

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

FAO No.5883 of 2015 (O&M)

Date of decision : 08.09.2015

Haryana Power Generation Corporation Ltd. and ors.

...Appellants

Versus

M/s Raj Kishan & 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. Lokesh Sinhal, Advocate for appellants.

AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the impugned order dated 27.03.2015, whereby objections filed under Section 34 of Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') against the award dated 22.12.2008, have been dismissed.

Mr. Lokesh Sinhal, learned counsel appearing on behalf of appellants submits that as per Clause 84 of General Condition of the Contract, it was agreed between the parties, that no person other than the one appointed by the Chairman/Chief Engineer shall act as an Arbitrator and if for any reason, it was not possible to appoint such Arbitrator, the matter shall not be referable to the arbitration and parties will be given liberty to avail the civil remedy.

In the instant case, Department as per facts and circumstances of the matter did not think it fit to refer the matter to the Arbitrator to be appointed by the Chairman/Chief Engineer, but yet under the intervention of this Court under Section 11(6), Arbitrator had been appointed. However, Objecting Court did not deal with objections particularly with regard to the fact that Arbitrator had not assigned any reasons for rejecting counter claim.

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

It is a matter of record that Arbitrator was appointed under provision of Section 11(6). In case appellants had any grievance, such objections could have been taken at the relevant point of time. Be that as it may. Even before the Arbitrator, the appellants had remedy to challenge its jurisdiction by invoking the provision of Section 16 of the Act. Having not done so, the parties have submitted to the reference entered by the Arbitrator for, such, plea for the first time cannot be taken in the objection under Section 34. Since no evidence was led in support of counter claim, the Arbitrator did not consider it to deliberate, much less, ponder on the same.

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.

In view of what has been observed above, there is no illegality and perversity in the order under challenge, much less, no interference is warranted.

Appeal is devoid of merits.

Same is accordingly dismissed.

08.09.2015

pawan

**(AMIT RAWAL)
JUDGE**