

CWP No. 175 of 2022

[1]

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No. 175 of 2022

Date of decision: 24th February, 2023

State of Punjab and another

Petitioners

Versus

Union of India and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Charanpreet Singh, AAG, Punjab.
Mr. Himanshu Malik, Advocate for UOI.
Mr. Gurjeet Singh, Advocate for respondent No. 3.
Mr. Praveen Chander Goyal, Advocate for respondent No. 4.

AVNEESH JHINGAN, J (Oral):

This petition is filed by the State of Punjab seeking quashing of order dated 16.4.2021 (Annexure P-1).

The grievance raised is that the fee calculated for arbitration is not in consonance with Fourth Schedule of the Arbitration & Conciliation Act, 1996 (for short, 'the Act').

Learned counsel for the parties are *ad idem* 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 SCC Online SC 1122***. 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”

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 arbitrator is more than Rs.46,00,000/-.

In view of the above, the impugned order fixing the fee is set aside and the matter is remitted back to the arbitral Tribunal for fixing the fee in accordance with the decision of the Supreme Court.

The petition is disposed of.

[AVNEESH JHINGAN]
JUDGE

24th February, 2023
mk

1. Whether speaking/ reasoned	:	Yes / No
2. Whether reportable	:	Yes / No