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

(215)

ARB-6-2021 (O&M)

Date of decision:- 23.08.2024

M/s ASC Builders Pvt. Ltd.

... Petitioner

Versus

Maharaja Ranjit Singh Punjab Technical University and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Maan Akashdeep, Advocate and
Ms. Simran Atwal, Advocate for the petitioner.

Mr. Puneet Sharma, Advocate
for the respondents.

SUVIR SEHGAL, J. (ORAL)**CM-138-CII-2021**

1. Exemption, as prayed for, is granted.
2. Application is allowed.

CM-4993-CII-2022

1. Counsel for the applicant-petitioner submits that the application has become infructuous.
2. Dismissed as having been rendered infructuous.

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1. By way of instant petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short "the Act"), petitioner has approached this Court for appointment of an Arbitrator.

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2. Counsel for the petitioner submits that a construction contract was awarded to the petitioner and an agreement dated 03.10.2016, Annexure P-1, was entered between the petitioner and the respondents. He submits that the construction work was duly completed and the respondents issued a Completion Certificate dated 27.04.2020, Annexure P-3, but they withheld some payments. He submits that the petitioner served a legal notice dated 30.04.2020, Annexure P-4, and filed a writ petition before this Court, which was disposed of vide order dated 18.08.2020, Annexure P-7, whereby respondents were directed to consider the representation submitted by the petitioner. However, by communication dated 11.10.2020, Annexure P-8, respondents took a stand that an excess amount has been paid to the petitioner. Counsel submits that as a dispute arose, petitioner invoked the arbitration clause by letter dated 27.11.2020, Annexure P-10, but it did not yield any result.

3. Upon notice by this Court, petition has been contested by the respondents by filing a reply, wherein it has been submitted that the Vice-Chancellor of the University-respondent No.1 has been named as an Arbitrator. It has been further submitted that in connivance with some officials of the respondents, petitioner had wrongly procured the Completion Certificate, which has been withdrawn on 22.06.2020, Annexure R-1/11. He submits that departmental proceedings have been initiated against the delinquent employee, he has been placed under suspension and a charge-sheet has been served upon him. Still further, he submits that the Board of Governors of the University-respondent No.1 has



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referred the matter to the Vigilance Bureau and on inquiry is pending. Placing reliance upon the judgment of the Supreme Court in **A. Ayyasamy Versus A. Paramasivam and others, (2016) 10 SCC 386**, he submits that as the petitioner has committed fraud with the respondents, dispute cannot be referred to an Arbitrator.

4. I have heard counsel for the parties and considered their respective submissions.

5. The judgment of the Supreme Court in **A. Ayyasamy's** case (supra) came up for consideration in a subsequent judgment of the Supreme Court in **Avitel Post Studioz Limited and others Versus HSBC PI Holdings (Mauritius) Limited, (2021) 4 SCC 713** and it was held as under:-

“14. In a recent judgment reported as *Rashid Raza (supra)*, this Court referred to *Sikri, J.'s* judgment in *Ayyasamy (supra)* and then held:

“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 mala fide 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,



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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.”*

6. From the documents placed on record by the respondents, it is evident that although the matter has been referred to the Vigilance Bureau, but there is nothing on the record to show that any criminal case has been registered against the petitioner. Mere allegation of fraud would not de-bar a party from resorting to the arbitration clause. Although, the Vice-Chancellor of the University-respondent No.1 has been named as an Arbitrator in the agreement, Annexure P-1, but in view of the statutory provision as contained in Section 12(5) of the Act, he is ineligible to be appointed. Petitioner had approached the Executive Engineer by serving legal notice, Annexure P-4, therefore, pre-reference mechanism stood exhausted. As a dispute has arisen between the parties, matter deserves to be referred for determination to an Arbitrator.

7. Accordingly, petition is allowed. Mr. Justice (Retd.) S.N. Aggarwal, a former Judge of this Court, resident of # 1458, Sector 40-B, Chandigarh, Mobile No. 09876716983, is requested to act as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory provisions.



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8. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed by him at his convenience.
9. Liberty is granted to the parties to raise all claims, counter claims, defences, pleas etc. before the Arbitrator.
10. Needless to mention that all the questions arising between the parties in this matter shall remain open for determination in the arbitral proceedings and any observation made hereinabove will not be binding on the learned Arbitrator.
11. A request letter alongwith a copy of the order be sent to Mr. Justice (Retd.) S.N.Aggarwal.
12. Pending application, if any, stands disposed of.

(SUVIR SEHGAL)
JUDGE

23.08.2024
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No