

206

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

**Date of decision : 09.05.2016
FAO-2480-2011 (O&M)**

1.

M/s Nucon Switchgear Pvt. Ltd.

... Appellant

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

... Respondents

2.

FAO-2481-2011 (O&M)

M/s Nucon Switchgear Pvt. Ltd.

... Appellant

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

... Respondents

3.

FAO-2482-2011 (O&M)

M/s Nucon Switchgear Pvt. Ltd.

... Appellant

Versus

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashwani Talwar, Advocate
for the appellant(s) (in all the appeals).

Mr. Sudhir Hooda, Advocate
for the respondent(s) in FAO-2480 of 2011.

Mr. Mohnish Sharma, Advocate
for the respondent Nos.1 and 2.
(in FAO Nos.2481 and 2482 of 2011).

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?

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of three appeals bearing FAO No.2480 of 2011 titled as “M/s Nucon Switchgear Pvt. Ltd. V/s Dakshin Haryana Bijli Vitran Nigam Ltd. and others”, FAO No.2481 of 2011 titled as “M/s Nucon Switchgear Pvt. Ltd. V/s Dakshin Haryana Bijli Vitran Nigam Ltd. and others” and FAO No.2482 of 2011 titled as “M/s Nucon Switchgear Pvt. Ltd. V/s Dakshin Haryana Bijli Vitran Nigam Ltd. and others”. The facts are being taken from the appeal bearing FAO No.2480 of 2011.

The appellant(s) are aggrieved of the dismissal of the objections filed under Section 34 of the Arbitrator and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') seeking setting aside of the arbitration award(s).

Mr. Ashwani Talwar, learned counsel appearing on behalf of the appellant(s) has raised the following submissions in support of grounds of appeal:-

1. The Bids were invited on 29.11.1990 and the purchase order was placed on 18.04.1991, during interregnum, the Board vide letters dated 07th and 12th June, 1991 changed the terms and conditions, therefore, margin of profits reduced considerably. The purchase order contained the element of payment of excise duty and therefore, the change in the rate was wholly misplaced, much less, arbitrary and illegal as there was no concluded contract.
2. In view of the agreement containing a clause bearing No.20.1, purchasing the transformers at the cost and risk of the appellant(s).

After cancelling the agreement, the bids were invited in the year 1992 from the different buyers and there was a change of specification and therefore, the appellant(s) cannot be burdened with the change of rate, much less, no explanation has come forth for immediately buying the transformers, so, there would difference of rate and almost one year had left in between.

He further submits that the re-tendering has to be on the same specification and the Board cannot deviate and therefore, the claim is not sustainable. In support of his contentions, he relies upon the judgment of Hon'ble Supreme Court rendered in **"M/s India meters Ltd., Madras V/s Punjab State Electricity Board and others" (1993) 1 SCC 230**, to contend that the Arbitrator did not accept such plea, which must specifically be raised under Section 34 of the 1996 Act, the same has been dismissed and therefore, the present appeal.

Mr. Sudhir Hooda, Advocate and Mr. Mohnish Sharma, learned counsel appearing on behalf of the respondent(s) submits that the Board had filed a civil suit for the appointment of the Arbitrator and thereafter, the matter reached upto this Court and ultimately the matter was referred to the Arbitrator and the question with regard to the concluded contract had already been addressed by this Court vide order dated 20.02.2004 in **CR No.5256 of 2002**. He further submits that no evidence had been led by the Contractor to show that there was a change of rate, when the purchase order was placed to third contractor at the risk and cost of the appellant(s). Even before the Arbitrator, no such objection was raised or any evidence with regard to the fact that there was no concluded contract had been lead. Even the judgment cited supra was based upon the

some correspondences i.e. with regard to the providing of the samples and the Objecting Court, while dealing with the aforementioned judgment, has held that there was a valid contract, thus, urges this Court for affirming the findings rendered by the Objecting Court and as well as in the Award.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and substance in the plea of Mr. Ashwani Talwar, for, no evidence had been led by the Contractor to prove that there was a concluded contract. In the absence of the same, any objection to the same, having been taken for the first time under Section 34 of the 1996 Act, is immaterial.

As regards the change of specifications and re-tendering on the same specifications, I am of view that this aspect has been noticed by the Arbitrator and found that major items were same and there was a small change in the specifications, which did not change the price of the transformers. The risk purchase was done in the year 1992. The contractor could lead evidence that the rates given by him at the time of the inviting of the bid and then in the year 1991 were far different. The Arbitrator was none-else, but the expert, having experience and examined the claim and reply submitted by the parties to the *lis* and gave the opinion that the contractor is bound by the terms and conditions of the risk purchase. This Court while sitting in an appeal cannot re-appreciate the evidence except the objections, apparently, are found to be within the parameters of Section 34 of the 1996 Act. In my view, the objections were not falling within the realm of Section 34 of the 1996 Act and rightly so, have been rejected.

In view of the foregoing reasons, no ground is made out for

interference in the findings, under challenge and accordingly, the appeals are dismissed.

09.05.2016
yogesh

(AMIT RAWAL)
JUDGE