

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.3858 of 2014 (O&M)

Date of decision: 26.03.2015

Municipal Corporation, Chandigarh

..... Appellant

versus

M/s Jai Bharat Construction Co. and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Sanjeev Sharma, Senior Advocate with
Mr.Sanjeev Ghai, Advocate for the appellant
Mr.Sanjeev Bansal, 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.

Municipal Corporation, Chandigarh has filed this appeal against the judgment dated 2.12.2013, passed by the learned Additional District Judge, Chandigarh, whereby application under Section 34 of the Arbitration and Conciliation Act, 1996 (in short, 'the Act'), filed by the appellant against award dated 20.4.2009 rendered by respondent No.2 -Arbitrator, was dismissed.

The facts of the case are that the Municipal Corporation, Chandigarh awarded work order No.8936-40 dated 8.10.2001 to respondent No.1 – claimant regarding construction of 2 Mg capacity clear water under ground Reservoir (UGR) at Water Works in Sector 39, Chandigarh at the cost of Rs.74,06,907/-. The work order was

subsequently enhanced to Rs.1,26,23,193/- vide letter No.3694 dated 10.6.2004. The work was completed on 22.3.2005. An amount of Rs.1,01,901/- was paid on 26.7.2005 vide cheque No.311956 towards full and final payment of the work. At that time, no dispute was raised. The entire payment of Rs.1,26,21,818.57 has been made to respondent No.1 after effecting the recoveries as mentioned in the final bill. However, later on, respondent No.1 invoked the clause No.25A of the agreement and got the matter referred to the Arbitrator. Before the Arbitrator, the following two claims were raised:-

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|------------|---|
| Claim No.1 | Under payment of Base Slab of UGR amounting to Rs.10,74,150/- |
| Claim No.2 | Non-payment of dewatering during the extended time period of contract amounting to Rs.10,87,500/- |

The Arbitrator allowed both the claims and awarded a sum of Rs.28,68,662/- inclusive of pendente lite interest. It is stated that respondent No.2- Arbitrator has misconducted himself in delivering the award and that the award is against the provisions of Contract Act, 1872, CSR (Common Schedule of Rates) and the Scheme of the Arbitration and Conciliation Act, 1996.

Municipal Corporation, Chandigarh challenged the award dated 20.4.2009 by way of filing objections under Section 34 of the Arbitration and Conciliation Act, 1996 before learned Additional District Judge, Chandigarh. Vide the impugned judgment dated 2.12.2013, the objections were dismissed.

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

The admitted position is that initially, the work order was issued on 8.10.2001 for Rs.74,06,907/- and vide letter dated 10.6.2004, the scope of work was enhanced to Rs.1,26,23,193/-. 2 Mg capacity clear water under ground Reservoir at Water Works in Sector 39, Chandigarh was to be constructed. The claim Nos.1 and 2 are reproduced as under:-

Claim No.1 Under payment of Base Slab of UGR amounting to Rs.10,74,150/-. Counter Claim – Rs.1956024, which is recoverable from claimant.

Claim No.2 Non-payment of dewatering during the extended period amount to Rs.10,87,500.

Discussion on Claim No.1 is taken up first.

It is the case of the claimant contractor that for the base slab, he prepared running bill No.5 dated 26.6.2003, on the basis of rates quoted against CSR item No.10.17 which is Rs.2750 per cum and the payment was accordingly made to him after checking the bills and approving it. After the change of Superintending Engineer of the Municipal Corporation, the new Superintending Engineer was of the opinion that the rate of CSR item No.10.17 has been wrongly applied for making the payment on base slab and correct applicable rates for the slab as per CSR item No.10.22 which is Rs.1760 per cum and are cheaper by Rs.990/- in comparison to CSR No.10.17. Therefore, after applying CSR No.10.22 the excess amount was recovered from the subsequent bill.

