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**(2000) 09 P&H CK 0118**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Revision No. 5972 of 1999**

Subash Chugh & Co.

APPELLANT

Vs

Girnar Fibres Ltd.

RESPONDENT

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**Date of Decision :** 07-09-2000

**Acts Referred:**

**Citation :** (2000) 4 RCR(Civil) 480

**Hon'ble Judges :** R.L.Anand, J

**Advocate :** Mr. Rajnish Narula, Advocates., Mr. P.S. Saini, Mr. P.S. Rana, Mr. U.K. Chaudhary, Senior Advocate, Advocates for appearing Parties

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## Judgement

R.L. Anand, J. (Oral)

1. Petitioners M/s. Subhash Chugh and Co. and 7 others, fully described in the headnote of this petition under Article 227 of the Constitution of India, have prayed for the quashment of order dated 20.3.1999 (Annexure P7) passed by respondent No. 2 i.e. Arbitration Committee, Ludhiana Stock Exchange Association Ltd., Feroze Gandhi Market, Ludhiana, and have further prayed for the issuance of any other order or direction which this Court deems proper in the facts and circumstances of this case.

2. Facts are not much in dispute but the controversy involved in the present petition lies somewhere else. The facts can be gathered even from the impugned order Annexure P7. M/s. Girnar Fibres Limited, Ludhiana (hereinafter called 'the Company') came out with a public issue in October 1995 for 80,00,000 equity shares of Rs. 10/ each for cash at premium of Rs. 5/ per share aggregating to Rs. 1,200 lacs. The issue opened on 12th October, 1995 and closed on 24th October, 1995. In terms of the prospectus, on application a sum of Rs. 7.50 per share was to be paid. The claimant company entered into underwriting agreements with various underwriters including the Lead Managers, Bank of Baroda, New Delhi, Industrial Finance Corporation of India Ltd., New Delhi and the Merchant Banker, namely State Bank of Bikaner and Jaipur on 13th September, 1995. The underwriting commitments to subscribe and to underwrite

varied with every underwriter.

3. The underwriters and the claimant Company entered into an agreement on 13.9.1995 whereby the underwriters agreed to underwrite/procure subscription for the public issue by the Girnar Fibres Limited on terms and conditions mentioned therein. Clause 2 of the underwriting agreement provided that the subscription list shall be kept open by the Company unless the issue is fully subscribed for a minimum period of 10 calendar days failing which the underwriter shall not be bound to discharge the underwriting obligations under the agreement. In the prospectus issued by the claimant Company the programme for the opening and closing of the issue was given as under :

Issue opens on

12th Oct. 1995

Earliest closing

17th Oct. 1995

Closing not later than

24th Oct. 1995

4. A dispute arose between the parties to the underwriting agreement between the claimant Company and the underwriters and in terms of Clause 20 it was referred to the Ludhiana Stock Exchange, being the regional Stock Exchange, in which the equity shares were to be listed. The Ludhiana Stock Exchange constituted an Arbitration Committee as per terms of arbitration clause and the arbitration proceedings were commenced.

5. The claimant Company filed its claim petition accompanied by the supporting documents with the Ludhiana Stock Exchange on 27.8.1996. Notices were issued to the underwriters, who filed the objections and on this application dated 27.8.1996 the Arbitration Committee framed the following issues :

1. Whether the arbitration committee has no jurisdiction to entertain, proceed with and decide the claim ?

2. Whether the proceedings taken so far by the arbitration committee are not in accordance with law of arbitration as applicable to the matter in dispute ?

3. Whether the claim is barred and not tenable in view of the provisions of Section 76 of the Companies Act, 1956 ?

4. What is the effect of Section 21 of the Arbitration and Conciliation Act, 1996 for these proceedings ?

6. The reading of the above issues would show that the Company challenged the jurisdiction of the Arbitration Committee to entertain and proceed with the reference. It also challenged the proceedings of the Arbitration Committee on the

plea that all the 7 arbitrators had never participated in the arbitration proceedings. Moreover, the claim filed by the underwriters is barred and not tenable in view of the provisions of Section 76 of the Companies Act. Apart from that the Committee was called upon to consider what is the effect of Section 21 of the Arbitration and Conciliation Act, 1996 on the arbitration proceedings.

