

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2850 of 2009 (O&M)
Date of Decision:05.02.2015

M/s J.S. Engineering Enterprises

....Appellant

Versus

Haryana Urban Development Authority and another

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. Ravindra Jain, Advocate for the appellant.

Mr. Manish Bansal, Advocate for respondent No.1.

NAVITA SINGH, J.

1. An award was purportedly passed on 27.5.2005 by the Arbitrator-respondent No.2 regarding which objections under Section 34 of the Arbitration and Conciliation Act (Act for short) were filed, which were dismissed by the Additional District Judge, Faridabad on 3.4.2008. The appeal in hand was preferred by the appellant against that order.

2. Counsel for the appellant referred to the so called award, which consisted of only two sentences reading as under: -

“The earnest money of the firm and cost of the tender form be released. The Xen-I (F) be informed accordingly.”

Above those lines, it was written that it was order of the Arbitrator. Counsel for the appellant submitted that the order passed by the Arbitrator, which may be called an award consisted of only two sentences without any reasoning or other discussion. Rather the court below while deciding the objection petition went into details of the facts and the presumption on which the award, according to that court, was rightly passed.

3. It is not even clear from the document, which in my opinion was not an award, as to where from it starts. The covering letter was written by the Arbitrator enclosing the copy of award which was also sent on demand. It is mentioned that the copy of award demanded vide letter of the appellant was being sent. Why signed copy of the award was not supplied by the Arbitrator himself is not explained.

4. Coming to the point as to whether any head or tail can be made out from the document, it may be mentioned that the same started with the words "Proceeding of hearing under Clause 25-A of the contract agreement.....". Date of hearing was mentioned as 17.11.2004 in which presence of the appellant and respondent No.1 i.e. Executive Engineer, HUDA, Division No.1, Faridabad was marked. Then there was mention about the statement of the Engineer Incharge and statement of representative of the appellant firm. Nothing was mentioned at the end whether the award was reserved and was later on passed on 17.5.2005. In continuation of the page where statement of the representative of the appellant ended, the so called award was typed in two lines. It is absolutely beyond comprehension of this Court and rather of anybody for that matter, that any award in arbitration proceedings can be made in such a cryptic and cursory manner with total lack of application of mind. What was considered and how the conclusion was arrived at, was not mentioned. Why the claim of the appellant was rejected, was also not discussed.

5. Counsel for respondent No.1 contended that the court deciding the objections had delved of all aspects and since none of the objections of the appellant fell in the purview of Section 34 of the Act, the petition was rightly rejected. This argument, however, is not acceptable and is being discarded for the reasons, which are following.

6. The court dismissing the objections referred to certain admitted facts and then to the claim of the appellant for compensation of the loss which occurred to the Company and went on to discuss that nothing was mentioned that any machinery had been taken to the spot by the appellant or any labour was employed. Evidence was not taken by the Tribunal. All the matters, which should have been reasoned out by the Arbitrator, were discussed by the court below and the objections petition was dismissed on certain facts and taking that no proper claim was laid before the Arbitrator, rather than holding that the reason given by the appellant for setting aside the award was not among those contemplated by Section 34 of the Act.

7. Counsel for the appellant referred to the letter dated 18.8.2003 sent by respondent No.1 to the appellant in which it was mentioned, in reference to the letter dated 24.4.2003 of the appellant, that the appellant had asked for extension of time upto 30.9.2003 and the request was not considered at that time mentioning that the appellant had just started the work and the firm was requested to speed up the work and complete the same at the earliest. Liberty was, however, given to file an application for extension at a later point of time with genuine reasons. This letter showed that the work had been started by the appellant.

8. From the material on record and from the facts pointed out above, it is amply clear that the Arbitrator was true to the meaning of the word 'Arbitrator' and acted absolutely arbitrarily, adhering to the spirit of arbitrary exercise of power. He lacked application of mind while the court below went beyond jurisdiction to overstep the scope Section 34 of the Act.

9. The appeal is allowed. The impugned order is set aside and so is the award of the Arbitrator. It is directed that the Arbitrator shall pass a fresh award in accordance with law.

(NAVITA SINGH)
JUDGE

05.02.2015
Ishwar

Whether to be referred to reporter: No