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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P. (T) (COMM.) 18/2023**

UNION OF INDIA

..... Petitioner

Through: Mr. Shoumendu Mukherji, Sr. PC,
with Ms. Megha Sharma, Ms.
Akansha Gupta, Mr. Siddhant Gupta,
Advs.

Versus

**JANAPRIYA ENGINEERS SYNDICATE ENTERPRISES P LTD &
ANR.**

..... Respondent

Through: Mr. Ananga Bhattacharyya, Mr. Shiv
Gupta, Mr. Krishnanu Barua, Mr.
Rohin Singh Pande, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

11.01.2024

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1. This is a petition under Section 14 and 15 of the Arbitration and Conciliation Act, 1996 seeking termination of the mandate of Sole Arbitrator and seeking appointment of substitute Arbitrator.
2. It is stated that there were disputes between the petitioner and respondent No. 1 with regard to construction of dwelling units for officers and JCOs/ORs at Gwalior, Talbhat.
3. The respondent No. 2 was appointed as a Sole Arbitrator by the Engineer-in-Chief, E-in-C's Branch, Integrated HQ of MOD (Army), Kashmir House, Rajaji Marg, New Delhi being the appointing authority by the letter dated 22.12.2014. The Sole Arbitrator entered into reference vide letter dated 14.01.2015.
4. As per the arbitration agreement, Sole Arbitrator was not entitled to



any fees other than normal salary payable to him as per mandate of his service conditions.

5. In July 2017, Sole Arbitrator was posted from Standing Panel of Arbitrator's office, Lucknow to E-in-C's Branch, New Delhi as Joint Director General (Army). However, the Sole Arbitrator did not resign from the arbitration proceedings and decided to continue as an Arbitrator between the disputes of the petitioner and respondent No. 1.

6. Even though, Sole Arbitrator was due to retire in November, 2018, Sole Arbitrator could not complete the arbitration proceedings. Thereafter, respondent No. 2 expresses his willingness to continue as an Arbitrator after his superannuation and with consent of parties to continue the same.

7. It is pertinent to mention that Sole Arbitrator at no point of time intimated his intention to charge fees for continuing as an Arbitrator after his superannuation.

8. In a proceeding on 07.02.2019, the Sole Arbitrator demanded the parties to pay a sum of Rs. 25 lakhs (to be shared equally) to the learned Arbitrator as his arbitral fees.

9. The petitioner is not agreeable and states that the same are beyond arbitration clause. The petitioner states that as a part of the Sole Arbitrator's service conditions, he was not to charge any fees for conducting the arbitration as he was a serving officer. Reliance is placed on **ONGC v. Afcons Gunanusa JV, 2022 SCC OnLine SC 1122** and the relevant portion reads as under:

“200.

(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);”

10. Mr. Bhattacharyya, learned counsel for the respondent has no objection to the petition being allowed and for appointment of substitute arbitrator by this Court.

11. With consent of parties, the petition is allowed with the following direction:-

- i) Dr. Justice S. Muralidhar (Chief Justice of Orissa High Court (Retd.)) (Mob. No. 9872727986) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the ‘DIAC’). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration &



Conciliation Act, 1996.

- iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - iv) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - v) The parties shall approach the learned Arbitrator within two weeks from today.
12. The petition is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

JANUARY 11, 2024/ NG