

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.3813 of 2004 (O&M)

Date of Decision.20.07.2015

State of Punjab and others

.....Petitioners

Versus

M/s C.S. Anand, Engineers and Govt. Contractor, H.No.323, Sector 44A,
Chandigarh

.....Respondent

Present: Ms. Vandana Malhotra, Addl. A.G., Punjab
for the petitioners.

Mr. Ashok Sehgal, Advocate
for the respondent.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J.

1. The revision petition challenges the order passed by the Additional District Judge confirming the decree of the Court of 1st Instance making the award of the Arbitrator the rule of Court. The arbitral reference had been with reference to work entrusted to a contractor for construction of SYL canal. The Arbitrator by his Award admitted several claims of the contractor including the delayed cost for completion of work as arising out of delay in handing over the property to the contractor and the resultant loss under various heads. The Court, which the award had been sent for making it rule of Court, found nothing seriously amiss and affirmed the award. In the appeal filed, the Appellate Court held that it could not treat itself as a Court of appeal and there was nothing on evidence that the Arbitrator had misconducted

himself or had admitted of any claim which was not the subject of averment and arbitral reference. Against these orders of the Courts below, present revision petition is filed by the State.

2. Even at the outset, I must set boundaries within which I propose to traverse that it shall be seen exclusively through the principles of Section 30 of the Arbitration and Conciliation Act that would require an examination whether the Arbitrator misconducted himself or that the Arbitrator's award had been inappropriately procured or otherwise invalid. Further, there is no ground that there was any order of Court superseding the arbitration and consequently, the invalidity that may arise under Section 35 of the Arbitration and Conciliation Act of 1940 is not required to be examined.

3. Learned counsel appearing on behalf of the State took me through each one of the claims and wanted to explain as to how the Arbitrator had committed mistake and the Courts that had affirmed the award had failed to exercise the jurisdiction to modify or set aside the award in the manner that the situation warranted. To go through the respective claims and the contentions raised by the counsel appearing for the State, I would set out the matter that would require an examination of the various heads which were adjudicated upon by the Arbitrator.

4. Claim No.1 is with reference to loss of profit arising out of delayed handing over of the property. The tender for the work was accepted by the department on 10.11.1985 and the agreement was executed on 24.01.1986. The notice preceding the agreement stated that the contractor could start the work immediately but it is an

admitted fact that possession of the land was handed over only on 19.06.1986 in view of certain objection by the land owner and the award for acquisition of the land was itself passed only on the day when the property could have taken possession. There was clearly a case of machinery and labour of the claimant remaining idle from 10.11.1985 to 19.06.1986 that is a period of about 7 months 9 days. The Arbitrator assumed that the contractor would have made a profit at least of 10% of the value of work and worked out ₹ 10,02,344/- as the likely profit and provided for 50% of the same as an anticipated profit namely ₹ 5 lacs as the compensation for loss of profit. The counsel for the State would argue that that the contractor had not produced any wage book for proof of payment of wages for workers during the idle period or that any machineries had been deployed at the spot for which hire charges had to be paid or investment had been made for deploying them at the site. Indeed, the site was handed over subsequently. I noticed that the contractor had issued notice on 01.10.1986 pointing out to the fact that the department could not hand over the site upto September, 1986 and that too was only handed over in part and in the major portion of the land running to a length of about 100 meters, rice crops, sugercane crops and eucalyptus trees had been left unharvested. The contractor has made the issue of the fact that the department would have to reimburse the loss suffered on account of placing a large amount of machinery and resources to start work immediately and that they were all idle. The notice also brings the fact that the balance of site had not been given and the approach road has also not been given. There is also a further reference in a notice issued on 17.12.1986 that the

department was not showing any interest in the maintenance of road despite repeated requests and consequently, in the interest of work, the contractor had been deploying their own bulldozers, tractors and tankers to keep the road motorable. There was a request made on the department for repairing the haul road, for, if it was not done, there was a danger of 52 tippers, 2 excavator-loaders to suffer idle hours far from the fact that the progress of work was getting hampered. Claim No.4 was a specific claim for idle machinery and connected to claim No.1.

5. The Arbitrator reasoned that there was no justification to hire machinery when his own machinery stood idle and even out of his machinery, there was no justification to claim for concrete mixture etc. as the river banks had not been made ready. The tired machinery such as tippers and tractors with scrapers could have been easily deployed on the other works of the claimant and only one hydraulic excavator and two bulldozers could have been allowed to remain idle. The Arbitrator, therefore, restricted the salary for the staff deployed and for depreciation of the machinery only for these items and calculated ₹ 47,020/- as salary paid to Foreman, Drivers and Helpers and the Watch & Ward staff ranging ₹ 1350/- to ₹ 750/- per month. He provided for depreciation for the idle machineries which he estimated as ₹ 2,27,700/-.

