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

**FAO-2215-2013 (O&M)
Date of decision : 26.08.2016**

D.S. Pannu and Associates Private Ltd.

... Appellant

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.S. Rana, Advocate
for the appellant.

Mr. P.S. Bajwa, DAG, Punjab.

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 the impugned order dated 11.10.2012, whereby the objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') for setting aside of the Award dated 02.09.2009 have been dismissed on the ground that the plea of the appellant-Contractor before the Arbitrator against the Government for not invoking the terms and condition 2.53 of the Agreement, in view of the letter dated 29.06.2007, was premature as the contract period was not over.

Mr. P.S. Rana, learned counsel appearing on behalf of the appellant-Contractor submits that the appellant-Contractor was awarded a contract for completion of Banur Canal system vide allotment letter dated

29.12.2006. The agreement, in this regard, was entered on 08.01.2007. The time for completion of the contract was nine months excluding the rainy season i.e. 01.07.2007 to 30.09.2007. The possession of the site was handed over in the month of February 2007. The terms and conditions of the agreement envisaged the construction of certain work upto 30.06.2007. However, vide impugned notice dated 29.06.2007, the Department imposed the penalty and started recovery of ₹ 3,00,000/- per day from the outstanding payment. It is, in this background of the matter, the appellant-Contractor having left with no other option invoked the arbitration clause. Thereafter, the respondent(s) terminated the contract and in this regard, two arbitration petitions bearing ARB No.49 of 2013 & ARB No.171 of 2013 had been filed by the parties under Section 11 of the 1996 Act, one by the Government and another by the Contractor for appointment of the Arbitrator and this Court vide order dated 15.11.2013 appointed Sh. Kishanjit Singh, Chief Engineer (Retired) as Sole Arbitrator. The order reads thus:-

“These are two connected petitions filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of arbitrator in terms of the arbitration clause to adjudicate the claims of the respective parties. The designated place of arbitration is at Chandigarh.

Learned counsel for the petitioner in ARB-171-2013 states that the claims are of technical nature. Both the learned counsels state that to save costs instead of having a panel of three arbitrators a single arbitrator be appointed.

I, thus, appoint Mr. Kishanjit Singh, Chief Engineer (Retired), H. No. 140, Sector 40-A, Chandigarh, as the sole arbitrator to enter upon reference and adjudicate the disputes inter se the parties. The fee of the arbitrator shall be as per the Punjab

and Haryana High Court (Arbitrator's Panel and Fee) Rules, 2011.

The petitions accordingly stand disposed of.

Copy of the order be sent to the arbitrator."

He further submits that the imposition of the penalty was premature as the contract period had not been expired which expired as noticed above, in the month of October 2007. Once, the arbitration proceedings are going on, the parties may be given liberty to oppose the aforementioned claim qua the imposition of the penalty in the present arbitration proceedings which are stated to be pending, but not in the manner and mode, thus, urges this Court for setting aside of the order under challenge and as well as the Award.

Mr. P.S. Bajwa, DAG, Punjab submits that he seriously disputes the alleged handing over the possession as the appellant-Contractor had been paid the mobilization advance on 25.01.2007. As per the terms and conditions of the contract, the part of the work was to be completed upto 30.06.2007 i.e. work up to safe level i.e. 945-50 sq. ft. It is, in this background of the matter, the penalty was imposed. The Department had acted in strict compliance of the terms and conditions of the contract and therefore, the claim of the Contractor was not maintainable and rightly so, the same has been rejected, thus, urges this Court for dismissal of the appeal.

He does not dispute the order dated 15.11.2013, whereby Mr. Kishanjit Singh, Chief Engineer (Retired) has been appointed as sole Arbitrator.

I have heard the learned counsel for the parties and appraised

the paper book and of the view that there is merit and substance in the submissions of Mr. P.S. Rana, for, the terms and conditions have yet to be interpreted after the termination of the Contract, in my view, the imposition of the penalty as per clause without termination of the contract, could not have been done as the termination is much later than imposition of the penalty which is in the month of June 2007, which factor is evident from the order dated 15.11.2013 passed by the then Hon'ble the Chief Justice of this Court, whereby Sh. Kishanjit Singh, Chief Engineer (Retired) has been appointed as sole Arbitrator.

I refrain to myself to delve upon a question whether the period of construction was over or not, as submitted by Mr. P.S. Rana. It would be in the realm/domain of the Arbitrator to decide the controversy, much less, even controversy regarding handing over of the possession of the site. I am of the view that once, the agreement had been terminated and the parties have already lodged their claim/counter-claim before the Arbitrator, it shall be open to the parties to seek modification of their claim/counter-claim viz-a-viz the imposition of the penalty etc. in accordance with the terms and conditions of the Contract, but not in the manner and mode as indicated above.

For the foregoing reasons, the impugned order dated 11.10.2012 under challenge and as well as the Award of the Arbitrator are hereby set aside leaving open to the parties to seek the remedy by amending their claim/counter-claim in the pending arbitration proceedings and the Arbitrator shall also decide the controversy regarding interpretation of the terms and conditions of the agreement whether the State is justified in

imposition of liquidated damages or not. The aforementioned finding of mine is backed from the reason that the construction of certain work was to be completed upto 30.06.2007, whereas the letter of the imposition of the penalty is dated 29.06.2007, thus, the order of imposition of penalty was premature, the State shall be at liberty to reagitate the claim in the pending arbitration proceedings.

With the aforesaid observations, the appeal stands disposed of.

26.08.2016
yogesh

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No