

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2904 of 2011 (O&M)

Date of Decision:24.12.2014

State of Haryana

....Appellant

Versus

Ved Parkash Mehta and another

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. Raj Kumar Makkar, DAG, Haryana with
Mr. Vikrant Jindal, AAG, Haryana for the appellant.

Mr. Sumit Gupta, Advocate for respondent No.1.

NAVITA SINGH, J.

1. The award by the Arbitrator was passed in favour of respondent No.1 on 17.4.2008. Objections against the award were filed under Section 34 of the Arbitration and Conciliation Act (Act for short), which were dismissed and the State of Haryana came up in appeal.

2. First of all, learned counsel for the appellant argued that Mr. V.K. Bathla was appointed as Arbitrator by this Court, who on account of his retirement, suo motu handed over the case to his successor Mr. S.S. Verma, Superintending Engineer. The first Arbitrator had no power to assign the case to his successor. The next argument was that additional claims were allowed by the Arbitrator, which was outside the purview of the agreement between the parties and the arbitration clause. The Arbitrator had the authority to decide only the matters within the terms and conditions of the contract agreement.

3. Learned counsel for the contesting respondent argued that the Superintending Engineer concerned was appointed as Arbitrator and when he

was to superannuate, he handed over the matter to his successor. No objection was raised by the appellant at that time and it submitted to the arbitration by Mr. S.S. Verma. The appellant was, therefore, stopped from raising any such objection here. The argument is accepted.

4. Regarding the additional claims, the counter arguments were that best evidence was withheld by the appellant itself as the measurement book and site order book were not produced. Without producing the relevant record relating to the work order and the work done, the appellant stood nowhere. The claim of the respondent was that his working capital worth Rs.18,94,522/- remained blocked with the appellant and the same crippled the capacity of the contractor to undertake other contracts. The amount remained blocked for about 25 years. If the amount had been paid in 1993 when it was due, the scene of things would have been entirely different.

5. So far as the additional claims are concerned, it came in evidence that the respondent had written in his application for extension of time that the work had been stopped by the appellant in December 1984. Vide the 7th running bill, an amount of Rs.2,91,830/- was paid to the respondent but the entire payment was not made on the plea that the work was not complete. The appellant had, however, stopped the work intermittently due to want of departmental approvals etc., the contract was, though, kept alive. The compensation was, therefore, also claimed by the respondent for the amount which got blocked. The Arbitrator considered the claim favourably and granted the compensation.

6. Regarding the loss sustained by the respondent on account of delay in completion of work, which was caused due to the fault of the department, the respondent was again compensated. The Arbitrator awarded compensation for

the loss of goodwill of the respondent in the market and though such loss actually was not computable in term of the money but the Arbitrator awarded the compensation for some solace to the respondent.

7. Litigation expenses had to be incurred by the respondent as he had to file requisite petitions in the District Courts and then in this Court and he was compelled to do so for no fault of his. Interest was lastly awarded.

8. Learned State counsel i.e. the appellant could not point out any infirmity in the award nor could he show that the objections filed under the Act were covered in one of the clauses specified in Section 34 of the Act. The only contention which was raised in this regard, was that the Arbitrator had acted beyond the scope of the agreement by allowing the additional claims. It would be seen that though the additional claims can be said to be not directly covered under the agreement, yet it can safely be said that those related to the dispute between the parties, which was referable to arbitration. The dispute was regarding the work allotted to the respondent and to be completed by him, while the additional claims related to the loss incurred by the respondent on account of the same work having been delayed due to technicalities on the part of the appellant. On account of the delay so caused, the working capital of the respondent remained blocked, his reputation in the market was lowered and he had to spend on the forced litigation. Had the appellant performed its part of the contract as agreed or had the delay been caused on account of any fault of the respondent, the shape of things could be different.

9. It is, therefore, held that the Arbitrator did not exceed his jurisdiction and also the appellant had no ground to challenge the award under any of the clauses mentioned in Section 34 of the Act. The scope of the Tribunal below was limited and jurisdiction was exercised properly in dismissing the objection.

10. The appeal being devoid of merit is dismissed.

(NAVITA SINGH)
JUDGE

24.12.2014
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Whether to be referred to reporter: Yes