

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.10054 of 2014 (O&M)

Date of Decision.30.09.2016

Punjab State Power Corporation Limited and othersAppellants

Vs.

M/s Jindal Traders and anotherRespondents

Present: Mr. Vinod S. Bhardwaj, Advocate
for the appellants.

Mr. S.K. Singla, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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?

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AMIT RAWAL J. (ORAL)

The appellant-Punjab State Power Corporation Ltd. (hereinafter called as “PSPCL”) is aggrieved of the impugned order whereby the Arbitration Case No.118/14/2014 filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter called as “1996 Act”) filed at the instance of the respondents, has been allowed.

Mr. Vinod S. Bhardwaj, learned counsel appearing for the appellants submits that the order under challenge is not sustainable in the eyes of law, as it has directed the appellant to pay the amount of the bill till the final adjudication of the matter by the Arbitrator, in essence, PSPCL cannot withhold any bill regarding the work already executed and complete or cancel the Work Order-cum-Contract Agreement till the final decision of the Arbitrator, thus, liable to set aside, for, statutory right has vested in the

contracting party which cannot be taken away in the manner indicated in the

impugned order.

The Court below has not appreciated the scope of provisions of Section 9(ii) of the 1996 Act. There was no balance of convenience, much less, prima facie, case could be made out in favour of the respondents. The Objecting Court has failed to appreciate that the conduct of the respondent was unbecoming and the PSPCL cannot be forced to continue with the contractor who had failed to perform the obligation in accordance with the work order-cum-contract agreement. The contractor had failed to fulfill the milestone prescribed under the work order-cum-contract agreement right from the completion of joint survey work in accordance with the provisions of work order and to start execution of the work.

Resultantly, the respondents were granted 30 days notice period for execution of the pending work but they failed to complete the same and accordingly, Agenda No.148 dated 05.08.2014 was placed before the Committee of the Whole Time Directors for consideration and in this backdrop of the matter, the Committee decided to cancel the work order-cum-contract agreement dated 22.10.2013. Despite cancellation of the work, the Additional District Judge had restrained the appellant-PSPCL from cancelling the same. This order is not sustainable in the eyes of law. The Court below has failed to appreciate that the project for shifting of meters outside the premises of the consumers started to curb theft of energy and to give better services to the consumers. The delay in execution of the project has not only increased the financial burden but also delayed the passing of benefits to the consumers, thus, urges this Court for setting aside the order under challenge.

Per contra, Mr. S.K. Singla, learned counsel appearing for the

respondents submits that the contract aforementioned dated 22.10.2013 was entered into between the parties for supply, erection, testing and commissioning of material for execution of project for shifting of existing single/three phase energy meters outside the consumer premises in the non-R-APDRP towns/villages/area on turnkey basis under T&D Loss Reduction Scheme against package of DS Circle, Patiala (Scheme Code-6857) of PSPCL as per Tender Specification No.035/CE/RE & ADRP/2012-13 and subsequent amendments thereof by which the work for District Patiala was allotted. The respondents had already completed the huge work and undertaken to complete the work within the stipulated period, much less, installed/procured huge materials to complete the said work and therefore, the appellant- PSPCL was not entitled to allot said work to any other person. As per the contract, a joint survey was to be conducted but the appellants' staff did not cooperate. Many representations in this regard were made, but instead of redressal of the grievance, letter dated 11.04.2014 was issued by the appellants. The appellants in furtherance of favouritism to their own persons issued memo dated 22.05.2014, vide which, extended threat to cancel the Work Order-cum-Contract Agreement. In this backdrop of the matter, the aforementioned petition was filed.

The arbitration proceedings under Section 9 of the 1996 Act can be initiated before, during arbitration and after the same. Since many bills were pending qua work done, the appellants were not making the payment and therefore, forced to invoke the jurisdiction of the Court below, thus, urges this Court for confirming the order under challenge.

I have heard learned counsel for the parties and appraised the paper book. The direction contained in the order under challenge reads

thus:-

“In view of my aforementioned discussion, I have come to the conclusion that as an interim measure by exercising powers under Section 9 of the Arbitration and Conciliation Act and without commenting upon the merits of the allegations and counter allegations of the parties, it shall be just and proper to restrain the respondents till decision of the dispute by Arbitrator from withholding the payment of bills of the work already conducted subject to the terms and conditions of the Work Order-cum-Contract Agreement and also from cancelling the contract, as such the application is allowed and the respondents are restrained from withholding any bill of the petitioners regarding the work already executed and completed subject to all terms and conditions of the Work Order-cum-Contract Agreement and they are further restrained from cancelling the Work Order-cum-Contract Agreement till final decision by the Arbitrator. However, respondents shall be at liberty to appoint the Arbitrator at the earliest and to get final decision over the entire dispute/rights and liabilities of the parties under the contract within any stipulated short and reasonable period. Parties are left to bear their own costs. Memo of costs be prepared. File of this Court be consigned to the record room.”

Before I could dictate the order, Mr. Singla, learned counsel appearing for the respondents informed the Court that now the appellants have resorted to reference of dispute through appointment of Arbitrator but the fact remains that owing to the interim order granted by this Court, the order under challenge cannot be implemented. I have seen the order and of the view that so far as the direction for payment of bills is stayed, I would not delve upon the argument of either parties with regard to completion of the work or not, much less, terms and conditions of contract as it would be

subject matter of arbitration proceedings. The fact remains that the

contractor cannot remain remediless in case payment of bills for his work remain pending and the issue is not adjudicated as it was on turnkey basis. I am of the view that restraint order of cancellation of the work was not sustainable as to the appellant it would entail to arm twisting, for, the contractor cannot not, in any way, take the advantages of the order impugned to create any hurdles in implementation of the work once restraint order from withholding the payment of bills of the work already conducted has been passed. The said order is operative till finalization of the arbitration. The order under challenge is of the year 2014 and for all these years they have not taken any steps for appointment of the Arbitrator. Now the Arbitrator is stated about to enter or had entered the reference and the decision of the dispute would take some time. As interim measure, the direction for payment of bills for the work already conducted subject to terms and conditions of the Work Order-cum-Contract Agreement is perfectly legal and justified and the same is upheld but the restraint order from cancelling the work is not sustainable in the eyes of law and is hereby set aside.

Accordingly, the appeal is partly allowed and the order under challenge is modified to the aforementioned extent.

(AMIT RAWAL)
JUDGE

September 30, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No