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

FAO-5120-2011 (O&M)

Date of decision : 04.04.2016

M/s Mokha Light House

...Appellant

Versus

State of Haryana and another

...Respondentss

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Behl, Advocate
for the appellant.

Mr. D.K. Mittal, DAG, Haryana.

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-Contractor is aggrieved of dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (herein after called 'the 1996 Act') for setting aside the Award, whereby the counter claim to the extent of ₹ 1,88,890/- have been allowed in part and the claimant-respondent has been awarded a total compensation to the tune of ₹ 10,26,983 which comes to ₹ 8,38,093/- after making adjustment of the aforementioned amount i.e. (₹ 10,26,983 - ₹ 1,88,890/- = ₹ 8,38,093/-).

Mr. S.S. Behl, learned counsel appearing on behalf of the appellant-Contractor submits that in pursuance to the contract having been awarded to the appellant-contractor, the Department did not supply the drawings and plans on time as tender was for work of the providing Estate

water supply, sewerage for development work in G.I.E. (Surgical Centre), Sonipat 'Laying of Estate water supply, sewerage,, construction of boundary wall, internal roads, street lighting, electrical sub-station and all other works contingent thereto" under the World Bank Aided Project. Despite having not supplied the material, the Department allegedly and illegally terminated the agreement on 20.12.1996. Since, the contract envisaged resolution of dispute through arbitration, the matter was referred to the Arbitrator. Both the parties filed their respective claims and counter claims, however, the respondent-Department failed to place on record any material to show that the work was got conducted through independent contract or at the risk and cost of the appellant. In the absence of evidence, the Arbitrator could not have awarded the compensation to the tune of ₹ 8,38,093/- after adjustment of the amount due to the appellant. He further submits that the five counter claims were filed and by considering all the counter claims, the Arbitrator awarded a compensation to the tune of ₹ 1,88,890/- after deducting from the claim and ordered the Department to claim a sum of ₹ 8,38,093/-. The aforementioned award was not in consonance with the terms and conditions of the contract, accordingly, the objections were filed and the same have also erroneously been dismissed. The Objecting Court has also committed illegality and perversity in dismissing the objections being not falling within the realm of Section 34 of the 1996 Act, whereas, it is a settled law that the Arbitrator is required to assign reasons, which is also a statutory requirement of law as per the provisions of sub-Section 3 of Section 31 of the 1996 Act. Even the Arbitrator did adhere to the provisions of sub-Section 3 of Section 28 of the 1996 Act.

Mr. D.K. Mittal, DAG, Haryana submits that the entire material

was placed on record before the Arbitrator and the Arbitrator after comparison of the bids submitted by the appellant-Contractor and the other Contractors assessed the loss to the tune of ₹ 10,26,983/-, rather than did not award 10% liquidated damages of ₹ 4,06,300/- as claimed as per clause 47(1)(i) of the Contract Act. The objections were not falling within the realm of Section 34 of the 1996 Act and rightly so, have been dismissed.

In rebuttal, Mr. S.S. Behl submits that the Arbitrator was not having any jurisdiction as he was himself Superintending Engineer and therefore, could not enter into reference.

I have heard learned counsel for the parties and appraised the paper book and of the view that for the purpose of taking the objections viz-a-viz the jurisdiction of the Arbitrator, the Contractor was required to challenge his jurisdiction as per the provisions of sub-Section 3 of Section 12 of the 1996 Act. No steps have been taken, rather submission of counter-claim itself proved submission to the jurisdiction of the Arbitrator and therefore, in my view, the objections have been taken for the sake of gravity, much less, as per provisions of Section 4 of the 1996 Act, the Contractor deemed to have been waived off the right by submitting counter claim. There is no merit viz-a-via the jurisdiction.

As regards, the awarding of the claim in the absence of evidence, I am not in agreement with the plea of Mr. S.S. Behl, for the reason that the Arbitrator on juxtaposition of the bids submitted by the appellant-Contractor and the other contractors, found the rates to be different. For the sake of brevity, the relevant portion of the Award reads thus:-

“According to the statement, claim on behalf of the claimant against the agreement amount of ₹ 40.63 lakhs, the respondent

executed a work of only ₹ 2.72 lakhs. The remaining work of ₹ 37.91 lakhs was put to risk and cost tender and the lower competitor bid was for ₹ 51.44 lakhs representing a clear loss of ₹ 13.53 lakhs attributable to the breach of contract on the part of the respondent. Adding another ₹ 4.06 lakhs on account of 10% liquidated damages, the claimant was entitled to a compensation of ₹ 17.59 lakhs plus 18% interest thereon. Moreover during the course of hearing, it turned out that the entire work put to risk and cost tender had not been got executed from the other agency namely Sh. Suraj Mal contractor. On the other hand the correct position is given as under:-

	Cost of balance work actually executed at the risk and cost of M/s Mokha Light House and at the rates of M/s Mokha Light House	Cost of executed by Sh. Suraj Mal contractor at the risk and cost of M/s Mokha Light House
Public Health Portion	₹ 12.16 lakhs	₹ 15.74 lakh
Building Portion	₹ 6.68 lakh	₹ 8.85 lakh
Electrical Portion	₹ 8.91 Lakh	₹ 13.43 Lakh
Total	₹ 27.75 Lakh	₹ 38.02 Lakh

In this way, the amount of compensation works out as ₹ 10.27 lakhs to be more precise to ₹ 10,26,983/-. In fairness to both the parties, they agreed to the revised figure submitted on 29.02.2000.”

The aforementioned piece of evidence has not been rebutted by the appellant-Contractor by leading any direct or cogent reasons, thus, gone un-

rebutted. In my view, the objections to such portion of Award were not falling

within the parameters of Section 34 of the 1996 Act as they were not against any of the parameter of the Act.

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.

04.04.2016
yogesh

(AMIT RAWAL)
JUDGE