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

**FAO-6184-2011 (O&M)
Date of decision : 25.02.2016**

M/s Contimeters Electrical Private Ltd.

...Appellant

Versus

Uttar Hayana Bijli Vitran Nigam and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Puneet Bali, Senior Advocate with
Ms. Neha Sonawane, Advocate
for the appellant.

Mr. P.S. Poonia, Advocate
for the respondents.

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 is aggrieved of the order dated 13.06.2011, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') seeking setting aside of the Award dated 15.11.2010 passed by the Arbitrator, have been accepted.

Mr. Puneet Bali, learned Senior Counsel assisted by Ms. Neha Sonawane, learned counsel appearing on behalf of the appellant submits, that in pursuance to the Contract having entered into between the parties, Clause 24 of the Contract Agreement contained a resolution of the dispute by way of

Arbitrator. As per the provisions of Clause 24, either the Chairman or his appointed nominee would act as Arbitrator. Lieutenant General (Retd.) O.S. Lohchab, Chairman of the respondent assumed the role of the Arbitrator and entered into reference on 29.09.2009. The arbitration proceedings continued and the parties to the *lis* participated. Though his term expired on 31.03.2010, but the parties to the *lis* continued to appear before him and ultimately resulted into passing of Award dated 15.11.2010. One of the grounds which weighed the mind of the Objecting Court in setting aside the award is that once the Arbitrator wrote a letter dated 31.03.2010 to the succeeding Chairman that he had been acting as Sole Arbitrator in two cases and his term ended and further requested that the serving Chairman to take the action as deemed fit. However, having not received any letter, he continued to hold the proceedings and which fact is evident from the proceedings held on 21.04.2010 (Annexure A-12). In support of his contentions he relies upon the judgment of Hon'ble Supreme Court in *"Hindustan Vegetable Oils Corporation V/s A.P. Paracer and others" 2000 (Suppl.) Arb. LR 684 (SC)* and the judgment in *"M/s Construction India V/s Secretary, Works Department, Government of Orissa and others" (1998) 2 SCC 89*, as an identical situation had arisen, where the Chairman of the Company was appointed as Arbitrator by name and not by designation and on demitting the office as Chairman, he continued to conduct the arbitration proceedings, the same was objected to by other party, which was rejected by the Hon'ble Supreme Court. He further submits that the order under challenge suffers from illegality and perversity and therefore, the same is not sustainable in the eyes of law.

Mr. P.S. Poonia, learned counsel appearing on behalf of the

respondent submits that the provisions of Section 15 of the 1996 Act apply to the facts and circumstances of the case, whereby, as per sub-section 2 of Section 15 of the 1996 Act, as and when the mandate of an arbitrator ceases or terminates, a substituted arbitrator shall be appointed according to the rules which were applicable to the appointment of the arbitrator being replaced. Since, the Clause 24 of the Agreement provided the resolution of dispute by way of arbitration proceedings, either by a Chairman or his nominee, the erstwhile Arbitrator, namely, Lieutenant General O.S. Lohchab, could not have been proceeded with the arbitration proceedings and rendered the award, rightly so, the Objecting Court accepted the objections as the objections were falling within the parameters and purview of Section 34 of the 1996 Act, as it was against the public policy and prays for dismissal of the appeal..

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a substance in the contentions of Mr. Puneet Bali, for the reason that for despite letter dated 31.03.2010 (O-10) referred above (supra), the parties to the *lis* continued to participate before the same Arbitrator, the proceedings conducted on 21.04.2010 reads thus:-

“Present

1. On behalf of M/s Contimeters Electricals Pvt. Ltd. Sh. R.S. Rana, Advocate.

2. On behalf of DHBVNL & UHBVNL.

a) Sh. Balbir Singh Jakhar, A.O. (CPC) DHBVNL, Hisar. b) Sh. Avneet Kumar, AE (MM), DHBVNL, Hisar. c) Sh. V.K. Join, XEN (MM), UHBVNL, Panchkula.

d) Sh. Subhash Mahajan, A.O. (CPC), UHBVNL, Panchkula.

PROCEEDINGS HELD ON 21.04.2010.

1. The case was fixed for 21st April, 2010. The advocate for the respondent-Nigams did not attend the hearing. The

representatives of respondent-Nigams stated that their advocate could not prepare the written arguments owing to short notice for hearing. He stated that the arguments will be filed on the next date of hearing.

2. Sh. R.S. Rana, Advocate for the claimant-Firm stated that since respondent-Nigams did not file written arguments today, no fruitful purpose will be served with his filing of written arguments. He further stated that he may also be permitted to file written arguments on the next date of hearing.

3. Accordingly, the case is adjourned to 03.05.2010 (Monday) at 03.00 PM at the same venue for submission of written arguments by both the parties against two Purchase Orders bearing No.DH-20/QD-14 dated 09.04.2001 and HN-5213/QD-14 dated 24.04.2001 and also hearing arguments.

Sd/-

(Ltd. Gen. (Retd.) O.S. Lohchab)

Sole Arbitrator-cum-Chairman (Retd.), HPU

Endst. No.1-3/OSL/ARB/1/DH-64/HH-5316

Dated 21.04.2010”

Section 16 of the 1996 Act empowers the party to challenge the competency in the jurisdiction of the Arbitrator, once the Nigam had come to know about the contents of letter dated 31.03.2010, nothing prevented him to raise the objections, in this regard, by invoking the aforementioned statutory provisions. It is a settled law that once a Arbitrator has been appointed by name, he shall continue to act as an Arbitrator, even on cessation of his term as employee of a particular Corporation/Board/Nigam. In my view, the Nigam acquiesced, much less, submitted to the jurisdiction of the Arbitrator, after 31.03.2010. Once the Arbitrator was appointed with the consent of the parties, thus, in my view, he continues to have a jurisdiction, though he may have demitted the office of the Chairman.

Keeping in view of above, I am of the view that the order dated 13.06.2011 passed by the Objecting Court accepting the objections on this ground was not sustainable in the eyes of law and accordingly, the same is hereby set aside and the matter is remitted back to the Objecting Court to decide the objections afresh, viz-a-viz the scope of the award, as to whether it was inconformity with the terms and conditions of the Contract or not, in essence, whether there has been a compliance of sub-Section 3 of Section 28 of the Act.

The parties through their counsel are directed to appear before the Objecting Court on 21.03.2016. However, it is expected that the Objecting Court shall decide the objections as expeditiously as possible preferably within a period of six months from the receipt of the certified copy of this order.

The record of the arbitration proceedings and as well as the Objecting Court be remitted back for adjudication of the objections.

With the aforesaid observations, the appeal is allowed.

25.02.2016
yogesh

(AMIT RAWAL)
JUDGE