

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.13707 of 2018 (O&M)
Date of Decision.30.05.2019

State of Haryana through Superintending Engineer, Chandigarh
Circle, PWD (B&R), Sector 33, Chandigarh ...Petitioner

Vs

Presiding Arbitrator and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vivek Gupta, Advocate
for the petitioner.

Mr. Gurinder Pal Singh, Advocate
as amicus curiae.

Mr. Arun Jain, Senior Advocate with
Mr. Abhishek Dhull, Advocate
for respondent No.5.

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AMIT RAWAL J. (ORAL)

The State of Haryana has invoked extraordinary writ jurisdiction seeking certiorari without mentioning provisions, in particular Article 226 of the Constitution of India, however, purportedly under those provisions for setting aside the following order:-

“It is accordingly held:

(i). That fee of ₹1 lakh per daily sitting is being paid by the State and its instrumentalities.

(ii). It cannot be said that the fee fixed by the Tribunal in this case is exorbitant.

(iii). The judicial precedent that is the decision of the High Court does not support the contention of the respondents. The High Court was not dealing with the proposition put across by the respondents.

(iv). *The amount already paid to the members of the Tribunal would be treated as a deposit in terms of the Section 38 of the Act.*

(v). *In no case the fee ultimately determined towards daily sitting would exceed the limit indicated in the model fee structure.*

It is hopeful that the parties would stick to the time schedule and would not seek unnecessary adjournments. Thus, the fee of the Arbitral Tribunal shall be governed by the model fee as indicated in the amended Arbitration and Conciliation Act. The payment already made shall be treated as a deposit in terms of Section 38 of the Act. Let the parties deposit the balance amount within two weeks.”

It was alleged that in pursuance of dispute having arisen between the parties containing a Resolution of dispute through arbitration, an Arbitral Tribunal was constituted whereby reference was entered in 2016. Respondent No.1, claimant, preferred claim statement before the Arbitral Tribunal and arbitration proceedings were commenced. After due deliberation, fee of the Arbitrators was fixed as ₹1 lakh per Arbitrator, ₹2500/- for each Arbitrator as conveyance charges, ₹20,000/- per hearing to the Presiding Arbitrator as administrative charges.

Learned counsel appearing for the State submitted that an application (Annexure P-2) under Sections 12 and 13 of the Arbitration and Conciliation Act, 1996 challenging the impartiality and independence of the Arbitrator and another application (Annexure P-3) to fix fees and charges in terms of fee schedule of Chandigarh Arbitration Centre, Sector 17 along with judgment of this

Court passed in CWP No.3962 of 2017 dated 21.07.2017 as the proceedings were held in Arbitration Centre of this Court were submitted. After deliberating upon the issue and keeping the matter pending for some time, vide order dated 17.04.2018 held that fee of ₹1 lakh per sitting being paid by the State and its instrumentality, will be kept as a deposit under Section 38 of the 1996 Act and fee of Tribunal shall be governed by the model fee as indicated in the amended Arbitration and Conciliation Act. The order was sought to be modified vide application (Annexure P-9) but the same was dismissed wherein the Arbitrators clarified regarding administrative charges.

It was next contended that judgment *idid* clearly mentioned that Arbitral Tribunal holding the proceedings in Arbitration Centre at Chandigarh shall be governed by the 4th Schedule and therefore, the order under challenge is not sustainable.

Per contra, Mr. Arun Jain, learned Senior Counsel assisted by Mr. Abhishek Dhull, learned counsel appearing for respondent No.5 and Mr. Gurinder Pal Singh, Advocate as amicus curiae submitted that in view of the judgment rendered by Hon'ble Supreme Court in **Radhey Shyam and another Vs. Chhabi Nath and others (2015) 5 SCC 423**, the writ petition under Article 226 of the Constitution of India is not maintainable. There is no prayer for treating the writ petition under Article 226 to Article 227 of the Constitution of India. Since the period prescribed of arbitration proceedings is over, an application under Section 29A (4) of the 1996 Act is already pending adjudication before the competent authority

for extension of time wherein the State is opposing tooth and nail. The entire act of the State is to delay adjudication of the claim and nothing else. No prejudice has been caused to the State, for, the fee paid so far has been ordered to be treated as deposit under Section 38, which will be decided at the final stage and can be adjusted and latter part of the fee is being charged as per the Schedule.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of learned counsel for the State, for, once the Arbitral Tribunal vide impugned order has already clarified that they will be governed by the arbitration schedule and the payment made so far has been kept as deposit under Section 38 of the 1996 Act and the same can always be taken care by the Tribunal at the final stage of the arbitration proceedings. The apprehension expressed is far fetched and a figment of imagination. The Arbitral Tribunal shall consider the charging of future fee as per judgment of Division of this Court rendered in **Punjab State Power Corporation Limited versus Union of India and others** rendered in CWP No.3962 of 2017 on 21.07.2017.

Resultantly, the writ petition with the aforementioned observations is dismissed.

(AMIT RAWAL)
JUDGE

May 30, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No