. Sodhi, J.*

(1) This order will dispose of three revision petitions 1200 of 1996, 4026 and 4556 of 1995 in which common questions of law and fact arise. Since the arguments were addressed in Civil Revision 1200 of 1996, the facts are being taken from this case.

(2) M/s Parmar Construction Company (for short, the contractor) is engaged in the construction of works for various organisations and is registered as an 'A' class contractor. Work of construction of Sarsa Acquiduct of S.Y.L. Canal (Balance Work) was awarded to the contractor and an agreement dated 19th

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December, 1988 executed between him and the State of Punjab. The terms and conditions governing the agreement in question were set out by the parties and it was, *inter alia*, agreed that the disputes and differences, if any, that may arise between them would be resolved through an Arbitrator to be appointed by the Chief Engineer of the State of Punjab. Clause 67 of the agreement is the Arbitration Clause and it provides that within 30 days of the receipt of notice from the contractor of his intention to refer the dispute to arbitration, the Chief Engineer shall send to the former a list of three in-service officers of Superintending Engineer or higher rank who were not connected with the S.Y.L. Project work. Within 15 days of the receipt of this list, the contractor was to select and communicate to the Chief Engineer the name of one officer from the list who was to be appointed as the sole arbitrator. It is not necessary to refer to the remaining paras of Clause 67 as we are not concerned with them in these cases. Disputes having arisen between the parties, Shri Sham Lal Garg, Superintending Engineer, Sirhind Canal Circle, Ludhiana was appointed the sole arbitrator in accordance with the procedure laid down in the arbitration clause. The said arbitrator fixed various dates of hearing and recorded evidence of the parties who produced some documents as well. While the arbitration proceedings were going on, the arbitrator was promoted as Chief Engineer. The concerned Chief Engineer then addressed a communication to the arbitrator pointing out that since he had been promoted as Chief Engineer he could not function as an arbitrator under the arbitration clause and he was advised not to proceed further with the arbitration proceedings. This communication to the arbitrator was wholly unwarranted as the arbitration clause did not disqualify the arbitrator from continuing with the arbitration proceedings on his promotion as Chief Engineer. However, the arbitrator accepted the advice of the Chief Engineer and stayed further proceedings in the cases. It was then that the contractor moved an application under sections 5, 11 and 12 of the Arbitration Act, 1940 (hereinafter called, the Act) for the removal of Shri Sham Lal Garg as the arbitrator on the ground that he had refused to proceed with the arbitration proceedings. This application was allowed and the authority of Shri Sham Lal Garg as arbitrator was revoked and in his place Shri S.S. Mongia, a retired Chief Engineer, resident of House No. 1203, Sector 43-B, Chandigarh was appointed as sole arbitrator for the adjudication of the matters in dispute between the parties. In the other two connected cases, the authority of the appointed arbitrator was revoked under similar circumstances and in one case Shri P.C.

Sanghi, Chief Engineer (Retd.), resident of House No. 2145, Sector 21-C, Chandigarh was appointed as an arbitrator whereas in the other case Shri T.P. Goyal, Superintending Engineer, MES (Retd.), resident of House No. 14, Sector 8, Panchkula was appointed. It is against these orders of the trial court that the present revision petitions have been filed by the State of Punjab.

(3) The grievance made by the learned State counsel is that the trial court erred in law in appointing the new arbitrator as he could be appointed only by the Chief Engineer in accordance with the procedure prescribed in Clause 67 of the Arbitration clause which governs the parties. The learned counsel for the contractor, on the other hand, contended that once the authority of an appointed arbitrator is revoked by leave of the court, it is the court alone which can appoint the arbitrator in place of the one who has been displaced and this is so even if there is a contract to the contrary entered into between the parties. He referred to the provisions of Section 12 of the Act to contend that the court alone could appoint the arbitrator and that it could not be appointed by the Chief Engineer in terms of the arbitration clause.