7. Arguments were addressed at considerable length and subsequently the Committee disposed of all the four issues against the present petitioners vide impugned order dated 20.3.1999 and it will be useful for me to incorporate in verbatim the findings of the Arbitral Tribunal on issues No. 1 to 4 framed by it, as under ;

"Issue No. 1

8. Learned counsel Sarvshri U.K. Chaudhary, A.C. Gupta, K.S. Jhaveri, D. Costa Associate of H.S. Chandoke appearing for the underwriters argued that the arbitration Committee of the Ludhiana Stock Exchange (hereinafter called the Exchange) has no jurisdiction to entertain, proceed with and decide the claim filed by the claimant company. Their contentions, in nutshell, are as follows :

(A) That the underwriting agreements dated 13.9.1995 are unstamped and therefore, are not enforceable.

(B) That the underwriting agreements are not enforceable in view of the "pointer advertisement" dated 17.10.1995 published in Daily Indian Express "closing the issue."

(C) That on complaint of the Company against the Merchant Banker, namely, the State Bank of Bikaner and Jaipur (hereinafter referred to Merchant Banker), the Chairman of S.E.B.I. vide his order dated 15.6.1998, has held that by issuing pointer advertisement, the Company has committed breach of the underwriting agreements and, therefore, no action in the matter is called for under Rule 4(d) of the SEBI (Merchant Bankers) Rules, 1992 and SEBI (Merchant Bankers) Regulations 13, read with regulations 35, 36 and SEBI (Underwriters) Regulations, 1993.

(D) That the decision of the Chairman, SEBI, dated 15.6.1998 aforesaid has been affirmed by the Appellate Authority, the Ministry of Finance, Govt. of India, vide order dated 10.11.1998.

(E) That the decision of the Chairman SEBI dated 15.6.1998 and that the appellate authority dated 10.11.1998 operate res judicata qua the proceedings before the Arbitration Committee.

(F) That the issue having been closed by the Company on the "earliest closing date" as given in the Prospectus, no dispute survives between the Company and the underwriters, the Company was liable to indemnify them against the loss suffered by them.

Reliance was placed on decision of Supreme Court reported in AIR 1989 SC 1498.

9. To the contrary, Shri Parveen Garg, counsel for the Company vehemently contested the contention of the counsel for the underwriters. His contention is that the alleged "pointer advertisement" dated 17.10.1995 published in the Indian Express "closing the issue" has not been given or authorised by the Company, that the moment the pointer advertisement surprised the Company, the Company as well as its Lead Manager, the Bank of Baroda, contacted through letter dated 17.10.1995, Newspaper and got a corrigendum published in the Indian express which appeared in the paper on 18.10.1995 that the "Issue is still open". He further contended that the proceedings taken by the Chairman, SEBI, and the Appellate Authority (Ministry of Finance Govt. of India) on the complaint of the company were "regulatory" in nature under the relevant Rules and Regulations, as aforesaid for purposes of taking action against the Merchant Banker for violating the Code of Conduct under Regulation 13 and contravening the terms and conditions of the License issued to it under Regulations 35 and 36 of the 1992 Regulations supra. That complaint or decisions aforesaid thereon are of no consequence nor do they operate as res judicata qua these proceedings. In this regard he referred to letter dated 25.8.1998 from SEBI to Exchange that the impugned order (15.6.1998) may not necessarily have bearing on the Arbitration proceedings being conducted under the underwriting agreement. He also referred to observations in para 28 of the appellate order. He further pointed out that the company has approached the Hon'ble High Court in that regard, also. He also submitted that for determination of preliminary issue, it is not material whether the underwriting agreements are stamped or not at this stage of proceedings, but would certainly be relevant at the stage of their admission in evidence during arbitration proceedings to be decided then. Presently, he argued, that the document cannot be said to be unenforceable.

