

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

FAO No. 4770 of 2007

Date of decision: 28.5.2016

Haryana State Electricity Board

.....Appellant.

Versus

M/s Raj Kishan and Company and others

.....Respondents.

CORAM: - HON'BLE MR. JUSTICE AMIT RAWAL

Present: - Mr. Mohnish Sharma, Advocate for the appellants.

Mr. Gaurav Chopra, Advocate for respondents

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AMIT RAWAL, J.

Appellant is aggrieved of the dismissal of the objection filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act') for setting aside of the award dated 13.4.2016.

Learned counsel for the appellant submits that the contract dated 26.3.1985 for construction of miscellaneous civil work stage-III at its power project, now known as Tau Devi Lal Thermal Power Station was awarded to respondent-contractor as per the terms and conditions of the contract. The work was to be completed within 32 months i.e. by August 20, 1987 and the completion period was to be reckoned from the date of issuance of the letter to the objectors. However, it was extended upto February 1991 and on the said date, it was completed. On completion of the work, respondent No. 1 was paid an amount of ₹

6,80,80,629/- on account of measurement and another amount of ₹ 74,48, 468.92 was also paid on account of escalation. After the lapse of almost 7 years, final bill to the tune of ₹ 7,16,51,902/- was submitted on 1.6.1999. The objector did not accept the claim and thus, the dispute arose between the parties. The matter was referred to the Arbitrator for resolution of the dispute. After hearing both the parties, the Arbitrator has awarded an amount of ₹ 34, 21,278/- along with interest @ 12 % per annum. Once, the contractor has taken the amount and did not further claim, he is estopped in law to raise the claim even awarding of the interest @ 12 % is phenomenal. The Board had also filed the counter claim to the tune of ₹ 3,85,000/- based on 0.5% rebate on cheque amount upto final bill if final payment was made to them within 90 days of completion of work. He further refers to Section 43 of the 1996 Act to contend that the provisions of Limitation Act shall apply to arbitration proceedings as it applies to proceedings initiated in Court, thus, it cannot be said that the applicability of the Limitation Act expressly excluded for determination of the dispute. The Objecting Court found that after completion of the work, final bill was submitted and in terms of the agreement between the parties, escalation was also allowed. For the aforesaid reasons, the Objecting Court dismissed the objections in a most mechanical and unreasonable manner. He further submits that the scope of the public policy as per the judgment rendered by the Hon'ble Apex in M/s Anand Brothers P. Limited vs. UOI and ors, 2015 AIR SC 125 has

been enlarged.

Mr. Gaurav Chopra, on the other hand, learned counsel for the respondent-contractor submits, that the terms and conditions of the contract envisages the submission of the running bills and against the submission of 68 bills, the payment as aforementioned had been made and thereafter the contractor had perpetually been requesting the department to make the payment of the balance amount and for that a letter dated 31.12.1990 as Ex. R-10 was also written. The Electricity Board called upon the contractor to undertake the balance work and undertook to pay the escalation charges besides the fact that the respondents have failed to place on record the final bill. As per Ex. C-17 dated 3.3.1999 the Executive Engineer even called up to inspect the premises to record measurement in measurement books. On inspection of the same, final bill were submitted on 1.6.1999 (Ex. C-18). All these factors have been noticed by the Arbitrator even though the contractor is entitled for interest @ 18% yet the Arbitrator has been very conservative in awarding the interest @ 12 %.

I have heard learned counsel for the parties and finds no merit in the submissions made by Mr. Sharma, as the letter dated 3.3.1999 Ex. C-17 acknowledges the payment of the outstanding amount to the contractor and therefore, the limitation period had to be reckoned from that period. Even, respondents claim is based upon preparation of

the final bill on 1.6.1999 (Ex. C-18) and Ex. R-10. In my view, the plea of limitation is not attracted and claim cannot be rejected on this ground. With regard to interest, I am of the view that the amount of interest is lesser though it was a commercial transaction. This Court before admitting the appeal vide order dated 2.4.2008 ordered for release of the principal amount against the amount of security to the satisfaction of the Executing Court but stayed the payment of the remaining amount of Award till disposal of the appeal. The Arbitrator has dealt with the dispute which was contemplated and was within the scope of it.

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.

I do not find any illegality and perversity in the impugned order and as well as the award and the order cannot be said to have been passed without jurisdiction.

Accordingly, the appeal is dismissed. The contractor shall be entitled to seek the payment of the outstanding amount in accordance with law.

(AMIT RAWAL)
JUDGE

28.5.2016
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