Now the question is as to whether for the base slab, rates as per CSR No.10.17 are to be applied or 10.22 are to be applied. The Arbitrator took the view that rates as per CSR 10.17 are to be applied and accordingly, allowed the claim. The counter claim was accordingly rejected. It is necessary to reproduce CSR item No.10.17 and 10.22, which are reproduced as under:-

- 10.17 *Reinforced cement concrete work hand mixed 1:2:4 for slab excluding steel reinforcement but including the cost of centring & shuttering laid in position complete in all respect.*
- 10.22 *Reinforced cement concrete work hand mixed 1:2:4 in foundation including footing strips or raft foundation etc. excluding steel reinforcement but including the cost of centring & shuttering laid in position complete in all respects.*

Learned counsel for the appellant has argued that rate of roof slab cannot be applied for base slab. Two items are distinct. He has argued that CSR item No.10.22 clearly shows that the foundation including footing strips or raft foundation etc. excluding steel reinforcement but including the cost of centring and shuttering laid in position complete in all respects, whereas in item No.10.17, the slab excludes steel reinforcement but includes the cost of centring and shuttering, which shows that 10.17 applies in case of roof slab and 10.22 applies in case of base slab. It is further contended that in this way, the Arbitrator misconducted himself in allowing the claim and learned Additional District Judge has also erred in dismissing the objections.

Undisputedly, the original drawings were changed and the revised work order was placed whereby the cost of the project was

enhanced from 74,06,907/- to Rs.1,26,23,193/-. A copy of the such design is Annexure A6. The examination of the same shows that in the drawing, base slab was also to be laid in addition to the foundation columns and foundation retaining wall. The slab does not find mention in CSR item No.10.22, where there is mention of footing strips or raft foundation etc.

Learned counsel for the respondent has argued that in this case, it was found that on digging earth, the velocity of the underground water was such that in addition to the foundation, base slab had to be constructed to stop the gushing out of water from the base and it is for this reason that the original design was revised and cost of the project also escalated.

Learned counsel for the appellant has argued that there are foot note No.6 in the tender letter which shows that the roof slab talks of something constructed at the higher level, where the shuttering is required. However, letter Annexure A3 whereby the work order was issued, does not find mention of foot note No.6 in CSR item No.10.22 or 10.17.

The law on account of which this Court can interfere in the award passed by the Arbitrator is well settled.

In M/s Navodaya Mass Entertainment Ltd. v. M/s J.M. Combines, Civil Appeal Nos.7128-7129 of 2011, decided on 26.8.2014, it was observed by the Hon'ble Apex Court as under:-

6. In our opinion, the scope of interference of the Court is very limited. Court would not be justified in reappraising the material on record and substituting its own view in

place of the Arbitrator's view. Where there is an error apparent on the face of the record or the Arbitrator has not followed the statutory legal position, then and then only it would be justified in interfering with the award published by the Arbitrator. Once the Arbitrator has applied his mind to the matter before him, the Court cannot reappraise the matter as if it were an appeal and even if two views are possible, the view taken by the Arbitrator would prevail. (See: Bharat Coking Coal Ltd. Vs. L.K. Ahuja, (2004) 5 SCC 109; Ravindra & Associates Vs. Union of India, (2010) 1 SCC 80; Madnani Construction Corporation Private Limited Vs. Union of India & Ors., (2010) 1 SCC 549; Associated Construction Vs. Pawanhans Helicopters Limited, (2008) 16 SCC 128; and Satna Stone & Lime Company Ltd. Vs. Union of India & Anr., (2008) 14 SCC 785.)

Learned counsel for the appellant has further relied upon the following authorities:-

- 1. Oil & Natural Gas Corporation Ltd. v. SAW Pipes Ltd., 2003(2) RCR (Civil) 554*
- 2. Delhi Development Authority v. M/s R.S.Sharma & Co. New Delhi, 2008(4) RCR (Civil) 165*
- 3. M/s Rashtriya Chemicals & Fertilizers Ltd. v. M/s Chowgule Brothers & Ors., 2010(3) RCR (Civil) 769*
- 4. J.G. Engineers Pvt. Ltd. v. Union of India and another 2011(3) RCR (Civil) 683*

5. *Steel Authority of India Ltd. v. Gupta Brother Steel Tubes Ltd.* 2010(1) RCR (Civil) 101

6. *Royal Education Society v. LIS (India) Construction Company Private Ltd.* 2009(2) SCC 261

7. *Hindustan Zinc Ltd v. M/s Friends Coal Cabonisation* 2006(2) RCR (Civil) 619

8. *Oil and Natural Gas Corporation Limited v. Western Geco International Limited*, (2014) 9 Supreme Court Cases 263

9. *Voltas Limited v. Rolta India Limited* 2014(3) RCR (Civil) 378.