10. The Committee has given thoughtful consideration to the submissions of both the parties. Existence of an underwriting agreement between the parties is not denied. The terms of the underwriting agreements are clear, precise and unambiguous. Arbitration Agreement is defined in Section 7 of the Arbitration and Conciliation Act, 1996. It may be in the form of an arbitration clause in the contract. Clause 20 in the underwriters' agreements is as follows :

"Any dispute arising out of the Agreement between the underwriters and the company shall be referred to the Arbitration Committee constituted by the Regional Stock Exchange in which the Equity Shares are to be listed and the decision of the Arbitration Committee shall be final and binding on both the parties".

Reading of this clause makes it amply clear that there is an "arbitration agreement" between the parties. No ambiguity or illegality has been pointed out in this clause. The contention is that the claimant Company has committed breach of the Underwriters Agreement by pointer advertisement dated 17.10.1995 closing the issue and therefore it has become unenforceable. This allegation has been denied by the Company. Whether "Publication of pointer

advertisement dated 17.10.1995 closing the issue" was authored or authorised by the claimant company or not is the dispute between the parties. This dispute involves determination of questions of fact and law. This alleged breach of the agreement doesn't per se render it unenforceable, until and unless it is proved to be attributable to the claimant Company, in which situation the determination of counter claim of the underwriters shall again be called for. In either eventuality the agreements are enforceable. The decision of Supreme Court in AIR 1989 SC 1498 is not applicable to the facts of this case.

11. The scope of enquiry on complaint of the Claimant Company against the Merchant Banker and decision thereon is within the jurisdiction of the SEBI under the SEBI (Merchant Bankers) Rules and Regulations. Any action taken by the SEBI under those Rules and Regulations have no bearing on the arbitration proceedings between the parties. In para 28 of the Order of Appellate Authority dated 10.11.1998 it is mentioned that "the Bank has fully submitted itself to the Arbitration process and that it will abide by the arbitration Award, that the position on this issue is accordingly very clear". The SEBI itself vide letter dated 25th August, 1998 to the Ludhiana Stock Exchange had advised that the impugned order dated 15.6.1998 may not necessarily have bearing on the arbitration proceedings being conducted under the underwriting agreement. Neither SEBI nor Appellate Authority has held that the underwriting agreement or its clause 20 has become unenforceable. Under its regulatory and supervisory powers, SEBI has only held that the Merchant Banker has not committed any violation of the conditions of Licence issued to it or of the Code of Conduct under the relevant Rules and Regulations governing the Merchant Bankers. SEBI did not have jurisdiction to adjudicate or give any findings, on the questions of fact and law involved in determining the rights of the parties under the Underwriting Agreement, nor was any such finding given while dealing with the Complaint of the Claimant Company against the Merchant Banker. Obiter observations of SEBI cannot have any bearing on these proceedings, muchless on the determination of questions of fact and law involved in determining the rights of the parties in this dispute. The order of the SEBI or the Appellate Authority cannot be termed to be a decision by a Court having jurisdiction competent to decide the issue within the meaning of explanation VIII of Section 11 CPC to operate res judicata. Decision reported in State of West Bengal v. Hemant Kumar, AIR 1966 SC 1061 relied upon by the counsel for underwriters is not applicable to the facts of this case.

12. So far as the contention that the underwriting agreements are unstamped is concerned, it cannot be disputed that an agreement to refer disputes to arbitration requires to be stamped under the Indian Stamp Act. However, an unstamped arbitration agreement doesn't ipso facto become unenforceable. Unstamped or insufficiently stamped document is inadmissible in evidence under Section 35. However, under Section 33 of the Stamp Act, when any instrument, required by law to be stamped, produced in evidence is not stamped or is insufficiently stamped, it is impounded. On payment of requisite stamp and penalty such document can be admissible in evidence. Therefore, as and when

the Underwriting Agreement containing clause 20 relating to arbitration is sought to be produced in evidence before the committee, the question of the same being unstamped shall be taken cognizance of and decided in accordance with law.

