

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

**FAO No.7035 of 2015 (O&M)
Date of decision: 14.10.2015**

Haryana State Agriculture Marketing Board ... Appellant

Vs.

Smt. Promila 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. Sandeep Moudgil, Advocate, for the appellant.

AMIT RAWAL J. (Oral)

The appellant-objector is in First Appeal against the order dated 12.02.2015, whereby, the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 1996, Act), for setting aside the Award dated 27.06.2011, have been dismissed.

Mr. Sandeep Moudgil, learned counsel appearing on behalf of the appellant-objector submits that Arbitrator has relied upon the evidence which was not admissible in law, as it ignored the measurement book. Had that book been taken into notice the result would have been otherwise. The Arbitrator committed material

illegality in relying upon the report of Local Commissioner and Superintending Engineer, which does not bear the signatures of the members. There was a difference in calculation as has been fixed by the Arbitrator. The Arbitrator did not afford any opportunity of hearing to the appellant-department and ignored all the material aspects.

I have heard learned counsel for the appellant-objector and appraised the paper book.

The objecting Court while rejecting the objections gave the following findings which read thus:-

“9. This Court has pursued the original file of the arbitrator which goes to show this fact that Executive Engineer/petitioner Haryana State Agricultural Marketing Board Rohtak has authorized number of times to his SDO to appear before the Arbitrator in the arbitration proceedings. So, by stretch of any imagination, it cannot said that opportunity of hearing was not given to the petitioner by respondent No.2 while adjudicated the dispute/point of the difference arise between the petitioner and respondent No.2 with regard to the above said works. Arbitrator Amar Singh Superintending Engineer Haryana State Agricultural Marketing Board Panchkula has passed the Award in favour of respondent No.1 and award is speaking one, as, he has discussed all the cases/claims between the parties and he has also

given reasons to determine the controversy between the petitioner and respondent no.1.

As far as, contention of learned counsel for the petitioner with regard to Superintending Engineer Prem Singh is concerned, same is devoid of merit because as per contention of learned counsel for the petitioner, Arbitrator has appointed Superintending Engineer Prem Singh as Local Commissioner to measure the side and to submit his report regarding the controversy between the parties with regard to above said work and the Arbitrator has passed the award on the basis of the report of Superintending Engineer Prem Singh. This contention of the learned counsel for the petitioner is devoid of merit and same is not forceful because it is an admitted fact that Arbitrator was appointed on 10.10.2007 by the Chief Arbitrator Haryana State Agricultural Marketing Board Panchkula. From the perusal of the file of the Arbitrator, it is revealed that there is report regarding final measurement of late Ranbir Singh submitted by Prem Singh the then Superintending Engineer, Haryana State Agricultural Marketing Board, Gurgaon but this report is of dated 23.12.2003, so question does not arise that the Arbitrator can pass the order to Superintending Engineer Prem Singh before about 4 years from the date of his

appointment as Arbitrator as he was appointed as Arbitrator in the year 2007 and this report is of the year 2003. So by stretch of any imagination, the Arbitrator cannot appoint Local Commissioner to Superintending Engineer Prem Singh in the year 2003 while he was appointed as Arbitrator in the year 2007. So, it cannot be said that Arbitrator has passed the Award after relying upon the report of Superintending Engineer Prem Singh and erred in ignoring the entries made in the measurement book at the time of final measurement made by the committee consisting of two SDOs and JE and petitioner has stopped to say that Arbitrator has wrongly passed his Award on the wrong report of Prem Singh the then Superintending Engineer Gurgaon.

10. As far as Award dated 27.06.2011 is concerned, same cannot be set aside in the present case. The petitioner has failed to prove on record that Arbitrator has mis-conducted himself by passing the award and Arbitrator has exercised his power beyond his jurisdiction. It is not the case of the petitioner that arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission of arbitration. Moreover, this Court is not to sit

in appeal against the award of the Arbitrator. The Arbitrator has passed the award after appreciating the evidence produced before him. From the perusal of the award dated 27.06.2011, it is revealed that it is speaking one and the grounds, which are mentioned in this application are not sufficient for setting aside the award. So, there is no cogent and convincing reason on the file which goes to show this fact that the award in question is liable to be set aside.”

The aforementioned finding, in my view, does not suffer from illegality, much less, perversity as the scope of interference in entertaining the objections is very limited. None of the objections filed on behalf of the appellant would reveal that the same falls within the parameters of Section 34 of the 1996 Act.

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 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 Arbitrator has dealt with the dispute which was contemplated and was within the scope of it. In my view the award of the Arbitrator does not suffer from any illegality in as much as the Arbitrator who is expert has dealt with the matter and decided the claim of respective claimants to the parties to the *lis*.

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

In my view, no error of law arise from the award. The award is perfect and justified and all the objections filed against the same were wholly misconceived.

There is no merit in the aforementioned appeal. The

same is accordingly dismissed.

(AMIT RAWAL)
JUDGE

October 14, 2015
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