

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

FAO No.645 of 2011 (O&M)

Date of Decision: July 22, 2015

M/s J.C. Engineers Private

.... Appellant

vs.

Haryana Power Generation Corporation Ltd. and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Ashok Khubbar, Advocate for the appellant.

Mr. Parveen Gupta, 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)

This order of mine will dispose of FAO No.645 of 2011.

Appellant M/s J.C. Engineers Pvt. has challenged the judgment dated 03.07.2004 passed by learned Addl. District Judge, Yamunanagar at Jagadhri, vide which the objection petition filed by Haryana Power Generation Corporation Ltd. (respondent herein) was allowed.

The brief facts of the case are that a dispute arose between the parties regarding work No.959/G-127 dated 08.02.1988. The Arbitrator is stated to have been appointed on 15.10.1992. The time for completing the arbitration proceedings was extended from time to time with the consent of the parties. However, the proceedings were not completed till 21.10.1994. The proceedings

were accordingly dropped by the order passed by the concerned Chief Engineer. The present appellant filed an application in the Civil Court for appointment of the Arbitrator. Vide order dated 31.10.2002, the proceedings were revived and the Arbitrator was directed to announce the Award within a period of four months. The Arbitrator then retired and his post was abolished. The Civil court was again moved for appointment of a new Arbitrator. Vide order dated 03.06.2003, the Civil Court allowed the appointment of a new Arbitrator and directed to announce the Award within four months. Respondent No.2 (herein) was accordingly appointed as an Arbitrator. However, he did not pass the Award within the prescribed time i.e. four months. He rather passed the Award on 03.07.2004, which according to the respondent-objector is without jurisdiction and in violation of the order of the civil court.

The present appellant (respondent) in the written statement took the plea that the proceedings were held with the consent of the parties. Therefore, question of expiry of any time limit did not arise. There was no violation of any provision of law nor the Arbitrator had misconducted himself. From the pleadings, following issues were framed:

- “ 1. Whether the arbitration award dated 3.7.2004 is liable to be set aside on the ground of misconduct by the arbitrator? OPO*
- 2. Whether the objection petition is time barred? OPR*
- 3. Whether the petitioner is estopped by his own act and conduct by filing the objection petition? OPR.”*

Learned Addl. District Judge, Yamunanagar at Jagadhri after recording the evidence came to the conclusion that the Award was not passed within four months from the date of entering into reference i.e. on 25.07.2003. No consent of the parties was obtained for extension of time. Therefore, the Award is illegal and was accordingly set aside.

It was also *inter alia* held that certain claims, which were originally not there, were also submitted. The Arbitrator also dealt with the dispute not contemplated by the terms of submission to the Arbitrator. Accordingly, the objections were allowed and Award was set aside.

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

Undisputedly, the original Arbitrator was appointed by the Civil Court vide order dated 31.10.2002 and the Arbitrator was directed to announce the Award within four months. The Award was not announced in the prescribed time. Vide order dated 03.06.2003, new Arbitrator was appointed and was directed to announce the Award within four months.

Learned counsel for the appellant has argued that by continuous appearance before the Arbitrator, there is implied consent. However, no express consent of the parties were obtained for extension of time.

A perusal of the arbitration agreement (Ex.R1) shows that as per Clause No.15, the Arbitrator may, from time to time with the

consent of the parties to the Contract, enlarge the time for making the Award. However, admittedly, in this case, no such consent was obtained.

Learned counsel for the respondent has argued that the respondent-objector had objected before the Arbitrator that it cannot continue with the proceedings without consent but that was not considered. I am of the view that expressed consent of the parties was required, in terms of Clause 15 of the Award, therefore, the Award passed on 03.07.2004 after the expiry of prescribed period, is illegal.

However, a perusal of the revised claim produced before the Arbitrator shows that since the work was done in the year 1989 and the fresh Arbitrator was appointed much later. Therefore, in the amended claim, only interest part was added. The Arbitrator could consider and decide the same whether the added interest is to be allowed or not.

It being so, with this alteration in the findings, the impugned order dated 01.09.2007 is upheld. Consequently, the present appeal stands dismissed.

July 22, 2015
sarita

(KULDIP SINGH)
JUDGE