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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CR-6764-2025(O&M)  
Date of Decision:22.09.2025

PUNJAB WATER SUPPLY AND SEWARGE BOARD, THROUGH ITS  
EXECUTIVE ENGINEER, PATIALA

....Appellants(s)

**Versus**

JAI BHUSHAN MALIK, CONTRACTOR AND ANOTHER

.....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present: Mr. Angadpreet Singh, Advocate,  
for the petitioner.

Mr. Dheeraj Mahajan, Advocate,  
for respondent No.1.

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**JASGURPREET SINGH PURI, J. (Oral)**

1. The present petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 29.08.2025 (Annexure P-6) passed by the learned Additional District Judge, Patiala, whereby the petitioner department i.e. Punjab Water Supply and Sewerage Board has been directed to deposit/pay the balance fee amount to the Arbitrator on or before 05.09.2025 under the provisions of Section 39 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act').

2. Learned counsel appearing on behalf of the petitioner submitted that in the present case the dispute is with regard to the payment of fee to the



learned Arbitrator. He submitted that it is a settled law that when the parties have agreed to and settled upon the fee of the Arbitrator, then the Arbitrator cannot charge fee as per Schedule IV of the Act because in that eventuality the fee is to be governed by the agreement between the parties and in the present case, the parties had agreed upon payment of a total sum of Rs. 2,00,000/- towards the fee of the Arbitrator which was to be borne equally by both the parties and the petitioner-Board undisputedly has paid an amount of Rs. 1,00,000/- to the learned Arbitrator but the learned Arbitrator had demanded the fee as per Schedule IV to the tune of Rs. 15,00,000/- which was to be equally shared by both the parties and in this way, the petitioner was burdened with an amount of Rs. 7,50,000/-, although the petitioner has already paid an amount of Rs. 1,00,000/-, as per agreement between the parties. He further submitted that when an award was passed against the petitioner, then objections were filed by the petitioner under Section 34 of the Act before the learned Additional District Judge, Patiala in which two separate applications were filed under Section 39 of the Act. First application was filed by respondent No.1 who is the decree-holder and second application was filed by respondent No.2 who is the Sole Arbitrator and both the applications were adjudicated upon by way of a common order which is the impugned order (Annexure P-6) in the present case whereby by allowing both the applications, the petitioner was directed to deposit/pay the balance fee amount to the Arbitrator on or before 05.09.2025.

3. Learned counsel submitted that the aforesaid order is erroneous in law in view of the fact that once the parties have agreed with regard to the fixation of fee, then the provisions of Schedule IV of the Act will not apply. To substantiate his arguments, he referred to Annexure P-1 which was the



appointment order passed by the Chief Executive Officer of the petitioner-Board by which the Sole Arbitrator who is respondent No.2 in the present case was appointed and by making reference to the aforesaid Annexure P-1 dated 31.08.2023, he submitted that the detailed schedule was mentioned therein. He submitted that although there is no such provision for the fee of the Arbitrator in the terms of the contract between the parties but as per the aforesaid Annexure P-1, the aforesaid fee has been mentioned and therefore, the provisions of Schedule IV of the Act would not apply in the present case. He submitted that considering the aforesaid facts and circumstances, the impugned order is liable to be set aside.

4. On the other hand, learned counsel appearing on behalf of respondent No.1 submitted that the petitioner has not stated the true facts in the present case. He submitted that although it is settled law that when there is an express agreement between the parties in the terms of the contract with regard to fixation of fee of an Arbitrator, then the same will prevail over Schedule IV of the Act and in the absence of the same, it is Schedule IV of the Act which will prevail and will be applicable. While referring to the facts and circumstances of the present case, he submitted that there is no dispute in the present case that there was no fixation of any fee in the terms of the contract which was signed by both the parties. He submitted that the only reliance which has been made by the learned counsel for the petitioner is on Annexure P-1 which was an order passed by the Chief Executive Officer pertaining to the appointment of Sole Arbitrator and while referring to the aforesaid Annexure P-1, he submitted that a perusal of the aforesaid order would show that even the appointing authority who was the Chief Executive Officer did not fix any fee. It was, however, in the forwarding letter that he referred to one schedule which



was pertaining to the fixation of fee in some Board meetings. He submitted that firstly, even if assuming for the sake of argument that the appointing authority had fixed some fee, the same would not have become binding upon respondent No.1 in view of the fact that it was not incorporated in the terms of the contract. Furthermore, as per clause 25 (ix) of the agreement, it has been provided that the parties will be governed by the Arbitration and Conciliation Act, 1996. He submitted that although the aforesaid contract has not been attached by the petitioner along with the present petition but during the course of arguments, he has supplied a copy of the terms of the contract. The aforesaid terms of the contract are therefore taken on record as Mark-X. The aforesaid clause 25(ix) is reproduced as under:-