13. As referred earlier in para 10 above, disputes arising out of agreement between the parties, shall be referred to the Arbitration Committee of Regional Stock Exchange in which Equity Sharers are to be listed and the decision of the Arbitration Committee shall be final and binding on the parties. It is not disputed that Ludhiana Stock Exchange Association Ltd. is the Regional Stock Exchange in which the Issue has been listed. The matter having been referred to the Arbitration Committee of Ludhiana Stock Exchange Association Ltd., it has jurisdiction to entertain and proceed with and decide the claim of the company and counterclaim of the Underwriters before it.

The Arbitration Committee has come to the conclusion that the Underwriting Agreement dated 13.9.1995, containing arbitration (agreement) clause 20 is valid and enforceable.

Issue No. 1 is therefore decided in favour of the Claimant Company and against the underwriters.

Issue No. 2

14. As per the Arbitration clause in the agreement between the parties, the dispute was referred by the claimant company to the Ludhiana Stock Exchange (which is the designated Arbitrator) and the Stock Exchange in turn appointed an Arbitration Committee to go into the dispute and determine the same. Initially, the Stock Exchange appointed two members of the Arbitration Committee, namely, Sarvshri Vishwanath Dhiri and Dina Nath Sharma. However, later 7 member Arbitration Committee was get (set ?) up in order to satisfy the requirement of Section 10 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 1996 Act). Consequently, the members of the Committee unanimously appointed Shri Dina Nath Sharma as Presiding Officer in terms of Section 11(3) of 1996 Act. The Arbitration Committee entered upon the reference. Notices were issued to Underwriter respondents. Some of the underwriters put in their appearance, some sent replies to the claim of the Company by post, others were proceeded against exparte as they chose not to put in their appearance before the Committee despite due service by post and substituted service by publication of notices in nationallycirculated Newspapers. Underwriters have put in their repliescumcounter claims. Preliminary issues have been framed, heard and are being disposed of by this order.

15. On behalf of underwriters, it was pointed out that all the members of the committee have not been participating and, therefore, the proceedings are vitiated. Reliance has been placed on decision reported as Maganlal Gangaram Rathor v. Ramaji Bondarji, AIR 1966 MP 177. This decision is inapplicable to the facts of this case. In this case, the Designated Stock Exchange is the sole arbitrator appointed by the Stock Exchange. Present is not a case where the

parties have appointed the named arbitrators or appointed the named Presiding arbitrator. The Arbitration Committee of the Stock Exchange (Sole Arbitrator) is a collective body. In the case of Maganlal (*supra*), each party had named and appointed each one of the named Arbitrators and also named the Umpire. Facts of that case are therefore distinguishable and don't substantiate the argument raised on behalf of the Underwriters.

16. The proceedings taken so far by the Arbitration Committee are therefore in accordance with law. This issue is decided against the Underwriters.

#### Issue No. 3

17. Section 76 of the Companies Act provides for "power of the Company to pay certain commission and prohibition of payment of all other commissions/ discounts etc., subject to the claimant Company fulfilling conditions provided therein. The Claimant Company had issued and provided the Prospectus as required by Law and approved by SEBI. Rights and obligations of the Claimant Company and the Underwriters inter se and the commission payable by the Claimant Company to the Underwriters are all provided in the Agreement entered into between the parties. As at present no specific violation of Section 76 *ibid* has been pointed out by the underwriters. However, the question whether any violation had been made by the Claimant Company, whenever brought to the notice of the Arbitration Committee, shall be determined being a question of fact and law. The claim of the Claimant Company is, thus, not barred by the provisions of Section 76 read with Section 79 of the Companies Act. This issue is decided against the Underwriters.

#### Issue No. 4

18. As already noticed earlier, Ludhiana Stock Exchange (through its arbitration Committee) is the sole designated arbitrator in this case. As provided in clause 20 of Arbitration Agreement the moment the Company made a request for the dispute to be referred to Arbitration and that request was received by the Arbitration (LSEA), the arbitral proceedings commenced. The dispute in this case arose on 17.10.1995 "when pointer advertisement closing the issue" appeared in the Newspaper. The matter was referred to Arbitration on 27.8.1996. The 1996 Act has come into operation with effect from 25.1.1996 (see Section 1(3)). Arbitration proceedings therefore commenced on 27.8.1996 under Section 21 of the 1996 Act, and shall continue to be governed by the provisions of the Act, irrespective of the fact that the dispute arose when the Arbitration Act, 1940 was in force, see 1997(1) Indian Civil Cases 374 (SC).

