IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O.No.3046 of 2010 (O&M)
Date of Decision: May 09, 2016

Union of India through Garrison Engineer, Ludhiana

...Appellant

Versus

M/s Tib Engineering Works, S.B.Road, Ambala Cantt & 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.Ashwinie Kumar Bansal, Advocate,
for the appellant.

Mr.Vijay Pal, Advocate,
for respondent No.1.

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AMIT RAWAL, J. (Oral)

CM No.14850-CII of 2010

For the reasons mentioned in the application, which is supported by an affidavit, delay of 83 days in filing the appeal is condoned.

CM stands disposed of.

FAO No.3046 of 2010

Appellant-Union of India is aggrieved of the rejection of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") seeking setting aside of the award dated 11.12.1998.

Mr.Ashwinie Kumar Bansal, learned counsel appearing on behalf of the appellant has confined his prayer to the awarding of Claim

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No.5, which according to him, is not in consonance with the provisions of Clause 11 of the contract/agreement. He further submits that the aforementioned clause prohibits the contractor to lodge any claim in respect of compensation. Otherwise, it is a matter of record that the contract was granted extension from time to time and one of the extension is Annexure P-4 containing a clause "Financial effect NIL". The aforementioned extension, which is duly signed by the contractor, does not project any exact financial expenses incurred and, therefore, quantification of Claim No.5 was based upon the surmises and conjectures. No reasoning has been assigned by the Arbitrator in forming an opinion that the claim did not fall within Condition 11 of IAFW-2249 and, thus, urges this Court that the award under challenge is not in conformity with the provisions of sub-section (3) of Section 28 of 1996 Act. It is not one of the ground for setting-aside of the award.

Mr.Vijay Pal, learned counsel appearing on behalf of respondent No.1 submits that the procedure adopted by the Arbitrator was not objected to by either of the parties. The contractor submitted the claim with regard to the aforementioned amount by quantifying the same and the Arbitrator, who is an expert, formed an opinion after having examined the contents whereof and rightly so, compensation has been awarded. He was forced to sign the extension and as well as the contract containing Clause 11, which is against the public policy and cannot take the benefit of his own wrong and, thus, urges this Court for affirming the award and as well as the impugned order.

Mr.Ashwinie Bansal, in rebuttal, relies upon the judgment rendered by the Hon'ble Supreme Court in **Ramnath International**

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Construction Pvt.Ltd. Versus Union of India and Anr., 2007(1) R.C.R. (Civil) 709 to contend that the terms and conditions of the contract are sacrosanct between the parties and the contractor is not entitled or eligible to claim compensation.

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

Clause 11 (c) of the contract reads thus:-

"*No claim in respect of compensation or otherwise, howsoever arising, as a result of extensions granted under Conditions (A) and (B) above shall be admitted."*

Clause (c) has already been pondered upon and discussed by the Hon'ble Supreme Court and after detailed deliberation in extenso found that the contractor is not entitled to claim compensation unless and until the employer establishes that the contractor has consented to accept the extension of time alone in satisfaction of his claim for delay. The extension granted from time to time has been acknowledged by the contractor as is evident from Annexure P-4. In view of such situation, the contractor could not have stake the claim of compensation in complete deviation of the terms and conditions of the contract.

Accordingly, the award regarding Claim No.5 and interest thereon is hereby set-aside and the objections in part accepted and the appeal is partly allowed.

May 09, 2016 **(AMIT RAWAL)**
ramesh **JUDGE**

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