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

Date of decision : 08.12.2015

1. FAO-4243-2012 (O&M)

M/s V.K. Kapoor and Co.

...Appellant

Versus

BSNL and another

...Respondents

2. FAO-4244-2012 (O&M)

M/s V.K. Kapoor and Co.

...Appellant

Versus

BSNL and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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: Ms. Ritam Aggarwal, Advocate
for the appellant (in both appeals).

Mr. Madan Mohan, Advocate
for respondent No.1-BSNL (in both appeals).

AMIT RAWAL, J. (ORAL)

By this order, I intend to dispose of two appeals bearing
Nos.4243 of 2012 & 4244 of 2012 filed at the instance of
the appellant-Contractor, as the common questions of law and facts

involved in both the appeal are the same.

Ms. Ritam Aggarwal, learned counsel appearing on behalf of the appellant-contractor submits that both the Objecting Court and the Arbitrator have misconducted in declining the claim and dismissing the objections, on the premise that both of them have not noticed the report made by the JTO (Joint Telecom Officer) and the concerned Officers with regard to the extent of the work done on behalf of the appellant-contractor. She submits that the work was allotted to the appellant-contractor, however, finding the experience certificate to be bogus, the Department invoked Clause (7) of the Agreement but the fact remains that by that time, the appellant-contractor had done the certain amount of the work and the claim before the Arbitrator was only with regard to the same. The evidence with regard to extent of work had been proved before the Arbitrator but he failed to notice but rather was completely swayed the in genuinenity and authenticity of the experience certificate. The objections filed in this regard have also met with the same fate, thus there is illegality and perversity.

Mr. Madan Mohan, learned counsel appearing for respondent No.1-BSNL submits that there is a very limited scope for interference on the objections which have been filed under Section 34 of the 1996 Act against the arbitration award. In essence, the objections were not within the realm of Section 34 of Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act'). The appellant-contractor had been found to be indulging into obtaining a forged and fabricated experience certificate and on ascertaining the information,

the Department rightly invoked Clause (7).

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

It would be apt to re-produce Clause (7) of the Agreement which reads thus:-

"If any information furnished by the contractor is found to be incorrect at any later stage the contract is liable to be terminated at any time without any notice. The earnest money and security deposit is liable to be forfeited in such cases by GMTD Rohtak besides action to be taken as per law of the land."

I have also gone through the record of the arbitration proceedings and found that the measurement of the extent of work had been done by the Department and this fact has not been noticed by the Arbitrator, much less, by the Objecting Court. In essence, the duty of the Objecting Court is to see validly that the award of the Arbitrator was within the procedure prescribed for the Arbitration or not. In my view, the objections filed by the appellant-contractor are within the parameters of the provisions of Section 34 of the 1996 Act. The Objecting Court is enjoined upon the obligation to examine the record of the arbitration proceedings and on going through the order, I am of the opinion that no such reference was to be made to such measurement, thus, the appellant-contractor has been deprived his statutory rights of the objections.

Keeping in view the aforementioned facts, I am of the opinion that the order of the Objecting Court is not sustainable in the eyes of law and the same is hereby set aside and the matter is

remitted back to the Objecting Court, to decide the objections afresh, by examining the record of the arbitration proceedings in accordance with law and decide the same preferably within a period of four months from the receipt of the certified copy of this order. The record of the arbitration proceedings be also sent back.

Both the appeals stand allowed.

08.12.2015
yogesh

(AMIT RAWAL)
JUDGE