

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

FAO No.4012 of 2011 (O&M)
Date of decision : 09.02.2016

M/s Quick Well Boring Company

...Appellant

Versus

Union of India and another

...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. H.K. Aurora, Advocate for the appellant.

Mr. Karamjit Verma, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

CM No.15412-CII of 2011

For the reasons stated in the application, which is duly supported by an affidavit, delay of 109 days in filing the appeal is condoned.

Application is allowed.

Main Case

The appellant is aggrieved of the findings rendered by the Arbitrator in not granting the claim vis-a-vis 14 pumps.

Mr. H.K. Aurora, learned counsel appearing on behalf of

appellant submits that in pursuance to the agreement dated 26.04.2001, the appellant-Contractor installed 63 pumps. Contract was extended up to 31.10.2002. All the pumps were installed but the respondent prepared the bill of only 49 pumps and after deducting amount of penalty, allegedly imposed paid only the sum of ₹56,000/- and odd amount. The Arbitrator declined the decision of the Department in imposing penalty and ordered that Contractor is entitled to the payment of 49 pumps, but declined the claim vis-a-vis 14 pumps on the ground that they were of defective/not good quality. He submits that notice with regard to defective material was sent on 06.11.2002 whereas contract was terminated on 23.12.2002. The alleged decision of the defect in the payment is unilateral as the Contractor has not been associated in any alleged inspection nor any report of the expert has been produced and thus, the Contractor is entitled to the payment of 14 pumps, which comes to approximately ₹82,000/- including dismantling charges.

Mr. Karamjit Verma, learned counsel appearing on behalf of respondents submits that this Court cannot assume role of expert and re-appreciate the evidence and prays for dismissal of appeal.

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

The letter dated 06.11.2002 is not supported by any report of the expert vis-a-vis non-working/defective quality of the 14 pumps. Neither Contractor has been called upon to repair the pumps vis-a-vis its non-working. Only correspondence i.e. letters dated 20.11.2002 and 13.12.2002 has been brought to record whereas 7 days notice was given to commence

the work. But no other letter, indicating alleged defect, dismantling and removing of defect has been allegedly proved. In, the absence of the same, Department, in my view was not liable to withhold the payment of 14 pumps.

Accordingly, award and the order of the Arbitrator is modified. It is held that Contractor is entitled to payment of 14 pumps along with interest at the rate of 9% p.a. from the date of award till its realisation.

Appeal to the aforesaid extend stands allowed.

09.02.2016

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**(AMIT RAWAL)
JUDGE**