

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

FAO No.1907 of 2015
Date of decision : 21.10.2015

Dakshin Haryana Bijli Vitran Nigam

...Appellant

Versus

M/s Jitco Overseas Projects & 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. P.S. Rana, Advocate for the appellant.

Mr. Puneet Bali, Sr. Advocate with
Mr. Vibhav Jain, Advocate for respondent No.1.

AMIT RAWAL, J. (Oral)

The appellant-Nigam is in First Appeal against the order dated 06.10.2014, whereby application under Section 34 of Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act'), has been dismissed.

Mr. P.S. Rana, learned counsel appearing on behalf of appellant submits, that award of the Arbitrator is not in consonance with the terms and conditions of the agreement inasmuch as that on plain and

simple reading of the alleged reasoning, the award tantamounts to re-writing of the terms and conditions of the contract which as per Section 28 of the Act, is not permissible. In fact, there were two contracts C/PLG8 and C/PLG9 which are allotted to respondent No.1. C/PLG8 had 3 works and C/PLG9 had 5 works in total 8 works. The Arbitrator erroneously mis-interpreted the terms and conditions of the contract by holding that work was to start from the issuance of work order not from the letter of intent. The counter claim filed on behalf of appellant was vis-a-vis non-completion of the work at Adampur/Siswal railway line as the Contractor not completed the work in time and the same was got done at the risk and cost of contractor and, therefore, claimed penalty of ₹5,34,950/- but the Arbitrator has erroneously reduced the same to the tune of ₹1,56,950/-, thus, there is illegality and perversity in the order. The aforementioned facts have not been noticed by Objecting Court in essence, objections filed were within the parameters of Section 34 of the Act.

Mr. Puneet Bali, learned Senior Advocate assisted by Mr. Vibhav Jain, Advocate for respondent No.1, submits that as per the award, work of the Mohhamadpuria, Sub Station and commissioning of Sub Station, Nangthala and Khanak was complete. The alleged termination/notice vide Annexure R-19 was served on 05.06.2009, whereas work had been completed much prior thereto. The Arbitrator accepted the counter claim in part, whereby liquidated damages to the tune of ₹5,40,000/-, at the rate of 5% p.a. of the contract value has been

awarded as per provision of Section 73 of the Indian Contract Act.

He further submits that scope of interference in the appeal filed under Section 37 of the Act in view of law laid down in Associate Builder is restricted, in essence, objections filed on behalf of Nigam were not within the provision of Section 34 of the Act and thus prays for dismissal of the appeal.

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

Noticing the aforementioned contentions and rival contention of the parties to the lis, I am of the view that appellant has been suitably compensated in view of work of Adampur/Siswal, having been completed by the Contractor while granting the benefit of liquidated damages of ₹5,40,000/- at the rate of 5% p.a. vis-a-vis counter claim of the penalty of ₹5,34,950/-. The Arbitrator found that certain Civil work was not granted/entitled to the Contractor on time and, therefore, did not grant the claimed amount and awarded sum of ₹1,56,950/- @ 5% p.a.. Even otherwise counter claim No.3 to the tune of ₹26,05,150/- has also been decided in favour of appellant-Nigam.

There is another aspect of the matter. Nigam has also been held entitled to the recovery of sum of ₹41,061,569/- as price of power transformers supplied at Khanak, Mohamadiki and Nangthala as well as station power transformers at Khanaki and Mohammadki on the ground that there was no evidence that work was got completed from any alternative source.

The aforementioned counter claim was, with regard to the work having got done at the risk and cost of the contractor. The Arbitrator in my view found that since the Nigam had been writing letters to the Contractor to complete the work before termination of the contract, Nigam cannot take the aid of provision of terms and conditions of the contract in strict sense as the time was not essence of the contract. In other words, time was flexible.

Noticing the aforementioned fact, Arbitrator found certain claims of the contractor, to be justified.

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 or for want of reasons 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 award read as a whole is just, fair and reasonable. It is now a settled law that the Arbitrator or Committee is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

I do not find any illegality and perversity in the order based on the oral and documentary evidence.

Accordingly, appeal is dismissed.

21.10.2015

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**(AMIT RAWAL)
JUDGE**