*“25(ix) The provisions of the Arbitration and Reconciliation Act, 1996 or any other statutory law there under or modification thereof and for the time being in force shall apply to the arbitration proceedings under this clause.”*

5. Learned counsel further submitted that in this way, in the absence of any agreement between the parties pertaining to fixation of fee, there is no dispute that the parties would be governed by the provisions of Schedule IV of the Act, particularly in view of the aforesaid clause (ix) as reproduced above. He submitted that the aforesaid schedule which has been mentioned in Annexure P-1 was only incorporated in the forwarding letter which was issued by the appointing authority which could have therefore no bearing upon the rights and liabilities of the parties pertaining to the fixation of fee of the Arbitrator. Had there been an intention of the parties to fix any fee for the learned Arbitrator, the same could have been incorporated in the terms and



conditions of the contract signed between the parties, whereas it is an admitted case that no such clause was incorporated in the terms and conditions of the contract.

6. Learned counsel further submitted that not only this, the present petition is also misdirected and misconceived in view of the fact that in the very first proceeding of the learned Arbitrator the record of which has been attached with the present petition as Annexure P-3, the learned Arbitrator in para No.11 of the first procedural order observed that both the parties have agreed to the fee and expenses payable to Sole Arbitrator and it was observed that the Sole Arbitrator will be paid fee as per the schedule fixed in the appointment letter of PWSSB. Para No.11 of the aforesaid order at page 30 is reproduced as under:-

*“11. Both parties agree to the following fee and expenses payable to the sole Arbitrator.*

*i) Sole Arbitrator will be paid fee as per schedule fixed in appointment letter of PWSSB.”*

7. He further referred to the next hearing i.e. the second hearing by the learned Arbitrator in which it was specifically recorded that regarding the fee of the Arbitrator, both the parties agreed to the fee and expenses payable to the Sole Arbitrator during the first hearing and it was by way of an agreement between the parties before the Sole Arbitrator that it was directed that the fee will be paid as per schedule fixed. It was observed that having considered the matter, it was found that the appointing authority did not pass any order regarding the fee payable to the Sole Arbitrator and also that the reference which was made by the petitioner for the payment of fee in the forwarding letter was without any authority of law and was not in consonance with the



provisions of Arbitration and Conciliation Act, 1996 and therefore it was directed that the total amount of Rs. 15,00,000/- was to be paid by both the parties in equal share. The relevant portion of the aforesaid order is reproduced as under:-

*“Record of proceeding 2<sup>nd</sup> hearing on dated 23.12.2023 at Patiala, Punjab.*

*The claimant has submitted claim statement running in 301 pages containing 11 claims with supporting documents. The respondents have submitted defence statement running into 43 pages.*

*The claimant stated that the defence statement has been submitted by the respondents on 20.12.2023 as such he wants time to submit the rejoinder.*

*Regarding fee of the Arbitrator, both parties agreed to the following fee and expenses payable to the sole Arbitrator during first hearing as under:*

*i) Sole Arbitrator will be paid fee per schedule fixed in appointment letter of PWSSB.*

*Persual of Order No.485 issued by the CEO PWSSB, there is no reference to the fee payable to the Sole Arbitrator. However while conveying the order a mention has been made regarding the fee payable as per schedule fixed by the Board. I have considered the matter and found that the appointing authority did not pass any order regarding the fee payable to the sole arbitrator. The reference made to payment of fee in the forwarding letter is without any authority and is not in consonance with Arbitration & Conciliation Act, 1996 with latest amendments (the Act). Both the parties agreed. Therefore, it is ordered that the fee shall be governed as per Schedule (IV) given in the Act. Accordingly, the fee of the Sole Arbitrator regarding claims is fixed as Rs. 15.00 Lakh to be shared equally by both the parties.*



*Parties are directed to deposit 2.00 lakh each before the next date of hearing. The claimant is directed to submit rejoinder before the next date of hearing with a copy to the respondents.*

*The next hearing is fixed for 20.01.2024 at 11.30 AM at 316 ph. Urban Estate Patiala.”*

