**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

**FAO No. 60 of 2011 (O&M)**
**Date of decision : October 28, 2015**

**State of Haryana through Executive Engineer**
**....... Appellant**

**Versus**

**M/s Mehta Construction Company and another**
**........ Respondents**

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Hitesh Pandit, Additional Advocate General, Haryana for the appellant.

Mr. Sumit Gupta, Advocate for respondent No.1.

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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?

**Amit Rawal, J (oral).**

The State of Haryana is in appeal against the order dated 27.5.2010 whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside of the award dated 25.4.2008 has been dismissed.

Learned counsel for the State submits that appointment of the arbitrator was not in consonance with the terms and conditions of the contract. It was the engineer-in-chief to adjudicate the matter and not the chief engineer. However, at the stage of arbitration proceedings an application in this regard was moved but the same was dismissed which resulted into passing of the award.

He further submits that the same very objection was taken in the objections but the objecting court has also committed illegality and perversity in dismissing the objections. The work was allotted to M/s Mehta Construction Company, Karnal by written agreement No.5 dated 8.5.2002 within a time limit of two months but the agency stopped the work on 31.5.2002 without assigning any reason or early warning. The award of the arbitrator was against the public policy of India as it was against the terms and conditions of the contract, much less violation of the various provisions of Section 16, 28(3), 24 (3), 31 (3) of the Act. He thus, prays for setting aside of the award, much less the order dismissing the objections.

Mr. Sumit Gupta, learned counsel appearing on behalf of the respondents submits that the scope of interference in an appeal under Section 37 of the Act, much less the objections is limited. None of the objections were within the parameters of Section 34 of the Act and prays that there is no illegality and perversity in the order dismissing the objections.

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

From the perusal of the file it reveals that the following claims and counter claims were referred to by the arbitrator:-

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| Claim No.1: | Claim on account of legitimate work executed at the site but not paid | 6,00,000.00 | 5,89,480/- |
| Claim No.2 | Claim on account of material carted at site | 3,50,000.00 | 3,49,000/- |

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| Claim No.3 | Claim on account of idling and under utilization of resources | 5,00,000.00 | 4,20,233/- |
| Claim No.4 | Claim on account of loss cause due to business loss | 50,00,000.00 | 50,00,000/- |
| Claim No.5 | Claim on account of loss of goodwill | 10,00,000.00 | Nill |
| Claim No.6 | Claim on account of loss caused by snatching legitimate work acquired by the claimant through open bid | 3,00,000.00 | Nil |
| Claim No.7 | Claim on account of loss caused by the Executive Engineer with his personal biases and prejudices and snatching the legitimate work of the claimant and arranging the same through other agency | 50,00,000.oo | Nil |
| Claim No.8 | Claim on account of Relief/ compensation on account of mental agony and harassment | 25,00,000.00 | Nil |
| Claim No.9 | Claim on account of litigation expenses | 1,00,000.00 | 19,300/- |
| Claim No.10 | Claim on account of future and pendentelite interest | ------- | 63,78,013/- |

**Counter Claims by the Department**

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|---|---|---|---|
| Claim No.1 | Claim on account of survey investigation and cost of preparation of documents for calling of bids including expenditure incurred on the staff engaged and other allied expenditure | 1,21,348.00 | Nil |
| Claim No.2 | Claim on account of expenditure of supervision of the work | 3,59,189.00 | Nil |
| Claim No.3 | Claim on account of losses suffered by the department in setting right unclaimed wasteful work being of no use | 0,6,376.00 | Nil |
| Claim No.1 | Claim on account of survey investigation and cost of preparation of documents for calling of bids including expenditure incurred on the staff engaged and other allied expenditure | 1,21,348.00 | Nil |
| Claim No.4 | Claim on account of losses suffered due to preparation and installation of caution board and engagements of staff to avoid mishap on | 0,7,150.00 | Nil |

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| | the pits dug at site and construction of diversion | | |
| Claim No.5 | Claim on account of loss of goodwill/image of Haryana State | 50,00,000.00 | Nil |
| Claim No.6 | Claim on account of interest | 18% p.a. | Nil |
| Claim No.7 | Claim on account of expenditure incurred on arbitration | 0, 50,000.00 | Nil |

The arbitrator on the basis of appreciation of oral and documentary evidence accepted certain claims and rejected the counter claim of the department. In essence, awarded compensation of ₹63,78,913/- along with interest at the rate of 18% per annum. It is borne out from the pleadings of the parties that the department did not raise the objection with regard to the jurisdiction of the arbitrator which they were required to raise under Section 16 of the Act. Section 16 of the Act reads thus:-

> ***Section 16 in THE ARBITRATION AND CONCILIATION ACT, 1996***
>
> *16. Competence of arbitral tribunal to rule on its jurisdiction.—*
>
> *(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—*
>
> *(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and*
>
> *(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.*
>
> *(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be*

*precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.*

*(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.*

*(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.*

*(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.*

*(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.*

From the perusal of the language of the aforementioned Section, it is clear that the objections with regard to the jurisdiction of the arbitrator has to be taken before any party to the *lis* files its defence. The department, in the instant case, raised the objections after completion of the arbitration proceedings i.e. when the arbitrator proceeded with reference, much less after submission of written arguments.

The objecting court rejected the objections by finding that since the department failed to take the objections viz-a-viz jurisdiction of appointment of the arbitrator as envisaged under Section 16 of the Act, therefore, the objections were wholly misconceived.

In my view, the department has waived right to raise the objections as per the provisions of Section 4 of the Act which reads thus:-

> ***"4 Waiver of right to object****. —A party who knows that —*
>
> *(a) any provision of this Part from which the parties may derogate, or*
>
> *(b) any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object."*

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 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. 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. The Arbitrator has dealt with the dispute which was contemplated and was within the scope of it.

It is now a settled law that the Arbitrator is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

In my view, no error of law arise from the award. The award is perfect and justified and all the objections filed against the same were wholly misconceived.

There is no merit in the aforementioned appeal.

The appeal is accordingly dismissed.

**(AMIT RAWAL)**
**JUDGE**

**October 28 , 2015**
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