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2023:PHHC:052556

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-10879-2021 (O&M)

Date of Decision: 17th April, 2023

State of Punjab and others

... Petitioners

Versus

Arbitral Tribunal and Anr.

... Respondents

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Charanpreet Singh, Assistant Advocate General, Punjab.

AVNEESH JHINGAN, J.(Oral)

1. This petition is filed by the State of Punjab seeking quashing of order dated 22.3.2019 (Annexure P-1).

2. The grievance raised is that fee of Rs.21,85,500/- for each arbitrator was wrongly fixed and fee should be composite to be equally divided among the arbitrators.

3. Learned counsel for the State has fairly submitted that this issue is no longer *res integra* and is covered by the decision of the Supreme Court in ***Oil and Natural Gas Corporation Ltd. v. Afcons Gunanusa JV, 2022 AIR (Supreme Court) 4413***. The relevant portion is quoted below:

“200. We answer the issues raised in this batch of cases in the following terms:

(i) Arbitrators do not have the power to unilaterally issue binding and enforceable orders determining their own fees. A unilateral determination of fees violates the principles of party autonomy and the doctrine of the prohibition of in rem suam decisions, i.e., the arbitrators cannot be a judge of their own

private claim against the parties regarding their remuneration. However, the arbitral tribunal has the discretion to apportion the costs (including arbitrators' fee and expenses) between the parties in terms of [Section 31\(8\)](#) and [Section 31A](#) of the Arbitration Act and also demand a deposit (advance on costs) in accordance with [Section 38](#) of the Arbitration Act. If while fixing costs or deposits, the arbitral tribunal makes any finding relating to arbitrators' fees (in the absence of an agreement between the parties and arbitrators), it cannot be enforced in favour of the arbitrators. The arbitral tribunal can only exercise a lien over the delivery of arbitral award if the payment to it remains outstanding under [Section 39\(1\)](#). The party can approach the court to review the fees demanded by the arbitrators if it believes the fees are unreasonable under [Section 39\(2\)](#);

(ii) Since this judgment holds that the fees of the arbitrators must be fixed at the inception to avoid unnecessary litigation and conflicts between the parties and the arbitrators at a later stage, this Court has issued certain directives to govern proceedings in ad hoc arbitrations in Section C.2.4;

(iii) The term "sum in dispute" in the Fourth Schedule of the Arbitration Act refers to the sum in dispute in a claim and counter-claim separately, and not cumulatively. Consequently, arbitrators shall be entitled to charge a separate fee for the claim and the counter-claim in an ad hoc arbitration proceeding, and the fee ceiling contained in the Fourth Schedule will separately apply to both, when the fee structure of the Fourth schedule has been made applicable to the ad hoc arbitration;

(iv) The ceiling of Rs 30,00,000 in the entry at Serial No 6 of the Fourth Schedule is applicable to the sum of the base amount (of Rs 19,87,500) and the variable amount over and above it. Consequently, the highest fee payable shall be Rs 30,00,000;and

(v) This ceiling is applicable to each individual arbitrator, and not the arbitral tribunal as a whole, where it consists of three or more arbitrators. Of course, a sole arbitrator shall be paid 25 per cent over and above this amount in accordance with the Note to the Fourth Schedule”

4. Learned counsel for the petitioner submits that as per Fourth Schedule of the Act, there is ceiling of Rs.30,00,000/- whereas the fee fixed in the present case for each of the arbitrators is more than Rs.21,00,000/-.
5. The Supreme Court in *Oil and Natural Gas Corporation Ltd.’s* case (supra) held that the ceiling of Rs.30,00,000/- highest fee payable shall be applicable to individual arbitrator and not to Tribunal consisting of three or more members.
6. Consequently, the impugned order is upheld and the writ petition is dismissed.
7. Since the main case has been decided, the pending application(s), if any is rendered infructuous.

(AVNEESH JHINGAN)
JUDGE

17th April, 2023
anuradha

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No