Announced to both the parties present at open hearing, today the 20th March, 1999."

8. The petitioners are not satisfied with this order and challenge in the present revision has been given to this very order dated 20.3.1999.

9. I have heard Mr. U.K. Chaudhary, Senior Advocate, assisted by Mr. P.S. Saini,

Mr. P.S. Rana and Mr. Rajnish Narula, on behalf of the petitioners, Mr. M.L. Sarin, Senior Advocate, assisted by Mr. Amit Rawal, advocate, on behalf of respondent No. 1, Mr. O.P. Goyal, Senior Advocate, assisted by Mr. N.P. Sinha, Advocate, on behalf of respondent No. 2 and with their assistance have gone through the records of this case.

10. A preliminary objection was raised by the learned counsel appearing on behalf of respondent No. 1 regarding the maintainability of the present revision. Learned counsel Mr. Sarin relied upon *M/s. Herike Rice Mills, Mehalkalan, District Sangrur v. State of Punjab and others*, 1998(1) PLR 395 : 1998(1) RCR(Civil) 473 (P&H) and submitted that an unsuccessful party cannot challenge the order of the arbitrator rejecting the challenge to his appointment even before a civil Court and such an order also cannot be challenged under Article 226 of the Constitution of India when the award is yet to be made. Elaborating his contention the learned counsel for the respondent No. 1 submitted that the decision under challenge dated 20.3.1999 is in the shape of an interim decision and it does not adjudicate any rights between the parties. Final award is yet to be passed in this case and if that goes against the petitioners, it will be open to them to challenge the same under Section 34 of the Arbitration and Conciliation Act, 1996 on the ground that the composition of the arbitral Tribunal was not in accordance with the agreement of the parties and was not in accordance with Part I of the Act which includes Section 11. Mr. Sarin submitted that the petitioners cannot bypass the entire procedure and challenge the impugned order of the arbitrators before the award is made. My attention was pertinently invited to para 6 of the judgment (*supra*). The learned counsel further relied upon a judgment of this Court *Punjab State Electricity Board v. M/s. Indure Limited*, 2000(1) RCR (Civil) 136 and submitted that once an arbitrator is appointed it can only be challenged on the grounds specified under Section 12 of the Arbitration and Conciliation Act, 1996 and till the final award is passed, no challenge can be given to the interim decision of the arbitrator. Under Article 227 of the Constitution a challenge to the appointment of arbitrator is not maintainable. The learned counsel further relied upon *Mehla v. Roop Ram and others*, 1999(1) RLR 197 : 1998(4) RCR(Civil) 170 (P&H) and my attention was invited to para 10 of the judgment which runs as follows :

"10. As regards the other revision petition the Tribunal has on a consideration of the evidence led by the parties found that the petitioners therein who were the Presiding Officers at booths in villages Khan Mohammad and Daulatpur, transported the ballot boxes without proper seals which was in flagrant violation of the Rules. This Court in the exercise of its jurisdiction under Article 227 of the Constitution doesn't sit in appeal over those findings. Since no jurisdictional error has been pointed out by the petitioners, I find no ground to interfere with the direction given by the Tribunal in regard to these petitioners. Consequently, Civil Revision No. 3003 of 1997 is dismissed. There is no order as to costs."

11. Mr. O.P. Goyal, the learned counsel appearing on behalf of respondent No. 2

has also supplemented the submission of respondent No. 1 and he has gone one step ahead by submitting that the intention on the part of the petitioners is only to delay the arbitration proceedings and that the Arbitral Tribunal has yet to pass the final award. On that award alone the petitioners can challenge the same according to law. The jurisdiction of the High Court under Article 227 of the Constitution of India is limited. At the most it is an irregularity and even if it is assumed for the sake of argument that it is an illegality on the part of the four arbitrators, who gave the award, it has no effect so far as the merits of the case are concerned when the final award has yet to come.

