

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.5958 of 2010 (O&M)

Date of decision: 11.03.2015

Union of India

..... Appellant

versus

M/s Surinder Pal and another

..... Respondents

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr. Ashwani Kumar Bansal and
Mr. Anmol Pandit, Advocates for the appellant
Mr. Sudeep Mahajan, Advocate for respondent No.1

1. *Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J. (Oral)

Challenged in the present appeal is the order dated 18.8.2009, passed by the learned Additional District Judge, Amritsar, vide which, the objections filed by the Union of India –appellant under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the award dated 22.1.2003, were dismissed.

The brief facts which required to be noticed for the purpose of disposal of the present appeal are that on 1.11.1997, the respondent No.1 was awarded a item rate contract for contract sum of Rs.4,22,136/-. The date of commencement of work was 8.11.1997 and date of completion of work was 7.3.1998. The work was actually completed on 18.4.1998. A dispute arose between the parties.

Therefore, Shri Sorabh Mathur – respondent No.2 was appointed as

sole Arbitrator to adjudicate the dispute. The Arbitrator passed the impugned award on 22.1.2003. Aggrieved by the said award, Union of India filed the objections, which were dismissed vide the impugned order.

I have heard learned counsel for the parties and have carefully gone through the file.

Before this Court, learned counsel for Union of India has assailed the impugned order on two grounds only i.e.

(i) in claim No.2, the interest for withholding payment has been awarded to the contractor to the tune of Rs.41,387.50. In claim No.6, Rs.1,80,000/- have been awarded on account of facing slack period since 18.4.1998 when the work was 100% completed but notice ratified by GE till 27.5.1999. It was stated that contractor was banned for three months by the enlisting authority on account of non-completion of work within time. The contractor was also not issued further tenders even after the lifting of above ban as per application, for tenders produced by the contractor during the hearing.

(ii) The Arbitrator erred in awarding interest on claim No.2.

Perusal of award shows that the payment was in fact delayed by 14 months. Therefore, claim No.2 was rightly allowed and interest for the delayed payment i.e. Rs.41,387/- was rightly allowed. However, I am of the view that awarding of Rs.1,80,000/- by the Arbitrator was beyond his competence. It is not on account of the contract. Admittedly, execution of the work was not completed on the due date. It was to be completed by 7.3.1998 and it was completed

only on 18.4.1998 i.e. delayed by one month and 11 days, for which action was taken by the Union of India. Taking of that action and consequences thereof are not part of the contract and are not related to the same. For blacklisting and loss of work, contractor had a separate cause of action to claim the damages through appropriate forum.

Therefore, I am of the view that claim No.6 was beyond the scope of the contract and beyond the competence of the Arbitrator. As such, amount of Rs.1,86,000/- awarded on account of the claim No.6 is hereby set aside.

It also comes out that the Arbitrator has awarded simple interest @ 6% per annum on the awarded amount on all the claims. Claim No.2 is already interest/ damages on account of delayed payment. Therefore, interest on interest could not be granted qua claim No.2. It being so, it is ordered that no interest should be payable on claim No.2.

As a result of foregoing discussions, the present appeal is allowed.

11.03.2015
gk

(Kuldip Singh)
Judge