

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No.2328 of 2010 (O&M)

Date of decision : 10.12.2015

State of Haryana

...Appellant

Versus

M/s Bhumika Entrepreneur 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. Ravi Partap Singh, AAG, Haryana.

Mr. Arun Jain, Sr. Advocate with
Mr. Kushagra Mahajan, Advocate for respondents.

AMIT RAWAL, J. (Oral)

State of Haryana is aggrieved of the order dated 09.12.2009, whereby objection filed under Section 34 of 1996 Act for setting aside of the award dated 31.08.2006, has been dismissed.

Mr. Ravi Partap Singh, AAG, Haryana submits that Arbitrator has not complied with the principles of natural justice inasmuch as that no effective opportunities have been given to lead evidence to rebut the claim of the contractor. The contractor had not complied with the terms and conditions particularly Clause 45 of the Contract with regard to the non-

completion of the work, therefore could not claim the damages/compensation. It is in these circumstances, the dispute arose and thus Objecting Court has committed illegality and perversity, much less, also failed to notice the aforementioned facts.

Mr. Arun Jain, learned Senior Counsel, assisted by Mr. Kushagra Mahajan, learned counsel for respondents submits that Arbitrator had granted ample opportunity to the State to lead evidence. The Arbitrator on 10.08.2005 noticed that one more opportunity be given to the respondent-State to produce evidence in the Court in their defence. On 29.07.2005, Arbitrator closed the hearing as the appellant failed to lead any further evidence. Both the parties were keen for the adjudication of the dispute, therefore, State cannot take the plea of non-compliance of the natural justice, moreover, the objections were not in consonance with the provision of Section 34 of the Act. Admittedly, State was granted the extension from time to time to provide trouble free space as there was escape channel, therefore, contract could not be completed on time while making the payment, the State deducted the unnecessary charges.

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

The zimni order dated 10.08.2005 read thus:-

“During the last date of hearing on 29.07.2005 both the parties stated that they have nothing to say more in this connection and requested that the arbitration proceedings of the case kindly be concluded.

Before closing/concluding the arbitration proceedings one more opportunity is being granted if the

defendants wants to say/produce anything in support of their defence. The defendants, if any, may be submitted by 31.08.2005.”

Noticing the aforementioned order, it is ex facie proved that State has not even able to avail the opportunities granted by the Arbitrator in support of their defence. Granting extension itself is a conclusive proof that there was obstruction in carrying out the work at the behest of the contractor i.e. escape channel. Ultimately Contract was completed on 10.05.2002. However, since payment made by the State of Haryana was found to be deficient, contractor invoked arbitration clause ultimately awarded the compensation. Noticing the aforementioned fact, I do not deem it appropriate to interfere in the present appeal as the objection do not fall within the realm of provision of Section 34 of the Act.

It is now a settled law that as to under what circumstances the award has to be interfered with. The question which has now been raised in the aforementioned appeal has already been answered by the Hon'ble Supreme Court in catena of judgments, wherein, it has been laid down that until and unless the award suffers from illegality or for want of reasons as statutorily prescribed under Section 31 (3) of the Act, the same cannot be interfered with. In this context I intend to refer the judgments of Hon'ble Supreme Court in **Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49** and **Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698**. In the aforementioned judgment the Hon'ble Supreme Court had culled out the ratio decidendi by holding that until and unless there is error apparent on the face of record or the arbitrator has not

followed statutory legal position, it is only in these circumstances it would be justified interfering with the award. The High Court should not act as a Court of appeal and reappraise the material/evidence and embarked on a path by substitution in its own view. It is not the case of the appellant that the award is against the public policy or has violated the principles of judicial approach, much less against the statute and other provisions of Section 34 of the Act.

The award read as a whole is just, fair and reasonable. It is now a settled law that the Arbitrator or Committee is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

Appeal is dismissed.

10.12.2015

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**(AMIT RAWAL)
JUDGE**