12. Meeting the preliminary objection of the opposite counsel the learned counsel appearing on behalf of the petitioners submitted that the preliminary objection taken up by the respondents is not tenable. In this case the petitioners are not challenging the appointment of the arbitrators, rather they are aggrieved by the mode of decision in passing the impugned order dated 20.3.1999 and if the decision given by the four arbitrators is totally illegal and violates the provisions of Section 29 of the new Act, the Hon"ble High Court has the supervisory power to interfere in such a decision.

13. I have considered the rival contentions of the parties. First of all, let us see how the things had proceed in this case. As I have stated earlier the dispute arose between the parties from the very agreement and as per the agreement clause the matter was referred to the arbitration of Ludhiana Stock Exchange Association Ltd. which had 7 permanent members, who are to act as arbitrators. Their names are S/Shri D.N. Sharma, Jaspal Singh, S.K. Sharma, Tarwinder Dhingra, Vishwa Nath Dhiri, M.S. Gandhi and Dr. M.A. Zahir. When the decision dated 20.3.1999 was given on the preliminary issues referred to above, three members of the Arbitration Committee of the Exchange were not present and it is stated in the document itself that they were not present for unavoidable circumstances. The decision dated 20.3.1999 is signed by four members. In this view of the matter, the controversy is whether the decision dated 20.3.1999 is in conformity with the provisions of the Arbitration and Conciliation Act, 1996.

14. It will be appropriate for me to examine and declare what type of document it is. As I have stated earlier the petitioners raised four issues including the one that the claim of the opposite party is barred and is not tenable in view of Section 76 of the Companies Act. Other objections were with regard to jurisdiction to entertain the claim and also under Section 21 of the Arbitration and Conciliation Act. According to Section 2(c) "arbitral award" includes interim award. The word "decision" has not been defined in the said Act. But definitely word "decision" has to be understood differently and separately from the arbitral award and as per the wisdom of this Court the word "decision" has a wider import as compared to the arbitral award. Section 29(1) of the Act lays down as follows :

"Unless otherwise agreed by the parties, in arbitral proceedings, with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of

all its members."

15. According to Section 29(2), notwithstanding subsection (1), if authorised by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by the presiding arbitrator. There is no agreement between the parties that the decision in the arbitration proceedings can be given by one, two, three or four members of the arbitral tribunal. As I have stated above there are 7 permanent members of the Arbitration Committee of Stock Exchange, Ludhiana. In such a situation, the point for adjudication which arises before me is that if any decision is given in the arbitration proceedings of arbitral tribunal by majority of its members, whether such decision is in conformity with law and if any, what are the powers of the High Court under Article 227 of the Constitution of India. The plain reading of Section 29(1) would show that there is no hindrance for the majority to give a decision but all its members must sit together and apply their mind to the controversy before it before taking a decision. If all the members are not present and only 4 members are present, as happened in the present case, whether it can be considered that the voice of other 3 members has also been counted before the taking of decision or not and the answer of this Court is in the negative. The words "all its members" are of significance. Few members unilaterally don't constitute the Arbitration Committee. It will always remain in its original members. Any decision given by a majority without consulting or associating the other members of the Committee will be without jurisdiction and it would affect the very nature of the decision which they will convey.

16. The learned counsel for the petitioners relied upon Maganlal Gangaram Rathor and another v. Ramji Bondarji and others, AIR 1966 Madhya Pradesh 177. Incidentally this judgment was also brought to the notice of the majority of the arbitrators and the arbitrators in their wisdom tried to distinguish the observations for their own reasons. This Court has also the occasion to go through the decision of the Hon'ble Judges of the Madhya Pradesh High Court and it will be useful for me to incorporate and quote paras 56, 57 and 72 in verbatim as under :

"(56) It is thus clear on these authorities that even where either the agreement of reference expressly provides or it following by implication by reason of section 10 subsections (2) and (3) that the award of majority is binding it is all the same incumbent upon all the arbitrators to participate in the arbitration proceedings particularly where the reference is to named arbitrators and not to a fluctuating corporate body which is governed by its own rules under which it is constituted.

