

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

FAO No.4831 of 2010 O&M)

Date of decision : 13.08.2015

M/s Ajay Construction & Co.

...Appellant

Versus

State of Haryana 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. D.K. Singal, Advocate for the appellant.

Mr. Ravi Partap Singh, AAG, Haryana.

AMIT RAWAL, J. (Oral)

The appellant-Contractor has invoked provision of Section 37 of 1996 Act by challenging in the present appeal, the order dated 17.09.2009, whereby objections filed by the Department vis-a-vis award dated 30.06.2008 has been accepted.

Mr. D.K. Singal, learned counsel appearing on behalf of appellant submits that objection as noticed in the award did not conform to the provision of Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter to be referred as to 'the Act'). In essence, none of the objection

falls within the provision of Section 34 of the Act and, therefore, Additional District Judge, has, instead of pondering upon this point decided the objection as if it was Appellate Court. It should not have exercised such jurisdiction as it is against the settled law, as has been held by Hon'ble Supreme Court in *Oil & Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd.* 2003(2) Arb. LR 5 (SC) & *Swan Gold Mining Ltd. Vs. Hindustan Copper Ltd.*, Civil Appeal No.9048 of 2014.

Therefore, impugned order is liable to be set aside.

Mr. Ravi Partap Singh, AAG, Haryana submits that objections have been rightly allowed as the Arbitrator has not assigned any reasons and has even not imposed penalty, which as per the terms and conditions of the Contract is required to be imposed. There is no illegality and perversity in the impugned order and the same is liable to be sustained.

I have heard learned counsel for the parties.

On going through the contents of order, it is discernible that Additional District Judge has entertained the objection as if it was the Appellate Court. The scope to entertain the objection under Section 34 of the Act is limited and in essence, exercise is limited to what has been prescribed under Section 34 of the Act.

None of the objection raised by the Department were within parameters confirming to the provision of Section 34. The Arbitrator has given detailed reasoning in deciding the claims, whereas the impugned order reflects that it was the duty of the Arbitrator to impose the penalty.

I am afraid the aforementioned observations as are not fallacious for the reasons that power to impose penalty for getting the work

done at the cost of Contractor lied with the Department and not with the Arbitrator. Nothing has been observed in the impugned order that award is not in consonance with the provision of Section 28(1) and 31(3) of 1996 Act.

In view of what has been observed above, impugned order is thus not sustainable and in my view is capricious and fallacious and is hereby set aside and award of the Arbitrator is restored.

The appeal is accordingly allowed.

13.08.2015

pawan

**(AMIT RAWAL)
JUDGE**