8. Learned counsel further submitted that the aforesaid proceedings have also been signed by the petitioner and the same were never challenged by the petitioner in any proceedings. He further submitted that in the subsequent proceedings i.e. 3<sup>rd</sup> proceeding dated 20.01.2024, 5<sup>th</sup> proceeding dated 10.04.2024, 6<sup>th</sup> proceeding dated 20.04.2024 and 7<sup>th</sup> proceeding dated 18.05.2024, it was repeatedly observed by the learned Arbitrator that the fee be deposited but the same was never objected to by the petitioner. He further submitted that not only this, even if assumingly there was a bar with regard to judicial interference against the orders which were passed by the Sole Arbitrator, the same could have been agitated by the petitioner even at the time of filing of objections under Section 34 of the Act but in the present case, even when the petitioner filed objections under Section 34 of the Act, still no such grounds were taken by the petitioner before the learned Additional District Judge. It was only when both respondent No.1 and respondent No.2 filed their respective applications under Section 39 of the Act, then by way of the impugned order directions were issued to the petitioner to deposit the balance amount of fee and in this way, no illegality or perversity can be found in the impugned order.

9. I have heard the learned counsel for the parties.



10. The petitioner is disputing the fee which is to be paid to the Sole Arbitrator. It was the case of the learned counsel for the petitioner that the fee was to be paid as per Annexure P-1 wherein the schedule has been mentioned, which provides that a total sum of Rs. 2,00,000/- only is to be paid in equal share by both the parties, whereas it was the case of the learned counsel for respondent No.1 that the fee was to be paid as per Schedule IV of the Act because Annexure P-1 did not provide for any such payment of fee based upon the agreement between the parties. It is an undisputed fact that in the agreement between the parties there was no clause for fixation of fee of the learned Arbitrator. The only reliance which was made by the learned counsel for the petitioner was on Annexure P-1. A perusal of Annexure P-1 would show that it is an order which has been passed by the appointing authority i.e. the Chief Executive Officer by which respondent No.2 was appointed as a Sole Arbitrator. There is no mention of any fee structure in the aforesaid order at all. However, when the aforesaid order was forwarded to various concerned persons, one schedule was incorporated in the forwarding letter. Learned Additional District Judge while deciding the applications filed by respondents No.1 and 2 under Section 39 of the Act observed that the schedule in the aforesaid forwarding letter had no sanctity in the eyes of law because it was not incorporated by the appointing authority. Even otherwise also, it is settled law that when an agreement has come into effect between two parties and the terms of the agreement set forth any schedule of payment of fee to an Arbitrator, then the same shall always prevail over Schedule IV of the Act. However, in the absence of any such agreed terms in the agreement between the parties, the provisions of Schedule IV of the Act would prevail. In the present case, admittedly, there was no condition in the terms of the agreement. The



forwarding letter to the appointment letter would have no bearing or would not change the rights and liabilities of the parties which were not a part of the terms and conditions of the contract. Therefore, in these circumstances, the provisions of Schedule IV of the Act will always prevail.

11. Apart from the above, the learned counsel for respondent No.1 has heavily relied upon the various sittings of the learned Arbitrator. In the first proceeding of the learned Arbitrator, as reproduced above, it was directed that the fee will be paid as per schedule fixed in appointment letter. Thereafter it was specifically observed in the second proceeding dated 23.12.2023, as reproduced above, that the total fee will be Rs.7,50,000/- for each party. Rather a detailed order was passed in the presence of all parties that fee will be as per IV<sup>th</sup> schedule to be Rs. 7,50,000/- each. Thereafter repeatedly the Sole Arbitrator had been pressing upon for the payment of fee. The petitioner admittedly did not challenge any of the orders under any proceedings. Even if assumingly, the petitioner would not have challenged the same being interlocutory orders, the petitioner could have challenged the same by filing objections under Section 34 of the Act but as per the learned counsel for the parties, no such ground was taken up in the objections under Section 34 of the Act.

12. By way of the impugned order, the learned Additional District Judge has directed the petitioner to deposit/pay the balance fee amount to the learned Arbitrator who has created a lien over the arbitration award in terms of Section 39 of the Act. Considering the aforesaid facts and circumstances, this Court is of the considered view that the present petition is devoid of any merit and is a misconceived petition.



13. Consequently, the present petition is dismissed with costs of Rs. 25,000/- (Rupees Twenty Five Thousand) which shall be deposited by the petitioner in the Rogi Kalyan Samiti Account No.917010075030711, GMSH-16, U.T, Chandigarh (Under High Court Dispensary Head), within a period of three months from today.

22.09.2025

(JASGURPREET SINGH PURI)

*rakesh*

**JUDGE**

Whether speaking

: Yes/No

Whether reportable

: Yes/No