IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4176 of 2009
Date of decision : 11.07.2016

Som Datt Builders Pvt. Ltd.

...Appellant

Versus

Haryana State Industrial Development Corporation Ltd. and others

...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 the appellant.

Mr. Dheeraj Chawla, Advocate for respondent No.1.

****

AMIT RAWAL, J. (Oral)

The appellant-Contractor is aggrieved of the impugned award and the order declining the objection under Section 34 of 1996 Act.

Mr. A.K. Bansal, learned counsel appearing on behalf of appellant-Contractor submits that on 29.10.1998, the contract was given to the appellant for carrying out the laying of the road works at IMJT Manesar, District Gurgaon, Haryana. Work commenced on 04.12.1998 and was to be completed by 04.03.2002. The contract was for an amount of ₹28,25,19,627/-. The terms and conditions of the contract are sacrosanct. During the interregnum, prices of bitumen increased on the basis of the decision taken by the Indian Oil Coordination Committee and thus, the claimant was/is entitled to additional cost as per Clause 22.2 of the Contract. The Arbitration Tribunal consisting of three members in majority rejected the claim but in minority, decided in favour of the Contractor. There is mis-interpretation of the clauses and even the minutes of pre-meeting cannot be part of the contract which has heavily been relied by the Majority members. Since award is against the public policy, objection in this regard was filed but same has met with the same fate. Increase in the cost of bitumen on the basis of the decision of the Indian Oil Coordination Committee was not within the control of the Contractor and thus urges this Court for setting aside of the award of the Tribunal to this extent.

Mr. Dheeraj Chawla, learned counsel appearing on behalf of respondent-Corporation submits that on co-joint reading of the Clauses 22 and 23 of the Contract, Contractor has been given the benefit of Clauses 22.1 and 23. This case would not fall under Clause 22.2 as has been vehemently stressed and claim and the benefit of increase in the cost of bitumen has been granted as per aforementioned Clauses and thus urges this Court for affirming of the findings under challenge.

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

Before referring to the rival submissions, it would be apt to reproduce the relevant Clauses of the agreement:-

"22.0 Changes in cost and legislation

22.1 Increase or Decrease of cost

There shall be added to or deducted from the Contract Price such sums in respect of rise or fall in cost of labour and/or materials or any other matters affecting the cost of the execution of the works as may be determined in accordance with Clause 23.

22.2 Subsequent Legislation

If after the date 28 days prior to the latest date for submission of tenders for the contract there occur changes to any national or state Statute, Ordinance, Decree or other Law or any regulation or bye-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or bye-law which causes additional or reduced cost to the Contractor, other than under Clause 22.1, in the execution of the contract, such additional or reduced cost shall, after due consultation with the employer and the Contractor, be determined by the Constitution Manager and shall be added to or deducted from the Contract price and the Construction Manager shall notify the Contractor accordingly, with a copy to the employer.

22.3 Other changes in cost

To the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the provisions of this or other clauses in the contract, the unit rates and prices included in the contract shall be deemed to include amounts to cover the contingency of such other rise or fall of costs.

23.0 Price Adjustment

Payment due to increase/decrease in price/wages after receipt of tender for Works (for Roads and Public Health Works only)

If the prices of materials and/or wages of labour required for execution of the work increase, the Contractor *shall be compensated for such increase as per provisions detailed below and the amount of the contract shall accordingly be varied, subject to the condition that such compensation for escalation in prices shall be available only for the work done during the stipulated period of the Contract including such period for which the contract is validly extended without any action under the Clause 7.8 and also subject to the condition that no such compensation shall be payable for work for which the stipulated period of compensation is 6 months or less. Such compensation for escalation in prices of materials and labour, when due, shall be worked out based on the following provisions:*

a) The base date for working out such escalation shall be the last stipulated date of receipt of tender including extension, if any.

b) The cost of work on which escalation is payable shall be reckoned as 85% of the cost of work as per the bills, running or final, excluding any work for which payment is made at prevailing market rates. In the case of materials brought to site for which any secured advance is included in the bill, the full value of such materials as assessed by the Construction Manager (and not the reduced amount for which secured advance has been paid) shall be added to the cost of work shown in the bill for operation of this Clause. Similarly, when such material are incorporated in the work and the secured advance is deducted from the bill, the full assessed value of the material originally considered for operation of this Clause should be deducted from the cost of the work shown in the bill, running or final.

c) Components of materials, labour, P.O.L. Etc. shall be indicated in the Annexure.

d) The compensation for escalation for material and P.O.L. Etc. shall be worked out as per the formula given *below:-*

a) $$Vm = W \times \frac{X}{100} \times \frac{MI - MIo}{Mio}$$

Vm: Variation in material cost, i.e. increase or decrease in the amount in rupees to be paid or recovered.

W: Cost of work done worked out as indicated as sub-para (b) above

X: Components of materials expresses as per cent of the total value of work.

MI & MIo: All India whole-sale-index for all commodities for the period under reckoning as published by the Economic Adviser to Government of India, Ministry of Industry and Commerce, for the period under consideration and that valid on the last stipulated date of receipt of tender including extension if any""

On co-joint reading of the Clauses 22.1 and 23, I am of the view that Contractor is entitled to the benefit of the increase or decrease of the cost and the prices of bitumen under aforesaid clauses and not under 22.2, as decision of the Indian Oil Coordination Committee cannot be said to have falling within the realm of legislation. Even the minutes of meeting, which was part of the Contract, has been signed by the parties particularly the fact that Contractor has been taken care of with regard to the increase in the cost of the bitumen as per the provision of Clauses 22.1 and 23, aforementioned. Case does not fall within the Clause 22.2 as has been strenuously argued by Mr. A.K. Bansal, Advocate.

For the foregoing reasons, majority view of the Arbitrator is upheld as it do not fall for interference as based upon appreciation of the oral evidence.

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 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 appeal is accordingly dismissed.

11.07.2016 **(AMIT RAWAL)**
pawan **JUDGE**