

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 1326 of 2013(O&M)
Date of decision : August 27, 2015

**State of Punjab, Public Works Department (B&R), Central Works
Division No.3, Ludhiana**

..... Appellant

Versus

M/s V. K. Sood, Engineer & Contractor

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rajesh Mehta, Additional Advocate
General, Punjab for the appellant.

Mr. Ashwinie Kumar Bansal, Advocate and
Mr. Gaurav Mohunta, Advocate
for the respondent.

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 challenge in the present appeal is to the order dated 15.11.2012 whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 against an award dated 30.11.2006 have been dismissed. The copy of the objections have been annexed as Annexure A-4.

Mr. Rajesh Mehta, Additonal Advocate General, Punjab submits that the contractor has deviated from the terms and conditions of the contract and not adhered to the contents of letter dated 3.7.2002 (Annexure A-1) which is part of the arbitration proceedings whereby the department had given an option to the

contractor to construct the guide bunds by using concrete blocks in accordance with the parameters stipulated in IRC: 89-1997. For the sake of brevity the same is extracted hereunder:-

*From Project Engineer-cum-
Executive Engineer,
Central Works Division No.3.,
Ludhiana*

*To
M/s V. K. Sood Engineer & Contractor,
SCO 85, Sector 5,
Panchkula*

Memo No.196

Dated, the 3 July, 2002

*Subject: Construction of high level bridge over River
Sutlej and 5 Nos.small bridges,approaches and
guide bunds on Khanna-Samrala-Machhiwara
Rahon road-Design of Guide Bunds.*

*Reference: your office memo No.
VKP/611/8/2002/1349 dated 10.5.2002 to the
address of Chief Engineer (I.P) with copy of Joint
Managing Director, PIDB and this office.*

*The proposal/drawing submitted by your firm vide
your letter under reference has been considered in
the light of the relevant provisions of the Contract
Agreement and IRC:89-1997. It has been observed
that your aforesaid proposal/drawing is not in
conformity with the provisions of the Contract
Agreement/IRC:89-1997 in all respects. Especially,
the alternative pertaining to usage of concrete
blocks conforming to design/drawing adopted for
guide bunds for bridge at Anandpur Sahib, is not
within the permissible parameters of the Contract
Agreement and IRC>89-1997. Accordingly a
revised drawing, which is in accordance with the
permissible parameters of the Contract Agreement
and IRC:89-1997 is being sent herewith.*

The revised drawing is based on the mean design velocity of 2.38 meter per second. The weight of individual stone to be provided in pitching and apron have been arrived at in conformity with the provisions of the Contract Agreement and IRC:89-1997.

In the context of the aforesaid, we would like to clarify to you and bring it on record that your firm was allowed eight (8) percent extra amount on account of change in the specification (so as to meet the thickness standards, mix design i.e. M-15 and other requirement of IRC:89-1997) of your initial alternative design based on concrete blocks. Therefore, please note that if your firm constructs the guide bunds in accordance with the enclosed revised drawing, then the eight (8) percent extra amount shall not be paid to your firm by the department. However, your firm has the option to construct the guide bunds by using concrete blocks in accordance with the parameters stipulated by IRC:89-1997 i.e. by using M-15 concrete blocks of one (1) meter thickness. The department hereby accords its in principle approval to your firm for exercising this option. Further, please note that in case this option of using concrete blocks is exercised by your firm, the department would be pleased to pay to your firm the eight (8) percent extra amount.

In view of the aforesaid, you are advised to either immediately commence the work pertaining to construction of guide bunds in accordance with the enclosed revised drawing (which is based on usage of loose stone boulders) or send us your proposal/drawing or constructing the guide bunds

by using concrete blocks in accordance with the parameters stipulated by IRC:89-1997, so that the department may accord its formal of such drawings.

Sd/-

*Project Engineer-cum-
Executive Engineer,
Central Works Division No.3,
Ludhiana*

Endst.No.

Dated:

*Copy forwarded to the Chief Engineer (I.P) Punjab
PWD (B&R), SCO 89-90, Chandigarh for
information and necessary action, please.*

*Sd/-Project Engineer-cum-Exe.Engineer
Central Works Divn.No.3,Ludhiana.*

He submits that the arbitrator has not taken into consideration the letter and gave the benefit of 8% of the lumpsum amount of the contract as the contractor had an option, much less has not referred to memo dated 10.5.2002 mentioned in the letter dated 3.7.2002.

Mr.Ashwinine Kumar Bansal, Advocate and Mr.Gaurav Mohunta, Advocate appearing on behalf of the respondents submits that the department prior to entering into a contract dated 14.2.2001 had already given the benefit of using the guide bunds by using concrete blocks, therefore the material used by the contractor was in conformity with the contract dated 14.2.2001 i.e. clause 58.2 of the agreement and therefore the appellant-department could not with hold the payment on receipt of final bill. The department is unnecessarily harping on the letter dated 3.7.2002 which was unilateral act and no option was accepted by the

contractor. It was the said letter which was challenged before the arbitrator. The arbitrator while taking into consideration the terms and conditions and contract had awarded the claim. The objections raised against the award ought not to have conformed with the parameters of Section 34 of the Act and therefore, the Additional District Judge has rightly dismissed the objections.

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

On going through the record of the arbitration proceedings it reveals that there is no such letter bearing No.1349 dated 10.5.2002.

The objections filed at the instance of the appellant (Annexure A-4) reveals that they are in unilateral in nature and does not fall within the parameters of Section 34 of the Act.

Be that as it may, the letter dated 3.7.2002 (Annexure A-1) is unilateral and one sided offer/option given by the appellant-department which was never accepted by the contractor. Moreover, the terms and conditons of the contract dated 14.2.2001 was never sought to be amended by the appellant-department. It is now a settled law that terms and conditions of the contract between the parties is sacrosanct, any deviation from the same has to be done as provided under Indian Contract Act, 1872. There has to be an offer and acceptance but in the instant case the letter dated 3.7.2002 had never been accepted by the contractor which fact has been revealed from the award. The arbitrator on the basis of the evidence lead, much less terms and conditions of the contract offer

and that the contractor had used the material which was prescribed in clause 58.2 of the contract, and therefore the appellant-department could not have withhold the payment of 8% of the contract amount on account of not using the material as allegedly had been referred to in the letter dated 3.7.2002.

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. Vs. 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. It is not the case of the appellant that the award is against the public policy or has violated the principles of judicial approach, much less against the statute and other provisions of Section 34 of the Act. The Arbitrator has dealt with the dispute which was contemplated

and was within the scope of it. The parties to the *lis* had participated in the proceedings and were given proper notice not only with regard to the appointment of the Arbitrator but viz-a-viz proceedings, in my view the award of the Arbitrator does not suffer from any illegality in as much as the Arbitrator who is expert has dealt with the matter and decided the claim of respective claimants to the parties to the *lis*.

The award read as a whole is just, fair and reasonable and only certain claims have been granted which are duly been supported with reasons. 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

August 27 , 2015
archana