

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

F.A.O.No.7516 of 2015 (O&M)

Date of Decision: November 19, 2015

Municipal Corporation, through its Commissioner, Rohtak

...Appellant

Versus

Sanjay Kundu Contractor & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers 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?

**Present: Mr.Pardeep Rajput, Advocate,
for the appellant.**

**Mr.Rajesh Goyal, Advocate,
for respondent No.1.**

AMIT RAWAL, J. (Oral)

The appellant-Municipal Corporation is in Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short “1996 Act”) against the order dated 20.7.2015, whereby the objections filed under Section 34 of 1996 Act for setting-aside of the award dated 9.1.2015, have been dismissed.

Mr.Pardeep Rajput, learned counsel appearing on behalf of the appellant-Corporation submits that the work for construction of the road was to be completed within a period of nine months. The contract was allotted on 22.8.2009, but the contractor did not complete the work and, therefore, the Corporation levied a penalty as per the terms and conditions of the contract and deducted the same from the security deposited by the

contractor. The Arbitrator and the Objecting Court have committed illegality and perversity in not noticing the aforementioned fact. However, the Arbitrator noticed that there was some complaint and, therefore, the work was stopped. The complaint is of the year 2012 and, thus, it is beyond the stipulated period of nine months, therefore, the contractor cannot be given the benefit and, thus, prays for setting-aside of Claim No.3.

Mr.Rajesh Goyal, learned counsel appearing on behalf of respondent No.1-contractor submits that the imposition of the penalty was not on the basis of the complaint, but owing to the aforementioned factors also, i.e., non-availability of water and sewerage in two colonies, namely, Ajit and Amrit. This fact has been noticed by the Objecting Court in paragraph 11 of the order and, thus, prays that once the work was stopped by the Corporation, it was not within the realm of the Corporation to impose the penalty and deduct the same from the security and, thus, prays for dismissal of the appeal.

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

It would be apt to reproduce the findings of the Arbitrator vis-a-vis Claim No.3 and as well as of the Objecting Court, which read thus:-

“Findings of the Arbitrator

“Claim No.3 (Claim on account of work deduction from security amount and final bill by the Respondent vide memo No.MCR/XEN-II/2014/5365 dated 18.3.2014 and the amount is refundable to the claimant as per law=Rs.27,10,000):-

The Claimant has requested for refund of deduction made from the security on account of action taken by the Respondent vide memo No.MCR/XEN-II/2014/5365 dated 18.3.2014. I find that the work was allotted to the contractor

vide letter No.292/ME dated 22-08-2009 and the contractor completed approximately 70% work within stipulated time period. However, work was stopped due to some complaint and the contractor was not issued any letter further for next Four years for completion of this work. After a lapse of four years he has been directed to complete the balance work and penalty under Clause-II was imposed against him. I find that imposition of penalty under Clause-II after such a long gap is not within allotted time period and justified. Accordingly, this claim of the Claimant Contractor is accepted. I award Rs.27.10 Lacs (Rs.Twenty Seven Lacs and ten thousand) in favour of the Claimant.”

Findings of the Objecting Court

“It is borne out from the documents placed on the file that the contractor was not at fault for not completing the work in time. There were two reasons for not completing the work in time. One reason was that there was no facility of water and sewerage in Amrit and Ajit Colonies and a decision was taken by the authorities on a report submitted by the Junior Engineer that till the time sewerage and pipe lines were not laid in those colonies, the work of construction of road be kept on hold. Second reason was that certain complaints were made regarding allotment of work to Sanjay Kundu Contractor at higher rates by the Executive Officer and use of substandard material by the contractor. To find truth in the allegations, the enquiry was entrusted to Vigilance Department. After holding enquiry two enquiry reports were submitted and in one report it was suggested to take action against the contractor under clause-II of the contract for not completing the work within stipulated period. It was solely on the basis of said report penalty of Rs.27.10 lac was imposed upon the contractor for not completing the work in time. Had the contractor been at fault for not completing the work in time, then the department would not have waited for four years to impose penalty and

would have taken the steps to get the work completed at the earliest in the year 2010 itself. As stated above, the Vigilance Department submitted two reports. In one report it explained the reasons of not completing the work in time and in the second report without going through the question whether there were sufficient reasons or not for not completing the work in time imposing of penalty upon the contractor by invoking the provisions of clause-II of the agreement was suggested. The arbitrator took note of said fact and held that for four years the contractor was not issued any letter for completing the work and it was only after four years, he was directed to complete the work and penalty was imposed which was not justified.”

From the perusal of the aforementioned findings, it is evident that the sole ground for not completing the work was non-availability of water and sewerage and in this regard, a report had been submitted by the Junior Engineer that till the time sewerage and pipe lines were not laid, the work of construction of the road be kept on hold. In view of such situation, the appellant-Corporation could not have imposed penalty, much less, deducted the same from the security deposited by the contractor. I do not intend to differ with the findings. The objections cannot be said to be within parameters of Section 34 of 1996 Act.

It is now a settled law that in what circumstances, the award has to be interfered with. The question, which is now 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 34 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 judgments, 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 embark on a path by substituting its own view in support of the Arbitrator's 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 its scope. The parties to the *lis* had participated in the proceedings and were given proper notice not only with regard to the appointment of the Arbitrator but vis-a-vis proceedings. 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 claims of respective parties to the *lis*.

In my view, 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.

The appeal is accordingly dismissed.

November 19, 2015
ramesh

(AMIT RAWAL)
JUDGE