

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

Arbitration Case No. 401 of 2023 (O&M)

Date of decision: 05.04.2024

PIMS Medical and Education Charitable Society ...Petitioner(s)

Versus

Punjab Institute of Medical Sciences Society, Jalandhar and another
...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA, ACTING CHIEF JUSTICE

Present:- Mr. Aditya Dewan, Advocate (through video conferencing) &
Mr. Arora Vishwar Kumar, Advocate, for the petitioner.

Ms. Anjali Sheoran, Advocate and
Mr. Tejasvi Sheokand, Advocate, for respondent No.1.

Mr. Salil Sabhlok, Sr. Deputy Advocate General, Punjab.

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G.S.SANDHAWALIA, ACTING CHIEF JUSTICE (ORAL)

The present petition has been filed by the petitioner society for constitution of an Arbitral Tribunal for adjudication of the disputes arising out of the concession agreement dated 28.01.2009 (Annexure P-1) executed between the parties in view of the provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996.

2. On 01.03.2024, this Court proposed to appoint Mr. Justice J.S.Khehar, former Chief Justice of India, as an Arbitrator to adjudicate upon the disputes and differences between the parties and his declaration under Section 12(5) of the Act of 1996 was sought which has been received. The said order reads as under:-

“The present petition has been filed by the petitioner society for constitution of an Arbitral Tribunal for adjudication of the disputes arising out of the

concession agreement dated 28.01.2009 (Annexure P-1) executed between the parties in view of the provisions of Section 11(6) of the Arbitration and Conciliation Act, 1996. Respondent No.1 had put in appearance on 29.09.2023 and on the last three occasions, it has chosen not to file any reply. Even State of Punjab has also been impleaded as respondent No.2 vide order dated 17.11.2023.

2. It is not disputed that the Arbitration Petition No. 283 of 2023 under Section 9 of the Act of 1996 is also pending inter-se the parties before the District Judge, Commercial Courts, Chandigarh where an interim order has been passed to protect the interest of the petitioner.

3. Necessary notice dated 26.07.2023 (Annexure P14) invoking arbitration as per Article 27.3 of the said Concession Agreement would go on to show that the petitioner has already nominated Hon'ble Mr. Justice Dipak Misra, former Chief Justice of India, as their nominee Arbitrator. The aforesaid clause also provides that there would be a board of three arbitrators, one was to be appointed by the concessioning authority i.e. respondent No.1 whereas the other one was to be appointed by the concessionaire-the present petitioner and the third was to be appointed by the above-said two arbitrators.

4. Learned counsel for respondent No.1 has also placed on record a copy of the letter dated 05.02.2024 written by the Department of Finance, Government of Punjab, addressed to the Registrar of Punjab and Haryana High Court, which reads as under:-

"I am directed to inform you that the following decisions have been taken for appointment of Arbitrators:-

- i) The appointment of Arbitrator in cases pending before the Hon'ble High Court should be left to the discretion of the Hon'ble High Court.
- ii) The existing list of Arbitrators as mentioned in the Punjab and Haryana High Court and updated time to time will be used for appointment of Arbitrators in future cases with the approval of competent authority in consultation with learned

Advocate General, Punjab. However, the Arbitration fee should not be more than that has been prescribed in Schedule B of the Punjab and Haryana High Court (Arbitrator's Panel and Fee) Rules, 2011."

5. *Keeping in view of the above, this Court proposes to appoint Hon'ble Mr. Justice J.S.Khehar, former Chief Justice of India as arbitrator. Let necessary declaration as required under Section 12(5) of the Arbitration and Conciliation Act, 1996 be called from Hon'ble Mr. Justice J.S.Khehar, former Chief Justice of India."*

3. Accordingly, the order dated 01.03.2024 passed by this Court is made absolute. The learned Arbitrators will appoint the third arbitrator as per the terms and conditions of the agreement and the arbitration clause.

4. In view of the aforesaid position, Mr. Justice J.S.Khehar, former Chief Justice of India, is appointed as Arbitrator to adjudicate upon the disputes and differences between the parties.

5. Petition is, accordingly, disposed of.

(G.S.SANDHAWALIA)
ACTING CHIEF JUSTICE

05.04.2024

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Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No