IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 2096 of 2002 (O&M)
Date of decision: 25.03.2015

Punjab State Agricultural Marketing Board

... Petitioner

versus

M/s Bachan Singh and Sons and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. S.P.Garg, Advocate, for the petitioner.

None for the respondents.

K.Kannan, J.

The revision petition brings a challenge to the award passed by an Arbitrator under the Provisions of the Arbitration Act, 1940. The matter related to claims and counter claims at the instance of the contractor who supplied hot mix plants in two lots. The initial supply was done for four hot mix plants. It was again done in two stages, one, when a sample of hot mix plant was delivered and when it was found satisfactory and when the Board wanted three more hot mix plants, they were also supplied. They were inspected by X.En. PMB and 98% of the bills have been paid with the specific certification that they were working and found to be satisfactory. After 2nd order was made for 8 more hot mix plants the contractor had supplied 4 hot mix plants in the first batch and that was the starting point of dispute between the parties, when the Board was complaining that even the earlier supplies were defective and that they were required to be replaced. The contractor gave a response to the effect that there were no manufacturing defects and the supplies were effected only after submitting a sample of hot mix plants and if there was any defect in working, they were prepared to rectify them but the plants themselves

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cannot be modified or substituted for there was no serious defect in the overall supply. The Board contended that the additional 4 hot mix plants which they had received, were taken as substituting the earlier supply and watch and ward staff charges for the 4 hot mix plants had to be insured by the Board and it was making counter-claim for such charges.

Initially, there was a claim for interim award but later the same was given up. The Arbitrator passed an award making reference to the total supply of 8 hot mix plants and provided for the award under three head:

1. 2% of the balance of the amount for the 1st supply order was ₹ 13,785/-.
2. Towards cost of 4 numbers of hot mix plants against the 2nd supply order which was valid only for 4 numbers awarded ₹ 5,85,280/-.
3. Earnest money awarded for ₹ 32,000/-.The interest claimed @ 18% for delayed payment was rejected. The counter claim for watch and ward charges were also rejected.

The award was, therefore, for value of 8 hot mix plants after giving due credit to the 98% payment released for the 1st lot for 4 hot mix plants.

The award was sought to be assailed when it was filed before the court to make it a decree of Court, by the Board on a plea that the Arbitrator had exceeded his jurisdiction. I find that even the initial claim, which was made after the reference to the Arbitrator was only with reference to the actual supply made, namely, the 1st sample supply the 3 more hot mix plants in the 1st lot and on a repeated order for 8 hot mix plants, 4 had been supplied and since the Board itself did not want a subsequent supply when it had some issues relating to the quality supplied already. Therefore, there was nothing wrong in making a claim for the 8 hot mix plants that had been actually taken possession

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by the Board. The Board was trying to take the fresh supply for 4 hot mix plants against the second order as substituted the first supply which were was found to be defective. The Arbitrator rejected such an attempt on the part of the Board. In fact, the Arbitrator was rejecting that the contract failed completely by the alleged defect of the goods. The Arbitrator was also rejecting the contention that the contractor by his offer to carry out some repairs had admitted that there were any manufacturing defects as such. I have seen the entire arbitration file. It carries minute notes on the various claims made and the arbitration award is merely a culmination of enquiry that is proceeded before him, after following all the necessary requisites of notice to parties, receipt of objections and claims from the respective parties and then proceeding to make award.

The nature of intervention that is possible on an objection taken by the party under Section 30 of the Arbitration Act, 1940 shall be restricted only to the grounds mentioned under Section 30 which would include the misconduct of an Arbitrator or an arbitral award that was in excess of authority. I find no fallibilities as having been exposed by the Board before the Courts below or before this Court.

I find no scope for intervention. The civil revision petition is dismissed with the above observations.

(K.KANNAN)
JUDGE

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