IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.2669 of 2014 (O&M)
Date of decision: 18.08.2015

Punjab State Power Corporation Ltd. ... Appellant

Vs.

M/s Jay Bee Industries and others ... Respondents

FAO No.2667 of 2014 (O&M)

Punjab State Power Corporation Ltd. ... Appellant

Vs.

Sangrur Industrial Corporation Ltd. & others ... Respondents

FAO No.2668 of 2014 (O&M)

Punjab State Power Corporation Ltd. ... Appellant

Vs.

Sangrur Industrial Corporation Ltd. & another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Vinod S. Bhardwaj, Advocate
for the appellant (in all the cases).

Mr. C.B.Kaushik, Advocate
for respondents No.1 and 2.
(in FAO No.2669 of 2014).
Mr. Tribhuwan Singla, Advocate
for the respondent-caveator .
(in FAO Nos.2667 & 2668 of 2014).

<u>AMIT RAWAL J. (Oral)</u>

This order of mine shall dispose of three appeals bearing Nos.2667, 2668 and 2669 of 2014, as the similar question of law and facts are involved in the same.

For the sake of convenience, the facts are being taken from FAO No.2669 of 2014.

The respondents, i.e., claimants had filed a suit for recovery of amount in terms of interest on account of delayed payment by invoking the provisions under Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (hereinafter referred to as the Act of 1993).

The appellant - Punjab State Power Corporation Limited moved an application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act), for staying legal proceedings and referring the matter to Arbitrator. The said application filed by Corporation was allowed. In view of Clause 24 of the Contract, the matter is liable to be referred before the Arbitrator. It would be apt to refer to clause 24 of the Contract herein below:-

> *24. Arbitration*
>
> *(a) If at any time any question, dispute or difference, what-so-ever, shall arise, between the Purchaser/Board and the Contractor/ Supplier, upon or in relation to or in connection with the Purchase order/contract, either party may forth with give to the other, notice, in writing of the*

existence of such question, dispute or difference and the same shall be referred for sole arbitration of a nominee of the Purchaser/Board, who shall give a reasoned/speaking awards. The award of the Sole Arbitrator shall be final and binding on the parties under the provisions of the Indian Arbitration Act, 1940 and of the rules thereunder. Any statutory amendment, modification or reenactment thereof for the time being in force, shall be deemed to apply to and be incorporated in the Contract/Purchase Order. It will not be objectionable if the Sole Arbitrator shall be deemed to apply to and be incorporated in the contract/purchase order. It will not be objectionable if the Sole Arbitrator is an officer of the Board and he had expressed his views on all or any of the matter in question of dispute or difference.

(b) Upon every or any such reference, the cost of and incidental to the reference and award respectively shall be in the discretion of the Sole Arbitrator so appointed who may determine the amount thereof or direct the same to be taxed as between Solicitor and Client or as between party and party and shall direct by whom and to whom and in what manner the same is to be borne and paid.

(c) The work under the Contract shall, if reasonably

possible, continued during the arbitration proceedings and no payment due or payable by the Purchaser/Board shall be with-held on account of such proceedings."

The matter was referred to the Arbitrator to be appointed by PSEB in accordance with terms and conditions of purchase orders/agreement executed between the parties. Arbitrator was appointed to resolve the dispute between the parties to the lis. During the interregnum, before the Arbitrator, the respondents raised an objection that Act of 1993 had been repealed and the new Act, i.e., Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the New Act) has been promulgated, therefore, the Arbitrator did not have the jurisdiction to resolve the matter and the matter be referred to the Industry Facilitation Council constituted under the provisions of the New Act. The Arbitrator rejected the claim and passed the award dated 21.07.2008.

It would not be out of place to mention here that while rejecting the objection vis-a-vis jurisdiction of Arbitrator, it was observed that the claimant - firm would be well within its right to withdraw the claim petition and move the same before the Industry Facilitation Council.

Against the aforementioned Award, objection under Section 34 of the Act, has been filed and the Additional District Judge while allowing the petition, relegated the matter to the Industry Facilitation Council to decide the matter, as per law.

Mr. Vinod S. Bhardwaj, learned counsel appearing on behalf of the appellant – Punjab State Power Corporation Limited submits that the order dated 18.12.2013 relegating the matter to the Industry Facilitation Council is bad in law, much less, erroneous and perverse. There is no provision under the Act to relegate the parties to appear before the Industry Facilitation Council. At the best, the matter could be remitted back to the Arbitrator for fresh adjudication and the parties could have been well within their rights to approach the Industry Facilitation Council by filing claim petition.