(57) Absence from and indifference to the proceedings by any one of the arbitrators has the effect of rendering the award invalid. It is essential that all the arbitrators must be present at each meeting of the arbitrators and must hear the parties and other evidence produced together. They must further all be present at final deliberation though all may not agree as to the final conclusion. It is only when they act together throughout the proceedings that the award of

the majority would be a valid one. In the present case the evidence of both the sides makes it clear that Sarpanch Kanhaiyalal did not attend the proceedings except perhaps in two or three of its sittings out of 10 or 12 and that too with gaps. He had gone to Indore when the final draft was prepared. His mere saying that award might be made by the rest cannot make the award valid.

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(72) It is therefore clear that the award given under the signatures of only three out of five arbitrators when one of them namely Kanhaiyalal did not attend most of the meetings and also the meeting when the final act of preparing the award was made and when Bhurmal, before the final act of preparation of the award by mutual deliberation was done had expressed his refusal to participate, is clearly invalid. The trial Court under these circumstances had sufficient power to supersede the arbitration."

17. The reading of above paras would show that the Hon'ble Judges were pleased to lay down the dictum that all the arbitrators must be present before the decision is taken in the name of Arbitration Committee. The voice of every one has to be considered and weighed and then it is for the Committee to take a decision whether unanimously or by dissent and in the event of conflicting views, the majority view has to prevail. When few members were not consulted at all, how the remaining members can give a decision unilaterally by ignoring the possible opinion which may be formulated by the absenting members. Such a recourse as has been adopted in this case will go to the inherent nature of the decision and in such a situation of course the jurisdiction under Article 227 of the Constitution of India can certainly be invoked.

18. Here there is a patent distinction in the judgments relied upon by the learned counsel for respondent No. 1. So far as the appointment of arbitrators is concerned, no challenge is being given by the petitioners. They have their own remedy under the Act. Their grouse is about the decision and the manner of the decision in which it has been granted. The four members of the Arbitration Committee for the reasons known to them have not taken the other three members into confidence. It is a conceded case at the Bar by the learned counsel for respondent No. 2 that those three members are still the members of the Arbitration Committee of Stock Exchange, Ludhiana. Thus any decision without consulting or associating others will be a nullity as this decision is given against the clear violation of Section 29 of the Act.

19. The learned counsel for the respondents took the assistance of Section 5 of the Arbitration and Conciliation Act, 1996 and submitted that this Act is a special piece of legislation and the legislature wanted that there should be no interference from any judicial authority except where so provided in the Act itself. Therefore, the High Court should not interfere and exercise its powers under Article 227 of the Constitution of India which are only supervisory in nature. Part of the submission of the learned counsel for the respondents I have

already dealt above. Section 5 of the Act lays down as follows :

"Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."

20. Firstly, in this chapter there is no indication that what would be the effect on the decision if that decision is in violation of the provisions of Section 29 of the Act. This Court is further of the opinion that the provisions of Section 5 of the Act cannot and should not supersede or override the constitutional powers of the High Court given under Article 227 of the Constitution of India. The powers are supervisory but wide. Though the arbitral tribunals are tribunals under the agreements arrived at between the parties, but in the matter of procedure they are controlled by the constitutional provisions, if there is no remedy provided under that Act.

In view of my above discussion, I have no hesitation in allowing this revision and quashing the order dated 20.3.1999, Annexure P.7, passed by respondent No. 2 with a clear observation that the application filed by the petitioners on 27.8.1996 survives and the preliminary issues framed by the Arbitration Committee can be disposed of at the time of final award and it is not obligatory for the Arbitration Committee to decide these issues at the preliminary stage and if the Committee takes a decision that these issues shall be dealt with collectively with the other controversies between the parties, such a recourse is open to it. There shall be no order as to costs.

Revision allowed.