

In the High Court of Punjab and Haryana, at Chandigarh

F.A.O. No. 1576 of 2008 (O&M)

Date of Decision: 23.12.2015

State of Haryana

... Appellant

Versus

M/s Mehta Construction Co. and Another

... Respondents

CORAM: Hon'ble Mr. Justice Amit Rawal.

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

Present: Mr. Vishal Garg, Additional Advocate General, Haryana for appellant.

Mr. Sumit Gupta, Advocate for the respondent.

Amit Rawal, J.(Oral)

The State of Haryana is in appeal under Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "the Act") against the impugned order dated 7.3.2008 passed by the learned Additional District Judge, Kurukshetra, whereby the petition filed under Section 34 of the Act for setting aside the award dated 19.11.1998 awarding the compensation to the tune of ₹ 31,24,688.15 ps. awarded in favour of the contractor, has been dismissed.

Mr. Vishal Garg, learned counsel appearing for the appellant-State submits that the Arbitrator has not been appointed by

the competent authority and therefore, he was having no jurisdiction to try and entertain the reference, much less to pass the award. Since the promulgation of the Act, the remedy, if any in the absence of appointment of the Arbitrator with the consent of the parties, is to invoke the provisions of Sub Section 6 of Section 11 of the Act.

In the instant case, the Arbitrator was appointed with the intervention of the Civil Court and he did not have the jurisdiction. Thus, there is illegality and perversity in the order passed by the Objecting Court. Therefore, the impugned order is liable to be set aside.

Mr. Sumit Gupta, learned counsel appearing for the respondent/Contractor submits that the petition was filed before the Civil Judge (Senior Division), who had referred the matter to the Civil Judge (Junior Division). However, during the pendency of the petition, both the parties suffered a statement and consented to the appointment of the Arbitrator, namely Mr. M.K.Gupta, Superintending Engineer, Yamuna Water Services Circle, Bhiwani. The plea of the State that the Arbitrator had been charge sheeted is also not sustainable in the eyes of law for the reason that the charges have been dropped and the Arbitrator was promoted as Engineer-in-Chief and thereafter was appointed as Chairman, Bhakra Beas Management Board. In support of his contention, learned counsel has relied upon the judgment rendered by Hon'ble the Apex Court in ***Narayan Prasad Lohia v. Nikunj Kumar Lohia and Others 2002 AIR (SC) 1139*** to contend that if the parties choose not to object with regard to the jurisdiction of the Arbitrator, it amounts to waiver as per the provisions of Section 4 of the

Act and thus, prays for dismissal of the appeal.

I have heard learned counsel for the parties and perused the paper book.

Section 4 of the Act reads thus:

"4. Waiver of right to object.- *A party who knows that-*

(a) any provision of this Part from which the parties may derogate, or

(b) any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object."

The ratio decidendi culled out by Hon'ble the Supreme Court in **Narayan Prasad Lohia** (*supra*), there is no manner of doubt that if the Arbitrator has been appointed by the consent of the parties, yet the other party, if had grievance, could have raised an objection before the Arbitrator by moving an application under Section 16(2) of the Act. Having done so, it tantamounts to waiver as per the provisions of Section 4 *ibid*. Since the objection had not been taken by the State of Haryana before the Arbitrator, therefore, the objection under Section 34 of the Act were not conforming to the parameters on the point that they were against the provisions of the statute.

Keeping in view the aforementioned facts, I am of the view that there is no merit in the present appeal as the State of Haryana did not raise any objection viz-a-viz the jurisdiction of the Arbitrator and even otherwise the charges initiated against the Arbitrator were dropped and he was promoted as Engineer-in-Chief and subsequently appointed as Chairman of the Bhakra Beas Management Board.

Thus, I do not intend to differ with the finding given by the Objecting Court and consequently, the instant appeal is hereby dismissed and the award dated 19.11.1998 and the impugned order dated 7.3.2008 are hereby upheld.

(Amit Rawal)
Judge

December 23, 2015

"DK"