
(2017) 05 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No.4882 of 2017 (O&M)

ICOMM Tele Ltd.

APPELLANT

Vs

Punjab State Water Supply and Sewerage Board

RESPONDENT

Date of Decision : 09-05-2017

Acts Referred:

Citation : (2017) 05 P&H CK 0005

Hon'ble Judges : S.J. Vazifdar, CJ. and Anupinder Singh Grewal, J.

Bench : Division Bench

Advocate : Rajdeep Singh Cheema, Advocate, for the Petitioner; Vijay Kumar Kaushal, Advocate, for the Respondent Nos.1 and 2.; Ms. Sudeepti Sharma, DAG, Punjab, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Vazifdar, CJ. (Oral)—The petitioner has challenged clause 25(viii) of the notice inviting tenders which reads as under:-

"CLAUSE - 25 Disputes & Arbitration

.....

It shall be in essential term of this contract that in order to avoid frivolous claims the party invoking arbitration shall specify the dispute based on facts and calculations stating the amount claimed under each claim and shall furnish a "deposit-at-call" for 10% of the amount claimed, on a scheduled bank in the name of the arbitrator by his official designation who shall keep the amount in deposit till the accouchement of the award. In the event of an award in favour of the claimant, the deposit shall be refunded to him in proportion to the amount awarded w.r.t. the amount claimed and the balance, if any, shall be forfeited and paid to the other party."

2. The petitioner had challenged the same clause by filing CWP No.18917 of 2016, which was disposed of by an order and judgment dated 14.09.2016. The

Division Bench upheld the validity of the clause. Paragraphs 5 and 8 of the judgment read as under:-

"5. A perusal of the above clause shows that a condition was put in the NIT by the respondents that in case of any dispute, the party invoking arbitration was required to specify the dispute and the amount claimed under each item and deposit 10% of the amount claimed in the name of the arbitrator. In case of award in favour of the claimant, the deposit was to be refunded to him in proportion to the amount awarded and the balance if any was to be forfeited and paid to the other party. It had been incorporated in the contract to avoid frivolous claims of a party. The said condition in no way can be said to be arbitrary or unreasonable. In case, any condition in the NIT was not acceptable to the petitioner, it was open for it not to respond to the NIT. Once having participated in response to NIT, it was too late in the day to claim that it was arbitrary or unreasonable and thus unsustainable. It was within the domain of the respondents to have put any reasonable condition in the NIT. Learned counsel for the petitioner has failed to substantiate that Clause 25(viii) in the NIT as reproduced above is illegal or arbitrary. No material was produced by the learned counsel for the petitioner to show that there was any malafide in putting the said condition or it was to benefit somebody. Once it is so, the imposition of said condition could not be faulted.

.....

8. Adverting to the judgments relied upon by the learned counsel for the petitioner, it may be noticed that in Central Inland Water Transport Corporation Limited and another v. Brojo Nath Ganguly and another, AIR 1986 SC 1571, it was held by the Apex Court that the courts will, not enforce and will when called upon to do so, strike down an unfair and unreasonable contract or an unfair and unreasonable clause in a contract entered into between the parties who are not equal in bargaining power. There is no dispute with this proposition. The position in the present case is different. Herein, the condition imposed under clause 25(viii) of the contract relating to arbitration, which has been incorporated to avoid frivolous claims made by a party, has not been shown to be unfair or unreasonable. Thus, the petitioner cannot derive any advantage from the said decision. The above judgment was followed by this Court in IFFCO TOKIO General Insurance Company Limited v. Permanent Lok Adalat (Public Utility Services) Gurgaon and others, 2012(1) RCR (Civil) 901."

[Emphasis supplied]

3. The judgment was sought to be distinguished on the ground that the facts of that case were different. That is immaterial. The clause was not upheld and indeed could not have been upheld merely on the facts of a given case. The Division Bench had upheld the validity of the clause generally. We are bound by the judgment. If, according to the petitioner, the judgment is incorrect, the remedy is to challenge the same.

4. The petition is accordingly dismissed.