6. I would find that the approach of the Arbitrator had been very modest and there is simply no ground for the State to complain about the same. It is not even necessary for me to examine how the calculation had been made, for, there was no requirement as the

Arbitrator was to make a reasoned award, there being no specification in the arbitral agreement for giving reasons. I have examined the manner in which the Arbitrator has brought the issue only to satisfy myself that there was no misconduct on the part of the Arbitrator by adopting some arbitrary figures.

7. Claim No.10 was for the revision of rates on account of steep rise when no work was allowed to be executed during the year 1986. The amount of claim by the claimant was ₹ 8,37,315/-. The escalation clause in the agreement submitted that general price rise would be taken into account considering the fact that the work involved was excavation, lining and providing a drainage behind the lining. The Arbitrator observed that each one of the activities would have required a particular type of expenditure. The excavation involved labour which was covered by the escalation formula provided by the Arbitrator. The Chief Engineer/Construction SYL had admitted in the meeting presided over by the Chief Secretary, Punjab on 09.06.1987 that the cost of “sand and coarse aggregate” shot up and admitted to the fact that huge quantity of materials were required for the execution of the work. The Arbitrator, therefore, worked out additional rates that would have been possible and assessed ₹ 1,72,515/- as the amount payable. The argument of the learned counsel appearing on behalf of the State was that the contractor had not placed any record to show that there was any idle machinery. The machinery itself had been purchased only subsequently on 10.06.1986 and the compensation could not have been, therefore, worked out for the entire period of alleged idle machinery.

The income tax returns had not been filed, which would have shown the

details of purchase of machinery and the depreciation as claimed by him. I reject this argument because the depreciation had not been worked out on all machineries and it was restricted only to some of them. I have no materials to vouch for the correctness of the contentions made that the depreciation allowed by the Arbitrator related to purchase of machineries in the sixth month of 1986. It is really going into a minute detail of the award. As regards the manner of calculation, it shall be impermissible as a ground of attack to the arbitral award. This really does not relate to claim No.10. The counsel would argue that the increase or decrease in the cost of materials would be calculated only in accordance with the following formula:-

$$V_m = \frac{0.75 P_m}{100} \times \frac{R(1'-10')}{10}$$

The counsel would argue that the plea of increase or decrease in the cost of materials would have been calculated only in the manner provided under the agreement. I do not think that there is any basis for contention that the Arbitrator's calculation is at variance with the formula provided under the document. On the other hand, I find that the Arbitrator has adopted only the formula while addressing the claim No.10 as found in page 8 of the Arbitrator's file. He has examined the cost of increase for each one of the products for which the escalation could be claimed. I will not, therefore, find any cause for intervention with the same.

8. The claim No.15 is with reference to the loss sustained by the firm on account of carriage of earth through excess distance required to be covered due to non-availability of haul road. The counsel would refer me to the fact that condition No.29 of the Information and

Instructions for Tenderers provided that the existing public roads near the site of work and the roads constructed by the Government in the area had already been shown in the index plan. The contractor could construct and maintain additional roads as required as his own expense. He shall not object to the use of these roads by other construction traffic and by the Government. I do not think that the Government's response is appropriate. I have already referred to the fact that soon after the execution of the agreement, the contractor had issued the notice about the fact that entire site had not been handed over and there were crops. The plan originally submitted assumes the whole of the property as vacant. The Arbitrator had made reference to the fact that on account of the standing crops interfering with the carriage of earth work through the route provided in the tenders, the contractor had to undertake the longer route that worked out to 6.5 kms. The Arbitrator had observed that this was not even contested by the State before him. It was only in December, 1986 that the claimant had intimated the department regarding the maintenance of haul road. The Arbitrator, therefore, took difference of rate for earth work carriage between lead of 6.5km and 3 km was ₹ 3.82 per cubic metre and allowed for a compensation worked on that rate. The calculation under this head has been worked out on the basis of what was not contested before him by the State and I will not allow for the matter to be reopened now at the stage of revision.

9. Claim No.16 is with reference to a compaction allowance for the earth brought from some other place. The State would argue that there was no mention that the actual quantity had been in excess and

no bills had been raised for extra work done. Claim No.18 is for some alleged extra work and this is also denied by the State on a contention that no bills are submitted. If it is ever the issue of sifting of evidence, the matter must reside with the Arbitrator's assessment and cannot be a matter of reappraisal by this Court in revision. The counsel would make reference to Clauses 37-A and 39 of the agreement requiring bills to be prepared and submitted. Adequacy of evidence or otherwise cannot be matter of intervention. Only arbitrary assessments could be. There is nothing substantial to doubt the correctness of what the Arbitrator has assessed. The Arbitrator has provided for interest @15% per annum. This according to the State would result in an assessment of damages for more than ₹ 40 lacs and in every claim that is assessed more than ₹ 1 lac, there ought to be a reasoned award for interest. I find particularly no fetter against the award of future interest and there are enough decisions to support such approach. I will again not find this to be a material ground for interference.

10. I find nothing substantial in any of the objections taken by the State against the award and there is no scope for interference in revision. The revision petition is dismissed.

(K. KANNAN)
JUDGE

July 20, 2015
Pankaj*