Mr. C.B.Kaushik and Mr. Tribhuwan Singla, learned counsel appearing on behalf of the respondents submit that in identical situation, a Co-ordinate Bench of this Court in FAO No.4401 of 2008 on 3.8.2011, upheld the order passed by the Court below which had relegated the parties to appear before the Facilitation Council, in view of the provisions of New Act, as the matter involves the claim of interest on the delayed payment which was within the jurisdiction of the New Act, not under Clause 24, ibid, of the Contract/Agreement. They further submit that as per the Arbitration Clause, the nature of dispute does not fall within the parameters of the Arbitrator and has rightly been dismissed by the Additional District Judge.

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

On going through the contents of the provisions of

Arbitration Clause, I am of the view that the dispute vis-a-vis claim of interest on delayed payment falls within jurisdiction of the Arbitrator and the appellant had rightly invoked the jurisdiction of Clause 24 by filing the application. At the instance of the appellant, the matter was referred to the Arbitrator before whom, despite raising of such objection, the same was declined. Once the claimant-firm did not have any remedy to file the objection or appeal against rejection of objection, it rightly availed statutory remedy by filing objection vis-a-vis jurisdiction of Arbitrator. The Court below while entertaining the objections found that nature of the dispute falls within the realm of provisions of the New Act and not under the Act. The argument of Mr.Vinod S.Bhardwaj, learned counsel for the appellant, qua not relegating the matter to the Facilitation Centre is not sustainable in the eyes of law, in view of the ratio decidendi culled by the aforementioned judgment rendered by a Co-ordinate Bench of this Court, ibid. Even otherwise, as observed above, I find that Arbitration Clause did not envisage the adjudication of the dispute raised by the claimant. The operative part of the order of the Court below, whereby, the parties have been relegated to approach the Industry Facilitation Council, reads thus:-

> *"I have considered respective submissions and have carefully gone through record of the case. There is no dispute regarding the fact that petitioner had earlier filed a suit for declaration to the effect that it was entitled to*

interest under the Act of 1993. On an application moved by respondent Corporation under Section 8 of the Act, matter was referred to ld. Arbitrator by the Civil Court. As per Section 6 of the Act of 1993, supplier could have pursued his remedy either by way of a suit or other proceedings under any law for the time being in force. Subsequently, the Act of 1993 was amended and a provision was made to create Industry Facilitation Council under the said Act. However, despite said amendment, there was a provision under the Act to pursue the matter through any other proceedings provided under law. In Section 32 of the New Act whereby the Act of 1993 had been repealed, it had been provided that any action taken under the Act of 1993 would be deemed to have been taken under corresponding provisions of the New Act. As such, in my considered opinion, it cannot be said that after enactment of the New Act, ld. Arbitrator who had already been dealing with the reference under the Act of 1993, seized to have jurisdiction to deal with the matter. However, as has been discussed above, impugned award passed by the Arbitrator is not sustainable in the eye of law as the same is against public policy and ld. Arbitrator had misconducted himself while passing the impugned award. The matter is again to be referred for arbitration *after setting aside the award. However, in view of the provisions of the New Act, it would be advisable if the matter is now sent to the Industry Facilitation Council created under the New Act, as the same has been formed particularly to deal with the matters of interest on delayed payments to Small Scale Industries under the New Act. This view of mine find further support from the observations made by Hon'ble Punjab and Haryana High Court in a similar case with similar facts titled as Punjab State Electricity Board through its Secretary, The Mall, Patiala vs. M/s Deekay Mechnical Works, Tunga Road, village Sibian, Sangrur passed in FAO No.4401 of 2008 decided on 3.8.2011, wherein without going into other merits of this matter, it had been observed by Hon'ble High Court that after amendment of the Act of 1993, only Industry Facilitation Council was the proper Forum to decide the matter.*

31. No other point was raised or argued by ld. Counsel for the parties. Accordingly, this issue is decided in favour of petitioner/objector and against the respondent corporation.

32. Consequent to my findings above, objection petition filed by the petitioner succeeds and is hereby allowed. Impugned award dated 21.7.2008 passed by ld.

Arbitrator is hereby set aside. However, parties are left to bear their own costs. The matter is referred to Industry Facilitation Council created under the Micro, Small and Medium Enterprises Development Act, 2006 to decide the matter as per law expeditiously. Record of Arbitrator be returned against proper receipt. Counsel fee is assessed at Rs.1000/-. Memo of costs be prepared. File be consigned to the record room, complete in all respects."

The Additional District Judge has also taken into consideration the judgment dated 03.08.2011 passed by a Co-ordinate Bench of this Court in FAO No.4401 of 2008 titled as Punjab State Electricity Board through its Secretary, The Mall, Patiala vs. M/s Deekay Mechnical Works, Tunga Road, village Sibian, Sangrur. It has been submitted that the said judgment had attained finality and appeal against the same has not been filed before the higher authority.

For the reasons stated above, the order under challenge before this Court is perfectly legal and fair, much less, in accordance with law. Accordingly, the same is upheld and the appeals are dismissed being devoid of merit.

(AMIT RAWAL)
JUDGE

August 18, 2015
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