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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**ARB No.251 of 2019 (O&M)**
**Date of Decision:12.12.2022**

SHAHEED UDHAM SINGH EDUCATION AND WELFARE SOCIETY

**......Petitioner**

**Vs**

THE PUNJAB EDUCATION DEPARTMENT AND ANR

**.....Respondents**

**CORAM:** ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Sandeep Khunger, Advocate
for the petitioner.

Ms. Shaveta Sanghi, Advocate for
Ms. Neha Sharma, Advocate
for respondent No.1.

Mr. Sanjeev Soni, Addl., A.G., Punjab.

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***<u>RAJ MOHAN SINGH, J.(Oral)</u>***

[1]. The petitioner has preferred this petition under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an independent Arbitrator to adjudicate the dispute between the parties arising out of the agreements dated 05.10.2016, 07.10.2016, 12.10.2016, 30.11.2017 and 10.08.2018.

[2]. The aforesaid agreements have arbitration Clause 15 to the effect that if any dispute arises with regard to the

agreements, the same shall be referred to the Principal Secretary to the Government of Punjab, Department of School Education for arbitration, who shall decide the dispute so referred in accordance with the provisions of the Act. The decision of the Arbitrator shall be final and binding on both the parties.

[3]. The petitioner-Society in pursuance of an advertisement floated by the Punjab School Education Board for operations of Adarsh Schools already functioning in the area of Bhupal, Boha, Malla, Midduman, Pacca, Hardasa, Daulatpura Niwan, Ransih Kalan, Parthala, Chauke and Talwara, applied for taking over the management of Adarsh Schools at the aforesaid places through a written application.

[4]. The application of the petitioner was accepted for the purposes of operating the day to day affairs and operations of Adarsh Schools at Boha, Malla, Bhupal, Balad, Ganduan, Kaleka and Manawan.

[5] For the aforesaid allotment, the respondent No.1 entered into agreements with the petitioner-Society on 05.10.2016 in respect of Boha, on 07.10.2016 in respect of Malla, on 12.10.2016 in respect of Bhupal, on 30.11.2017 in respect of Balad, on 30.11.2017 in respect of Ganduan, on 30.11.2017 in respect of Kaleka and on 10.08.2018 in respect of Manawan.

[6]. As per the aforesaid agreements, the terms and conditions with regard to performance of day to day affairs and conduct of the business of the schools were settled between the parties. The petitioner had been operating the day to day affairs under the agreements, but owing to some development involving political clout, the respondent No.1 started to withdraw from discharging its obligations under the agreements in letter and spirit on one pretext or the other.

[7]. The petitioner is a charitable society and had undertaken to contribute 30% towards the student cost as well as salary of the staff employed which the society was to generate from its own sources and remaining 70% was to be contributed by the respondent No.1.

[8]. Both the parties are at variance in respect of contribution made by the respondent No.1.

[9]. Learned counsel for the respondent No.1 submits that 70% share of the respondent No.1 has already been released.

[10]. Learned counsel for the petitioner submits that the petitioner-Society has also honoured its commitment towards 30%. As against the fake appointment of staff, criminal case bearing FIR No.66 dated 10.08.2019 under Sections 420, 465, 467, 468, 471 IPC has been lodged in Police Station Baja Khana, District Faridkot and in that FIR, the police after due investigation, has submitted a cancellation report as no

incriminating allegation could be substantiated against the petitioner. Learned counsel further submits that as per arbitration clause, the matter has to be referred to the Arbitrator and even as per stand taken by the respondent No.1 in para Nos.10 and 14 on merits, the provisions of arbitration are available, but the petitioner did not approach the Arbitrator for arbitration.

[11]. The objection raised by the petitioner was in the context of incompetence of the officer of the department to conduct any arbitral proceedings in view of ratio laid down in ***TRF Limited vs. Energo Engineering Projects Limited, (2017) 8 SCC 377***; ***Bharat Broadband Network Limited vs. United Telecoms Limited, (2019) 5 SCC 755***; ***Perkins Eastman Architects DPC and another vs. HSCC (India) Limited, (2020) 20 SCC 760*** and ***Ellora Paper Mills Limited vs. State of Madhya Pradesh, (2022) 3 SCC 1.***Para No.54 of ***TRF Limited's*** case (supra) reads as under:-

> "*54. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity nor the individual respectability. We are only concerned with the authority or*