(4) Having heard counsel for the parties and after going through the orders passed by the trial court, I find no merit in the contention of the learned State counsel. According to Section 12(2) of the Act, when the authority of an arbitrator is revoked by leave of the court, the court may, on the application of any party, appoint a person to act as sole arbitrator in place of the person displaced. This is precisely what the trial court has done. At this stage, it would be relevant to reproduce the provisions of Sub-section (2) of Section 12 of the Act which read as under:—

“12. Power of Court where arbitrator is removed or his authority revoked.—

(1) xx

xx

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(2) Where the authority of an arbitrator or arbitrators or an umpire is revoked by leave of the Court, or where the Court removes an umpire who has entered on the reference or a sole arbitrator or all the arbitrators, the Court may, on the application of any party to the arbitration agreement, either—

(a) appoint a person to act as sole arbitrator in the place of the person or persons displaced, or

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(b) order that the arbitration agreement shall cease to have effect with respect to the different referred.

(3) xxx xxx xxx.”

(5) A plain reading of this provision makes it clear that when the authority of an arbitrator has been revoked by the court the latter has two options before it: (i) either to appoint a sole arbitrator in place of the person displaced, or (ii) order that the arbitration agreement shall cease to have effect with reference to the differences referred. The trial court in the present case exercised the first option and appointed Shri S.S. Mongia as the sole arbitrator in place of Shri Sham Lal Garg. It is, thus, clear that the Chief Engineer in terms of the arbitration clause could not appoint a fresh arbitrator after the authority of Shri Sham Lal Garg had been revoked by the court as such a power is vested only with the court. The view that I have taken finds support from a Single Bench judgment of the Delhi High Court in *M/s Khanna Associates (P) Ltd. v. New Delhi Municipal Committee and another* (1), which was followed by this court in *Union of India vs. Darshan Singh Ahuja* (2), (Civil Revision 3740 of 1991 decided on 17th January, 1992).

(6) No fault can, thus, be found with the impugned orders passed by the trial court.

(7) Since the proceedings before the arbitrator were stayed, the parties through their counsel have been directed to appear before Shri S.S. Mongia on 2nd June, 1997 before Shri P.C. Sanghi on 3rd June, 1997 and before Shri T.P. Goyal on 4th June, 1997. On the oral request of the counsel for the contractor, the time to make the award is enlarged by another four months from the date when the parties appear before the arbitrators. The arbitrators are directed to expeditiously dispose of the proceedings and make their awards within the stipulated period of four months. However, if they are unable to make the award within the aforesaid period of four months, it will be open to the parties to enlarge the time by mutual consent for making the award failing which either party will be at liberty to take steps for the extension of time in accordance with law.

(8) In the result, the revision petitions are dismissed leaving the parties to bear their own costs.

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1. AIR 1985 Delhi 262  
2. 1992 (1) Arbn. L.R. 288 (P&H)

(9) A copy of this order be given *dasti* to the counsel for the parties on payment of requisite charges.

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*J.S.T.*

*Before Amarjeet Chaudhary & N.K. Agrawal, JJ.*

SUSHILA DEVI,—*Petitioner*

*versus*

STATE OF HARYANA & OTHERS, —*Respondents*

CWP No. 3046 of 1997

7th May, 1997

*Constitution of India, 1950—Arts. 226/227—Haryana Co-operative Societies Act, 22 of 1984—Section 18(1) —Rejection of nomination—Petitioner by a resolution of 2/3rd majority appointed by Managing Committee of Society as its representative to participate in election of Board of Directors of Bank—Petitioner's nomination cancelled by Zonal Committee on the ground that resolution not passed by 2/3rd majority—Challenge to cancellation—Held that resolution rightly passed—6 out of 10 members attended meeting and approved of petitioner's name—Only nine authorised to vote as 10th member was an associate member and would not participate in election—Incumbent upon committee to afford opportunity to Society to pass fresh resolution in case resolution is defective.*

*Held*, that from the facts emerging from the rival contentions, it appears from a perusal of the resolution dated 27th December, 1996 passed by the Managing Committee of the Society that 10 members had attended the meeting, one of whom was Shri Ajit Singh, Executive Officer of the Bank. He, being an associate member, did not have a right to vote. Section 18(1) of the Haryana Co-operative Societies Act lays down that a Co-operative Society may admit any person or a Co-operative Society or any other statutory body as an associate member in accordance with its bye-laws. Section 20 provides for right to vote in the affairs of the Society. Clause (b) lays down that an Associate member shall not have the right to vote. It is thus clear that Shri Ajit Singh, Executive Officer of the Bank had no right to vote because he attended the meeting as a representative of the Bank. Since he was only an associate member, he actually did not participate in the election.

(Para 6)

*Further held*, that six members of the Managing Committee appended their signatures and thus, although nine members, who