

219

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

FAO-334-2013 (O&M)

Date of decision : 12.02.2016

Divisional Engineer (PH-1), PUDA and another

...Appellants

Versus

Enviro Control Associate (I) Pvt. Ltd., and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Naresh Prabhakar, Advocate
for the appellants.

Ms. Anjali Khosla, Advocate
for respondent No.1.

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 dismissal of claim Nos.3, 4 and 7, viz-a-viz the objections on claim No.1 filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') have been accepted.

Mr. Naresh Prabhakar learned counsel appearing on behalf of the appellant submits that as per Section 28 (3) of the 1996 Act, the award of the Arbitrator is as per the terms of the Contract. The drawings provided to the Contractor clearly

mentioned about the construction of the boundary wall and erection of transformer, therefore, the Contractor could not have claimed the payment alleged to have been withheld by the PUDA, because he failed to raise the construction of the aforementioned boundary wall and install transformer, thus, the objections were falling within the realm of Section 34 of the 1996 Act and prays for setting aside of the Award.

Ms. Anjali Khosla, learned counsel appearing on behalf of the respondent-Contractor submits that the contract provided in certain Volumes, as per the scope of the work, there was no provisions of boundary wall or transformer. The bid was not with regard to the boundary wall or transformer. This fact has been noticed by the Arbitrator. The scope of work was well defined. She further submits that this Court cannot sit in appeal and re-appreciate the evidence to arrive at different opinion.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the Arbitrator found that the scope of the work was well defined on page No.1 Volume II of the tender document and against the clause No.1(i), which included item Nos.1 to 35, where the boundary wall was not shown. As per clause No.1.9.2, the list of drawings of civil units, drawings of boundary wall was never supplied. However, as per clauses bearing Nos.1.9.3, 1.9.3.1 to 1.9.3.43, there was no description of boundary wall, even, the price schedule clause No.1.2 clearly indicated that the scope of civil works and work had been given in Volume II, where there is no provisions for providing boundary wall.

The operative part of the Award of the Arbitrator reads thus:-

- "i) The scope of work is well defined on page (1) of volume-II of Tender Document against the clause No.1(i) general scope of work against item B.*
- ii) Whereas as per clause No.1.9.1 of Tender volume-II whereas the scope of work of civil works is defined which include item 1 to 35 and the scope is categorically indicated for each and every unit as well as for small ancillary item where boundary wall was not included.*
- iii) As per clause No.1.9.2 as per the list of drawings of civil units, drawings of boundary wall never supplied.*
- iv) Whereas in clause No.1.9.3 page v and sub head 1.9.3.1 to 1.9.3.43 page 5 to 25 no description of boundary wall have been made.*
- v) Where as chapter 2 to 18 of specifications of civil structure page 26 to 127 Volume-II where in no boundary wall defined.*
- vi) The price schedule clause No.1.2 civil works page-2 clearly indicates at first para civil works, scope of works shall be given in the volume-II where in no where boundary wall is mentioned.*
- Vii) The detail price schedule does not cover boundary wall.*
- viii) Claimant has further referred PUDA-DE (HQ-2)/06/1599 dated 15.02.2006 wherein terms and conditions point No.4 clearly mentioned that payment will be made as per the rates quoted item wise by the contractor etc.*
- ix) Whereas scope of transformers is concerned claimant has against reiterated that as per condition No.4 of allotment PUDA-DE (HQ-2)/06/1599 dated 15.02.2006 the payment is to be made item wise by the contractor as there was not item for the transformers as such it was not provided by the agency.*

x) The price schedule does not cover the item of transformer and ancillary item like HT panel and GOD etc.

xi) as far as drawings submitted for the electrical system as a part of scope of work drawing No.ECAIPL PUDA/STP/M/54 for SLD which is approved by the respondent which clearly shows that transformers as well as HT panel GOD and other ancillary is not included in the scope of work."

Once, the Arbitrator being Superintendent Engineer (C-1), GMADA, formed that the scope of work did not envisage the construction of boundary or installation of electric transformer, PUDA was not entitled to hold the balance payment, rightly so, which necessitated filing claim before the Arbitrator. No fault can be found with the findings rendered by the Arbitrator, viz-a-viz the claim Nos.3, 4 and 7, much less, objections were not within realm of Section 34 of the 1996 Act before the Objecting Court.

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 of 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.

12.02.2016
yogesh

(AMIT RAWAL)
JUDGE