

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Arb App No. 4/2021
CM Nos. 8881 & 8882/2021
CM No. 1047/2022
CAV No. 2192/2021**

1. Union Territory of J&K (Erstwhile State) through
Commissioner/Secretary to Government,
Public Health Engineering Department
(Now Jal Shakti Department),
Civil Secretariat, Jammu.
2. Chief Engineer, Public Health Engineering Department
(Now Jal Shakti Department),
Jammu

....Appellant(s)

Through:- Mr. Amit Gupta, AAG

v/s

M/s Rishi Dutt, S/o Sh. Sohan Lal
R/o H.No. 22, Sadar Bazar, Nai Basti,
Jammu.

....Respondent(s)

Through:-

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE**

JUDGMENT(ORAL)

Sanjeev Kumar J.

1. This appeal filed in terms of Section 37 of the Jammu and Kashmir Arbitration and Conciliation Act, 1996 (for short '**the Act**') is directed against the judgment of the learned Single Judge of this Court dated 15.03.2021 passed in Arb.P No. 33/2019, whereby the application filed by the appellants herein under Section 34 of the Act, has been dismissed and the award of the Arbitrator upheld.
2. The impugned judgment of the learned Single Judge is assailed on multiple grounds, however, during the course of arguments, Mr. Gupta,

restricted his challenge to the award of cost of litigation twice by the learned Arbitrator. He submits that this aspect of the matter was though highlighted before the learned Single Judge, but the same has not been considered and dealt with. He invited our attention to the award dated 22.11.2018 passed by a Sole Arbitrator, Engineer Vinod Sharma. He submits that under **Claim No.4**, which deals with the **Cost of Litigation**, the Arbitrator has awarded a sum of Rs. 1.00 lakh and under the head **Claim No.5-Cost of Arbitration**, the Arbitrator has yet again awarded a sum of Rs. 1.75 lakh representing the Cost of Arbitration on account of arbitration including counsel fee and other expenses.

3. Mr. Gupta, however, argued that the grant of Cost of Litigation twice by changing the nomenclature of the claim was beyond the jurisdiction of the Arbitrator, therefore, not sustainable in law.
4. Heard Mr. Gupta, learned counsel for the appellants and perused the material on record.
5. With a view to appreciating the arguments of Mr. Gupta, learned counsel appearing for the appellants, we deem it appropriate to set out the award by the Arbitrator on Claim Nos. 4 and 5, which for facility of reference are reproduced hereunder:

Claim No.4 Cost of Litigation

Petitioner has claimed Rs.5.00 lakhs on account of litigation and other expenses incurred by him for filing a petition for appointment of Arbitrator in the High Court for payment to Counsel etc.

I partially sustain this claim and award an amount Rs.1.00 lakh against this claim

Claim No.5 Cost of Arbitration.

The claimant has claimed the cost of Arbitration on account of Arbitration including counsel fee and other expenses.

I, partially sustain this claim and award an amount Rs.1.75 lakhs against them claim.

6. The argument of learned counsel for the appellants is that the Cost of Litigation, if any, incurred by the respondent/claimant before the High Court in proceedings leading to the appointment of Arbitrator could not have been granted by the Arbitrator. Awarding of Cost of Litigation disposed of by the High Court falls within the domain of the High Court and the High Court while allowing an application for appointment of Arbitrator has not granted any Cost of Litigation. It was, thus, beyond the competence and jurisdiction of the Arbitrator to grant litigation expenses incurred by the respondent/claimant for filing the petition for appointment of Arbitrator before the High Court of J&K.
7. From reading of the order impugned, we do not find any discussion on this aspect. As it appears from the impugned order, the learned Single Judge in Paragraph-7 adverted to the grounds of challenge urged by the appellants to assail the award passed by the Sole Arbitrator and came to a conclusion that none of the grounds urged by the appellants were traceable to Section 34 of the Act except ground-C. Having said that, the learned Single Judge did not appreciate the fact that the grant of litigation expenses by the Arbitrator in respect of the petition disposed of by the High Court was not within his jurisdiction, therefore, while awarding Claim No.4, the Arbitrator had clearly exceeded his jurisdiction.
8. In view of the aforesaid, we agree with the submissions of the learned counsel for the appellants that awarding litigation expenses in respect of the expenses allegedly incurred by the respondent/claimant in contesting the litigation before the High Court was, not within the jurisdiction of the Arbitrator. Needless to say that the Arbitrator like a civil court is entitled

to award the Cost of Litigation and this Cost of Litigation to be awarded by the Arbitrator in a given case must relate to expenses incurred by a successful party before the Arbitrator. He has no jurisdiction or competence to assess and award the litigation expenses, if any, incurred by a successful party before the High Court or any court of law prior to his appointment as Arbitrator.

9. We, therefore, hold that while awarding litigation expenses in relation to the expenses allegedly incurred by the respondent/claimant in a litigation disposed of by this Court were beyond the jurisdiction of the Arbitrator, therefore, a case of Arbitrator having exceeded his jurisdiction in granting aforesaid claim was clearly made out. The writ Court has failed to appreciate this aspect of the matter, therefore, we find the judgment of the learned Single Judge flawed on that account.
10. Since the claim figuring at Item No.4 of the award is clearly separable from the other claims, therefore, we **allow** this appeal partially and set aside the award of the Arbitrator to the extent of Item No.4, whereunder the litigation expenses to the tune of Rs. 1.00 lakh have been awarded to the respondent/claimant on account of Cost of Litigation allegedly incurred by the respondent/claimant in a litigation disposed of by the High Court. Rest of the award is, however, upheld.
11. The appeal along with connected application(s) is, accordingly, **disposed of.**

(Mohan Lal)
Judge

(Sanjeev Kumar)
Judge

Jammu
16.10.2023
Vijay

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