

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

F.A.O.No.5761 of 2010

Date of Decision: August 11, 2015

M/s Rajinder & Company, Sector 19-D, Chandigarh

...Appellant

Versus

Punjab State through Executive Engineer, Central Works Division, Sangrur
& another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Aman Kashyap, Advocate,
for the appellant.

Mr.Rajesh Mehta, Addl.A.G.Punjab,
for the State.

AMIT RAWAL, J. (Oral)

The Contractor has come up in appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short “the Act”) against the order dated 7.5.2010 passed by the Additional District Judge, Patiala, whereby the objections filed by the department, vis-a-vis Claims No.2 and 3, have been accepted.

Mr.Aman Kashyap, learned counsel appearing on behalf of the appellant submits that the order under challenge suffers from illegality and

perversity for the reason that the arbitrator, while taking into consideration the Notice Inviting Tender (NIT) and Detailed Notice Inviting Tender (DNIT), has awarded the claim, aforementioned, in favour of the Contractor, i.e., vis-a-vis 7 Kms. and additional bitumen applied upto the extent of 5.23% against quoted 4.5%. He further submits that the Additional District Judge, Patiala, while accepting the objections, has not taken into consideration the provisions of Section 34 of the Act as there is only limited scope for interference in the objections. In support of his aforementioned submissions, he has also drawn the attention of the Court to the record of the arbitrator to contend that the department itself, while pondering upon the question of analysis of the rate for Semi Dense Bitumen Concrete (SDBC) for widening the National Highway No.71, has taken into consideration the thickness as 5.5%, whereas appellant had claimed only 5.23%, so it was within permissible limit. Even otherwise, as per condition No.2 of DNIT, it clearly envisages that the work will be carried out strictly as per the latest edition (3rd Revision) M.O.S.T. Specifications (3rd Revision) and according to the said rate, there is a provision of variation of quantity of bitumen, which shall be assessed and the payment shall be adjusted as per rate of bitumen. The relevant portion of Clause 511.9 of the MOST Specifications (3rd Revision) reads thus:-

“511.9. Rates

The contract unit rate for semi-dense bituminous concrete shall be payment in full for carrying out the required operations including full compensation for all components listed in Clause 504.8 (i) to (vi). The rate shall cover the provision of bitumen in the mix at 4.5 per cent of the weight of the total mix, with the

provision that the variation of quantity of bitumen will be assessed and the payment adjusted as per the rate of bitumen coated.”

Even as per the NIT, the appellant had quoted the rate for 1 Km., but actually had incurred the cost of 8 Kms. and, therefore, claimed compensation for 7 Kms.

Mr.Rajesh Mehta, learned Additional Advocate General, Punjab appearing on behalf of the State submits that the rate quoted by the appellant was in consonance with the NIT and DNIT Item No.II and was for 1 Km. and even Clause-37 of the DNIT, extracted in the impugned order, also envisages 1 Km. and, therefore, the Contractor has signed the agreement with open eyes and, thus, could not claim the cost for extra kilometers, which alleged to have been incurred vis-a-vis other claims. He further submits that the rates quoted by the Contractor for thickness of 4.4 was ₹1600/-, which was reduced to ₹1400/- and further reduced to ₹1350/- and, therefore, rightly so the Additional District Judge has accepted the objections.

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

Vis-a-vis the claim of the Contractor regarding the extra 7 Kms., Clause-II of the NIT and Clause-37 of the DNIT envisage the rates for 1 Km. as Contractor had signed the agreement with open eyes and, therefore, could not claim the cost for extra kilometers. The terms and conditions of the contract are sacrosanct between the Contractor and the department. Clause-37 of the DNIT has been noticed by the Additional

District Judge in his order. For the sake of brevity, the same is extracted herein below:-

“37. Nothing extra shall be paid for any lead or lift unless otherwise specified for any material required for the work directly or indirectly and the rate to be cleared by the contractor shall include all the leads and lifts”.

On going through Clause-37, aforementioned, it leaves no manner of doubt that claim No.2 of the Contractor was not in consonance with the contract and the arbitrator exceeded his jurisdiction in awarding Claim No.2 and the Additional District Judge has rightly accepted the objections by invoking the provisions of Section 34 of the Act, therefore, the plea of the appellant vis-a-vis rejecting claim No.2 is hereby rejected and the objections qua that claim are upheld.

As regards Claim No.3, i.e., thickness of bitumen, I am of the opinion that the clauses, aforementioned, of the NIT, DNIT and as well as MOST Specifications (3rd Revision) envisage the variation. Even the analysis was also with regard to 5.5%, though quoted was for 4.5%, but the Contractor has claimed only 5.23%, the actual thickness, which was required to be laid for the laying of the road. The Additional District Judge has not noted the aforementioned clauses and MOST Specifications (3rd Revision) for arriving at a finding that the Contractor would claim as awarded by the arbitrator. In my view, the arbitrator had rightly granted the benefit in claim No.3 to the Contractor, which was within the parameters of the contract and as well as the analysis of the department and, therefore, there was no variation from the contract and, thus, the objections at the behest of the department qua that claim were not maintainable and it could

not have been entertained under Section 34 of the Act.

Accordingly, the order of the Additional District Judge, Patiala, accepting the objections vis-a-vis claim No.3, are hereby set-aside. The appeal is accordingly partly allowed. The consequential finding rendered by the Additional District Judge, Patiala vis-a-vis the claim for claiming interest on the amount determined on claim No.3 is set-aside.

August 11, 2015
ramesh

(AMIT RAWAL)
JUDGE