*the power of the Managing Director. By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the plinth. Or to put it differently, once the identity of the Managing Director as the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated. Therefore, the view expressed by the High Court is not sustainable and we say so."*

[12]. Learned counsel for the petitioner further highlights that the lodging of criminal case also is of no consequence as the criminality as raked up by the respondents has been found to be on negative note. The legislative intent of the Act is party autonomy and minimal judicial intervention in arbtiral process is required. All issues and objections are to be decided by the arbitral Tribunal/sole Arbitrator in accordance with law. Same set of facts may lead to civil and criminal proceedings. If it is clear that civil dispute involves question of fraud etc, then mere fact that prosecution of criminal case would not lead to

conclusion that dispute is otherwise arbtirable, ceases to be so. Reference can be made to para Nos.14 and 16 of ***Avitel Post Studioz Limited & Ors. vs. HSBC PI Holdings (Mauritius) Limited, 2021(4) SCC 713*** which are reproduced hereasunder:-

> *"14. In a recent judgment reported as* ***Rashid Raza (supra),*** *this Court referred to Sikri, J.'s judgment in* ***Ayyasamy (supra)*** *and then held:*
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> > *"4. The principles of law laid down in this appeal make a distinction between serious allegations of forgery/fabrication in support of the plea of fraud as opposed to "simple allegations". Two working tests laid down in para 25 are: (1) does this plea permeate the entire contract and above all, the agreement of arbitration, rendering it void, or (2) whether the allegations of fraud touch upon the internal affairs of the parties inter se having no implication in the public domain."*
>
> *After these judgments, it is clear that "serious allegations of fraud" arise only if either of the two tests laid down are satisfied, and not otherwise. The first test is satisfied only when it can be said that the arbitration clause or agreement itself cannot be said to exist in a clear case in which the court finds that the party against whom breach is alleged cannot be said to have entered into the agreement relating to arbitration at all. The second test can be said to have been met in cases in which allegations are made against the State or its instrumentalities of arbitrary, fraudulent, or malafide conduct, thus necessitating the hearing of the case by*

*a writ court in which questions are raised which are not predominantly questions arising from the contract itself or breach thereof, but questions arising in the public law domain."*

*16. In the light of the aforesaid judgments, paragraph 27(vi) of Afcons (supra) and paragraph 36(i) of Booz Allen (supra), must now be read subject to the rider that the same set of facts may lead to civil and criminal proceedings and if it is clear that a civil dispute involves questions of fraud, misrepresentation, etc. which can be the subject matter of such proceeding under section 17 of the Contract Act, and/or the tort of deceit, the mere fact that criminal proceedings can or have been instituted in respect of the same subject matter would not lead to the conclusion that a dispute which is otherwise arbitrable, ceases to be so."*

[13]. The petitioner has tentatively valued its claim to the tune of Rs.4 crores subject to the final adjudication by the Arbitrator.

[14]. In view of facts and circumstances of the case, I deem it appropriate to appoint ***HMJ M.M.S. Bedi (Retd.), House No.2152, Sector-44-C, Chandigarh-160047, Mobile No.09780008126, bedims@gmail.com*** as the sole Arbitrator, to resolve the dispute/difference between the parties. The appointment of the Arbitrator shall be subject to the declaration to be made by him as required under Section 12 of Arbitration and Conciliation Act, 1996 in respect of his independence and impartiality to settle the dispute between the parties.

[15]. The Arbitrator would complete the proceedings within the specified time in terms of Section 29-A of the Act. The Arbitrator shall be paid fee in accordance with the IVth Schedule of the Act as amended from time to time. The fee shall be borne by both the parties equally.

[16]. The venue of the Arbitration shall be disclosed by the Arbitrator as per his/her convenience.

[17]. A copy of this order be dispatched to the Arbitrator on the following address:-

***HMJ M.M.S. Bedi (Retd.),***
***House No.2152, Sector-44-C, Chandigarh-160047,***
***Mobile No.09780008126,***
***bedims@gmail.com***

[18]. Petition stands disposed of accordingly.

**(RAJ MOHAN SINGH)**
12.12.2022 **JUDGE**
*Prince*
Whether speaking/reasoned Yes/No
Whether reportable Yes/No

PRINCE SAINI
2022.12.14 17.13
I attest to the accuracy and authenticity of this order/judgment