

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 3292 of 2002 (O&M)
Date of decision: 08.07.2015

UOI and others

... Petitioners

versus

M/s Singla Trading Co. and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Ms. Deepali Puri, Advocate for the petitioners.

Mr. Naresh Jain, Advocate for respondent No.1.

K.Kannan, J.

The point that is brought for consideration in revision is to consider the meaning to the Clause in the Government contract relating to the finality of the liability arising on the contract in party for any delay in execution of the works. This Clause is reproduced as under:

7. TIME, DELAY AND EXTENSION

(a) time is of the essence of the Contract and is specified in each individual supply order. If the delivery of the supplies be delayed:-

(i) by force majeure, or

(ii) by reason of abnormally bad weather, or

(iii) by reason of serious loss or damage by fire or,

(iv) by reason of civil commotion, local combination of workmen, strike or lockout, affecting any the trades employed on the works, or

(v) by reason of delay on the part of the nominated sub-contractors or nominated suppliers which the Contractor has, in the opinion of GE, taken as practicable steps to avoid, or reduce, or

(vi) by reason of delay on the part of the Contractors or tradesmen engaged by government in executing work not

forming part of this Contract, or

(vii) by reason of any other cause, which, in the absolute discretion of the Accepting Officer is beyond Contractor's control;

then, in any such case the Accepting Officer may make fair and reasonable extension in the completion dates of individual items of Supplies or groups of items or supplies for which separate periods of completion are mentioned in the Supply Order.

Upon the happening of any such event causing delay, the contractor shall immediately but not later than 30 days of the happening of the event, give notice constantly his best endeavour to prevent or make good the delay and shall do all that may reasonably be required to the satisfaction of the GE to proceed with the delivery of the supplies.

In case the Contractor fails to notify the GE of happening of an event(s) causing delay within a period of 30 days stipulated in sub-para 3 above, he shall forfeit his right to claim extension of time for delay caused due to such events.

Extension of time, as approved by the Accepting Officer shall be communicated to the Contractor by GE in writing and shall be final and binding except in the case of contracts accepted by the GE when in the event of the Contractor not agreeing to the extension granted by the GE, the matter shall be referred to the CWE whose decision shall be final and binding.

(b) if the delivery of the supplies be delayed by reason of non-availability of Government stores mentioned in Schedule 'B' then, in such event, notwithstanding the provisions hereinbefore contained, extension of time as may appear reasonable to him and the same shall be communicated to the contractor by the GE in writing. The decision so communicated shall be final and binding and the contractor

shall be bound to complete the delivery of the supplies within such extended time.

(c) No claim in respect of compensation or otherwise, howsoever, arising as a result of extensions granted under conditions (a) and (b) above shall be admitted.

This Clause has been considered by this Court, particularly in regard to two streams of judicial opinions that abound in this jurisdiction. This Court has held in Union of India though Commander Works Engineers Ferozepur Cantt and another Vs. M/s Prabhat Kumar and Brothers, Engineers and Government Contractors, CR No. 7294 of 2010, that the Arbitrator has a power to allow for the loss caused due to the prolongation of the contract. Against the claim made for Rs. 40,000/- which was later on modified as Rs. 41,000/-, the Arbitrator had allowed for Rs. 25,000. There was no elaborate reasoning for the same but even that issue of whether the arbitral award could be assailed for want of reasoning has been settled in law and it will not afford any ground unless the arbitral agreement itself requires a reasoned award to be given.

Yet another objection that is taken is that the Arbitrator allowed for 18% interest and the interest that can only be awarded as only 6% or at the most 9%. Though presently the bank rates have fallen and the interest is awarded @ 6% and 9%, this will not affect the award which is passed two decades earlier that allowed for 18% interest which was in consonance with the then judicial pronouncements. I will sustain the orders passed and will make no interference.

The civil revision petition is dismissed with above observations.

08.07.2015
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(K.KANNAN)
JUDGE