

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

1. FAO No.1828 of 2011 (O&M)
Date of decision : 15.10.2015

M/s Oasis Contractors & Consultants (P) Ltd. ...Appellant

Versus

Punjab State Agricultural Marketing Board and another ...Respondents

2. FAO No.1829 of 2011 (O&M)
Date of decision : 15.10.2015

M/s Oasis Contractors & Consultants (P) Ltd. ...Appellant

Versus

Punjab State Agricultural Marketing Board and another ...Respondents

3. FAO No.1830 of 2011 (O&M)
Date of decision : 15.10.2015

M/s Oasis Contractors & Consultants (P) Ltd. ...Appellant

Versus

Punjab State Agricultural Marketing Board 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. Satish Goel, Advocate for the appellant.

Mr. S.P. Garg, Advocate for respondent No.1.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of three FAOs bearing Nos.1828, 1829 and 1830 of 2011 titled as M/s Oasis Contractors & Consultants (P) Ltd. Versus Punjab State Agricultural Marketing Board and another.

Mr. Satish Goel, learned counsel appearing on behalf of appellant submits, that award dated 24.03.2008 passed by the Chief Engineer was without jurisdiction and as per the agreement, it was Superintendent Engineer who was named Arbitrator for resolution of the dispute, if any. The Arbitrator entered into a reference. In the meantime, application under Sections 14 and 15 of the Act was filed at the instance of the appellant before the Principal Court. The same was decided on 18.09.2006, whereby direction was issued to the Arbitrator to decide the matter. On 16.07.2007, petition under Section 11 of the Act was filed for change of the Arbitrator. However, the petition had been rendered infructuous in lieu of reply filed by the respondent that arbitrator had passed the award. The reply on behalf of respondent was accompanied by award.

Aggrieved against the aforementioned award, the appellant has filed the objections under Section 34 of the Act. Copy of which has been annexed as Annexure P-1. He further submits that award is not sustainable in the eyes of law and this fact is totally been ignored by the Objecting Court while rejecting the objections vis-a-vis committed illegality and

perversity.

Mr. S.P. Garg, learned counsel appearing on behalf of respondent No.1 submits, that there is no illegality and perversity in the order. The Arbitrator had granted three opportunities to appear and filed their respective claims i.e. from 08.09.2006 to 16.07.2007. In support of his claim, the Contractor did not file any evidence to rebut the counter claim and thus prays that appeal does not warrant any interference and is liable to be dismissed.

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

Copy of the objections reported to have been filed against the award has been annexed as Annexure P-1. Para No.3 of the same be read thus:-

“3. That a dispute was referred by the petitioner Contractor vide his letter dated 01.11.2002 for arbitration under Clause 25-A of the agreement for determination of the dispute. The named arbitrator i.e. the Chief Engineer, Punjab Mandi Board, Sector 17-C, Chandigarh entered on reference and fixed few hearings, but he failed to decide the matter for a long period, hence a petition was filed under Section 14 & 15 of the Arbitration and Conciliation Act, 1996 in the Court of District Judge, Chandigarh to terminate the mandate of the arbitrator on 02/11/2004 which was disposed off on 18.09.2006 with the direction to the arbitrator to start the arbitration proceedings and to dispose off the same as expeditiously as possible. But the said Arbitrator had conducted only three hearing on 06/06/2006, 05/12/2006 and 06/03/2007 and he has not done anything else nor made award in spite of court order.

The arbitrator has failed to perform his function and a period of about more than six years had passed from the date of reference and further a period of one year had passed after the direction by the court to dispose of the matter as expeditiously as possible.”

In view of the categorical stand taken in the objections, plea now which is sought to be raised that the Superintending Engineer was the named Arbitrator is wholly perverse, much less, atrocious. As per Section 25-A, it is the case of the appellant that Chief Engineer was the named Arbitrator. Thus, the plea that Superintending Engineer was the named Arbitrator is hereby rejected.

The Arbitrator has given the award on the basis of the documentary evidence placed on record, whereby the claim filed by appellant-Contractor has been rejected and the counter claim has been accepted. It is the case of the appellant that Chief Engineer was the named Arbitrator, therefore, it does not lie in the mouth of the appellant to contend that Arbitrator exceeded in its jurisdiction. The appellant did not chose to file any objection or application as contemplated under Section 16 of the Act vis-a-vis jurisdiction of the Arbitrator. Thus, in my view has waived the right as per Section 4 of the Act.

The Objecting Court while dismissing the objection noticed that appellant did not place Single Act or Act to show that Arbitrator exceeded its jurisdiction while dealing with the dispute.

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.

There is no illegality and perversity in the order.

Appeals are dismissed.

15.10.2015

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**(AMIT RAWAL)
JUDGE**