It has been argued that it is a public money and that the Arbitrator misconducted himself in allowing claim No.1.

I am of the view that there is no misconduct on the part of the Arbitrator. The Arbitrator adopted one line of reasoning which has its basis, as coming out from the above noted discussions. Since the word 'slab' was used in the contract, the Arbitrator took the view that CSR item 10.17 will apply. However, in CSR item 10.22 word 'slab' is not used. Slab is distinct from other structure. Therefore, this Court does not find any ground to interfere in the award passed by the Arbitrator as well as judgment passed by the learned Additional District Judge, Chandigarh. Accordingly, the finding of learned Additional District Judge, Chandigarh, rejecting the objections of appellant on claim No.1, are affirmed.

Now coming to claim No.2, it is stated that the original date of completion of work was for 12 months from the date of

issuance of the work order on 8.10.2001. It is also not disputed that the design was changed and the work order was also revised and value increased to Rs.1,26,23,193/-. The time was also extended upto 31.3.2005.

Learned counsel for the appellant has argued that once the base slab was laid, there is no question of dewatering. In the contract, a fix sum of Rs.4,50,000/- was provided. There is nothing on file to show that even after the initial period of 12 months, any dewatering was required, or was done for next 35 months i.e. till 15.3.2005. The Arbitrator, arbitrarily applied the formula of granting Rs.8,62,500/- to the contractor by dividing Rs.450000 by 12 to find out the charges for one month and accordingly, multiplied it by 23. It has been argued that when the final bill was submitted on 31.3.2005, no claim for dewatering was made.

On the other hand, learned counsel for the respondent has contended that even after the base slab was laid some weight has to be put on the same by foundation walls and the roof slab to ensure that the underground water does not gush out and damages the base slab and foundation. Therefore, continuously dewatering was required.

I am of the view that the claim for dewatering is imaginary. In the contract, a fix sum of Rs.4,50,000/- was to be awarded. Once, the work of foundation slab is completed, the underground water cannot gush out and no dewatering is required.

Contention of learned counsel for the respondent that weight of the foundation retaining wall and foundation column and

roof slab is required to protect the base slab is without any force.

There is nothing on file to show that until the roof slab was laid and the entire work was completed, underground water kept gushing out and dewatering was required. Had the underground water gushed out even after laying base slab, then there would have been some damage to the foundation and base slab. Moreover, when the final bill was submitted it was not claimed that dewatering for extended period had to be done.

The Arbitrator has noted that payment for earth excavation was done on 12.6.2002. Therefore, it is assumed that excavation work started two months prior to this date and started on 15.4.2002 on which date, dewatering system must have been established. In the absence of any proof that even after laying the foundation and foundation slab, underground water was gushing out and any dewatering was required, the Arbitrator without any basis could not grant claim of the claimant- respondent for a sum of Rs.8,62,500/- on the basis of his own calculations and formula. The claim can be granted only on the basis of the facts established before the Arbitrator. There was no evidence that dewatering had to be done beyond the initial period of 12 months and that after laying the foundation and foundation base slab, the underground water was still gushing out from the foundation and base slab or sides, which would have partly damaged the structure, and dewatering was required. As such, claim No.2 was allowed without any evidence and on the basis of imagination, surmises and conjectures. Therefore, this Court can interfere in the award of the Arbitrator to disallow such

claim to protect the public money from going into the pocket of the contractor without any basis. As such, the claim No.2 awarded by the Arbitrator is hereby set aside and so are the findings of learned Additional District Judge, Chandigarh on claim No.2.

As a result of the foregoing discussions, the appeal is partly allowed and amount awarded under claim No.2 passed by the Arbitrator is hereby set aside and consequently, the findings of learned Additional District Judge, Chandigarh regarding claim No.2 are also set aside. Remaining part of the award and the order of the learned Additional District Judge, Chandigarh is maintained.

26.03.2015
gk

(Kuldip Singh)
Judge