

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

FAO No.4792 of 2013 (O&M)

Date of decision : 30.10.2015

Union of India

...Appellant

Versus

M/s Tarlochan Singh & Company and 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. A.K. Bansal, Advocate for appellant.

Mr. P.S. Rana, Advocate for respondent No.1.

AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the order dated 06.04.2013, whereby objection filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') against the award dated 12.07.2008, whereby compensation of ₹3,13,739/- alongwith 12% p.a. interest from the date of award, has been awarded in favour of Contractor, has been dismissed.

Mr. A.K. Bansal, learned counsel appearing on behalf of appellant-Union of India submits, that Arbitrator has misread/misinterpreted the Clauses 36 and 48 of the Contract and inasmuch as that Contractor was not liable to be compensated any amount as the roof raised had collapsed and, thereafter, fresh designs were submitted and the roof was again laid, for that additional cost was paid to the Contractor. He has drawn the attention

of this Court to Clauses 36 and 48, which read thus :-

“36. Precautions against Risks – *The Contractor shall be responsible at his own expense, for precautions to prevent loss or damage from any and all risks other than for Accepted risks and to minimise the amount of any such loss or damage and for the provision of all protective works, casings, coverings, etc., required for the purpose, until the works have been handed over complete to the Engineer-in-Charge.*

All Government buildings rented to the Contractor for workshops or stores shall be insured by the Contractor in favour of Government to their full value against risk of loss or damage from whatsoever cause arising other than the accepted risk, and the policy of insurance and receipts for premiums shall be produced when required by the G.E., provided always that where part only of a building is rented to the Contractor he will be required to insure the building only if used by him for the purpose of storing or using materials of a combustible nature, as to which the decision of the G.E. Shall be final and binding.

The Contractor shall provide all watchmen necessary for the protection of the site, the works and of materials and plant and all things on the site during the progress of the works, and shall solely be responsible for and shall take all reasonable and proper steps for protecting securing, lighting and watching all places on or about the works and the site which may be dangerous to any person whomsoever.

48. Damage and loss – *(a) All plant, temporary building, equipment and things on the site provided by or on behalf of the Contractor for the construction of, but not for incorporation in the works shall stand at the risk and be in the sole charge of the Contractor and the Contractor*

shall be responsible for, and with all possible speed make good, any loss or damage thereto arising from any cause, whatsoever, including the accepted risk.

(b) Save as above, the works and all materials and things whatsoever including such as may have been provided by Government on the site in connection with and for the purpose of the Contract shall stand at the risk and be in the sole charge of the Contractor and the Contractor shall be responsible for, and with all possible speed make good, any loss or damage thereto arising from any cause whatsoever, other than the accepted risks and shall deliver up all the works to the Engineer-in-Charge in a clean state, complete in every particular.

In the event of any loss or damage to works and materials on the site from any of the accepted risks, or loss or damage from accepted risk and fire to Government buildings handed over to contractor for execution of works referred to in Condition 47, the following provisions shall have effect -

(i) the Contractor, shall, as may be directed in writing by the Engineer-in-Charge, remove from the site any debris and so much of the works as shall have been damaged taking to the G.E.'s store such articles and/or materials as may be directed;

(ii) the Contractor shall, as may be directed in writing by the Engineer-in-Charge, proceed with the erection and completion of the works under and in accordance with the provisions and conditions of the Contract; and

(iii) there shall be added to the Contract Sum the net amount due, ascertained in the same manner as for deviations or as prescribed for payment, in respect of the re-execution of the works lost or damaged, the replacement of any materials and things lost or damaged but not

incorporated in the works at the date when the loss or damage occurred, and the removal by the Contractor as provided above the debris and damaged work referred to therein.

Provided always that the Contractor shall not be entitled to payment under this condition in respect of so much loss or damage as has been occasioned by any failure on his part to perform his obligations under the Contract.

(c) Save as provided above, the Contractor shall at his own expense reinstate and make good to the satisfaction of the G.E. or make compensation for any injury, loss or damage occasioned to any property or right whatever including property and rights of Government (or agents, servants or employees of Government) being injury, loss or damage arising out of or in any way in connection with the execution or purported execution of the Contract and further, the Contractor shall indemnify Government against all claims enforceable against Government (or any agent, servant or employee of Government) or which would be so enforceable against Government were Government, a private person, in respect of such injury (including injury resulting in death), loss or damage to any person whomsoever or property, including all claims which may arise under the Workmen's Compensation Act or otherwise.”

and, therefore, objections were within the parameters of the provision of Section 34 of the Act and, thus, prays that Objecting Court has wrongly declined the objections as there is gross illegality and perversity.

Mr. P.S. Rana, learned counsel appearing on behalf of Contractor submits, that Arbitrator on the basis of the reports submitted by

the Punjab Engineering College, found that lapse was not on the part of the Contractor alone, but it was on both the parties. He further submits that Arbitrator found that without laying of sub-base in the main building and the ballies were allowed to rest on loose filled up earth rather than on sub-base and, thus, prays that Contractor has not been compensated for the entire loss but only liability which has been casted upon Union of India. He further submits that objections were not within the parameters of Section 34 and rightly so, have been dismissed.

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

It would be apt to reproduce the relevant paragraphs of the award which demonstrates that Arbitrator after examining the report of the Punjab Engineering College had assigned valid reasons in forming an opinion:-

“The experts from Punjab Engineering College, Chandigarh inspected the site on 1 & 3 Jul 93 & submitted their report to U of I on 07 Jul 93. They brought the possible cause of collapse of roof slab as shuttering failure which took place because of soil failure underneath the ballies. There was some filled up clayey soil. During the concreting & curing process some water trickled down on ground due to which filled up clays soil get wet & lost its bearing strength and could'nt stop ballies to slip & caused slab to collapse.

. Revised drg/design was provided by the U of I to contractor wherein steel trusses were there in lieu of RCC beams & pre cast concrete slab covering were there in lieu of RCC roof slab. In addition, certain strengthening

measures were also there which were not there in the original design/drg.

. The above changes were regularized by U of I through a deviation order no.11(p) wherein already casted beams/slab including shuttering/reinforcement were omitted.

83. It could be seen from the followings that both U of I & Contractor were responsible for collapse of roof slab:-

. U of I allowed to commence the work of shuttering without laying of sub base in main bldg. Ballies were allowed to rest on loose filled up earth rather than on sub base.

. There were gaps found between the shuttering plates where from water was allowed to trickle down on ground which made the soil wet & resulted to loose its bearing strength & couldn't stop ballies to slip.

. U of I allowed non monolithically casting of roof slab with inverted beams & hence allowed the complete dead/live/impact load of slab to soil through the ballies for which they were not designed for.

84. From the above, I conclude that the collapse of roof slab occurred due to fault of both the sides; hence the financial burden should also be shared by both the parties in equal ratio. Contractor has spilted his claim in six parts. These are now discussed one by one as under;”

In my view, reasons assigned by the Arbitrator are not contrary to the report and, therefore, the objections raised could not be said to have been totally opposite to the terms and conditions of the agreement referred above.

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.

There is no illegality and perversity in the order.

Appeal is dismissed.

30.10.2015

pawan

**(AMIT RAWAL)
JUDGE**