205

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3565-2011 (O&M)
Date of decision : 15.01.2016

The Punjab State Cooperative Society and Marketing Federation Limited

...Appellant

Versus

The Punjab Cooperative L/C Society Limited and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Saurabh Goel, Advocate,
for the appellant.

Mr. P.S. Khurana, Advocate
for respondent No.1.

****

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)

The appellant-Markfed is against the order dated 08.12.2010 passed by the Objecting Court, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (herein after called 'the 1996 Act') for setting aside the Award dated 12.04.2006 have been dismissed.

Mr. Saurabh Goel, learned counsel appearing on behalf of the appellant-Markfed submits that the Clause 13 of the Contract envisaged the imposition of the penalty of 1% subject to the total value of the contract per week of delay subject to maximum of 10% of the contract value. The Arbitrator has not noticed the fact that the contractor has failed to complete the construction work and, therefore, penalty of 10% was imposed, whereas he reduced it to 1% by assigning the reasons which are contrary to the record, much less, terms and conditions of the contract.

Mr. P.S. Khurana, learned counsel appearing on behalf of respondent No.1 submits that there is no illegality and perversity in the order. The objections were not within the purview of Section 34 of the Act and rightly so, the Objecting Court has dismissed the same.

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

Clause 13 of the Contract reads thus:

> *"13. In case the contractor fails to complete the work within the prescribed time limit as per contract, Markfed shall be at liberty to levy penalty 1% (one percent) of the total value of the contract per week of delay subject to maximum of 10% of contract value. The clause of liquidity damages shall be applicable after the expiry of the construction time limit.*

> *That admittedly, respondent No.1-Contractor failed to complete the construction of the godown within the prescribed time limit and despite the fact that respondent No.2(sole arbitrator) had come to this conclusion, decided to travel beyond the terms of the contract and accepted the claim filed by respondent No.1".*

The reasons assigned by the Arbitrator read thus:

> "It is amply clear from the letter of respondent dated 24.04.2001 and noting of Assistant Engineer Shri Malkiat Singh dated 03.05.2001 that major work of construction of 8000 M.T. Capacity Godowns were completed as per the requirements of the respondent and only one godown of 2000 M.T. capacity could not be completed due to non-handing over of site to the claimant, rush of trucks carrying wheat for storing etc, also since the work was finally completed by the Claimant Society, as such, there was no financial loss to the Markfed, therefore, plea of the claimant is accepted and the penalty is reduced to ₹ 1,28,651/- i.e. (1%) from ₹ 12,86,52/- i.e. (10%)."

On going through the reasons, I am of the view that it was not the Contractor, who was solely responsible for undertaking the work of only godown as there was rush of trucks of carrying wheat and, therefore, confined the imposition of penalty to 1% as per the terms and conditions of the Contract. No justification has been given by the Markfed in sustaining the penalty of 10%.

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 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. The arbitrator has dealt with the dispute which was contemplated and was within the scope of it.

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 claim of respective claimants to the parties to the *lis*.

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.

In my view, no error of law arise from the award as well as order impugned. The award is perfect and justified.

There is no merit in the aforementioned appeal.

The appeal is accordingly dismissed.

15.01.2016 **(AMIT RAWAL)**
yogesh **JUDGE**