

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CR No. 652 of 2004

Date of decision : 09-09-2015

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State of Haryana through
the Controller, Printing and Stationery Department,
Haryana, Chandigarh.

.....Petitioner

Versus

M/s Victor Engineering Works through its General
Power of Attorney Sh. Tara Chand Jain and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. N.K Sharma, DAG, Haryana.

Ms. Avnika Gupta, Advocate for
Mr. Vinod Bhardwaj, Advocate for the respondents.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

State of Haryana-petitioner has come up in present
revision petition against the order dated 29.10.2003 (Annexure P-10)
passed by the Additional District Judge, Gurgaon, whereby an appeal

under Section 39 of the Indian Arbitration Act, 1940 against the order dated 27.11.2001 (Annexure P-9) passed by the Additional Civil Judge, Senior Division, Gurgaon was allowed and the impugned award was set aside.

Brief facts of the case are that M/s Victor Engineering Works through its General Power of attorney-respondent no.1/contractor entered into an agreement with the petitioner for supply of stationery articles. The terms of agreement were reduced into writing at Gurgaon. There was an arbitration clause in the agreement which provided that Commissioner and Secretary to Government of Haryana, Printing and Stationery Department shall act as arbitrator for adjudicating any dispute arising between the parties. Some dispute arose between the parties with regard to the payment of stationery articles supplied to the Government. Respondent no.1 then moved an application to the arbitrator for adjudicating the dispute. The application of respondent no.1 was dismissed vide order dated 17.7.1995. Respondent no.1 then filed a petition under Section 14(2) of the Indian Arbitration Act, 1940 in the Court of the then Senior Sub Judge, Gurgaon on 17.10.1995. Notice of the said petition was issued to the Government as well as the arbitrator. Thereupon the arbitrator filed the order dated 17.7.1995 along with record of proceedings conducted by him. Respondent no.1 filed objections challenging the order dated 17.7.1995 on the grounds that the arbitrator had misconducted himself as effective opportunity had not been granted to respondent

no.1 for filing claim and address arguments.

The Government had refuted the objections raised by respondent no.1 on the plea that respondent no.1 did not present himself before the arbitrator and had intentionally committed default of appearance and therefore, the arbitrator had dismissed his application.

The trial Court framed the following issues:-

- 1. Whether the award dated 17-7-95 passed by respondent No.4 is illegal, null and void without jurisdiction and the same was liable to be set aside? OPP*
- 2. Whether the civil court has got no jurisdiction to try and entertain the present petition?OPR*
- 3. Whether the petition is bad for mis-joinder and non-joinder of necessary parties?OPR*
- 4. Whether the petitioner has got no cause of action to file the present petition?OPR*
- 5. Whether the petitioner has got no locus standi to file the present petition?OPR*

After hearing counsel for the parties and perusing the records of the case, the trial Court came to the conclusion that there was no ground to set aside the impugned award and petition for setting aside the impugned award was dismissed.

On appeal filed by respondent no.1, the Additional District Judge, Gurgaon allowed the same. Judgment of the trial Court was set aside and the impugned award was declared null and void.

Learned Deputy Advocate General, Haryana, Mr. N.K Sharma appearing for the petitioner-State of Haryana while referring to the order dated 17.7.1995 (Annexure P-5) has argued that this award was passed by the Arbitrator on account of non-appearance of respondent no.1-Contractor (petitioner therein). The proceedings have been dismissed for want of follow up by respondent no.1-Contractor. After perusing the impugned order this argument of the counsel for the petitioner-State of Haryana is liable to be rejected as the arbitrator had entered upon the reference on 5.11.1986. The arbitrator was required to pronounce the award within four months after entering on the reference or within such extended time as the Court may allow. Neither extension of time was sought from the Court nor the parties had given their consent to the arbitrator to extend the time for making his award. Hence the arbitrator without extension of time had lost his jurisdiction to pass any order on the reference.

A reference, at this stage, can be made to a judgment cited by the counsel for the respondent i.e **State of Punjab vs. Harydya, AIR 1985 SC 920**. In this case while interpreting Section 28 of the Arbitration Act, 1940, the Supreme Court has held that as per Section 28, *it is open to the parties to an arbitration agreement to fix the time within which the arbitrator must give award, but it has to be so stated in the agreement itself. If per chance no time has been*

specified by the parties in the arbitration agreement, then by virtue or operation of Section 3 read with Cl.3 of the First Schedule the award must be given within four months of the arbitrator entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow. Sub-section (1) of Section 28 is very wide and confers full discretion on the court to enlarge time for making the award at any time. The discretion under sub-s. (1) of s. 28 should, however, be exercised judiciously. Sub-section (2) of s. 28 also makes it evident that the court alone has the power to extend time. It further provides that a clause in the arbitration agreement giving the arbitrator power to enlarge time shall be void and of no effect except when all the parties consent to such enlargement. It is not open to arbitrators at their own pleasure without consent of the parties to the agreement to enlarge time for making the award.

In paragraph 13 of this judgement, the Supreme Court has observed as under:

“13. Once we hold that the law precludes parties from extending time after the matter has been referred to the arbitrator, it will be contradiction in terms to hold that the same result can be brought about by the conduct of the parties. The age long established principle is that there can be

no estoppel against a statute. It is true that the time to be fixed for making the award was initially one of agreement between the parties but it does not follow that in the face of a clear prohibition by law that the time fixed under cl. 3 of the Schedule can only be extended by the court and not by the parties at any stage, it still remains a matter of agreement and the rule of estoppel operates. It need be hardly emphasized that the Act has enjoined the arbitrator to give an award within the prescribed period of four months unless the same is extended by the court. The arbitrator has no jurisdiction to make an award after the fixed time. If the award made beyond the time is invalid the parties are not estopped by their conduct from challenging the award on the ground that it was made beyond time merely because of their having participated in the proceedings before the arbitrator after the expiry of the prescribed period.”

Recently a Co-ordinate Bench of this Court in the case of **Union of India vs. Om Construction Company and another, 2009 (5) RAJ 166** while considering a case of extension of time set aside the award passed by the arbitrator on the ground that it was beyond a period of four months and per Sections 30, 33 and 28 of the Arbitration Act, 1940 it had become functus office. With extension of time by the Court or by mutual consent of the parties, arbitrator was bound to answer the reference within four months and could not ignore the claims raised for whatever reasons. The award passed by the arbitrator beyond a period of 4 months was set aside.

In the facts of the present case, the arbitrator had entered into a reference on 5.11.1986 and proceeded to give a notice to respondent no.1/contractor on 5.6.1995 i.e after the gap of nine years and thereafter the impugned order dated 17.7.1995 (Annexure P-5) was passed where all proceedings for arbitration was dismissed for want of follow up by respondent no. 1 (petitioner therein). Hence whether we take the date as 5.11.1986 i.e the date of entering into the reference or 29.7.1993 i.e the date of the judgment passed by the Sub Judge 1st Class, Chandigarh in the petition for revocation of the authority of the arbitrator filed by respondent no.1, it was beyond a period of four months within which the arbitrator was required to decide the dispute between the parties. As per the judgment of Hon'ble the Supreme Court in the case of ***State of Punjab vs. Hardyal's case (supra)*** after a period of four months, the arbitrator becomes functus office for all intents and purposes and the order if

any passed on the reference would be void order. In view of the ratio of the judgment of the Hon'ble the Supreme Court in **State of Punjab vs. Hardyal's case(supra)**, the order passed by the Additional District Judge, does not require any interference.

In view of all that has been discussed above, the revision petition is dismissed.

09-09-2015
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(RITU BAHRI)
JUDGE