

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

FAO No.4093 of 2013 (O&M)

Date of Decision.08.12.2016

M/s Ramesh Chander Contractor

.....Appellant

Vs

Union of India and another

.....Respondents

Present: Mr. Padam Kant Dwivedi, Advocate  
for the appellant.

Mr. Namit Kumar, Advocate  
for the respondents.

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

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**AMIT RAWAL J. (ORAL)**

The appellant-contractor is aggrieved of the arbitral Award dated 28.05.2007 and as well as the dismissal of the objections filed against the same.

Mr. Padam Kant Dwivedi, learned counsel appearing for the appellant submits that the appellant was awarded with contract for fencing on the Indo Pak Border situated at Ajnala South Sector. The work was completed but owing to the flood, the fencing washed away. The invocation of clause 7 i.e. the risk and cost was, thus, not justified, much less, without jurisdiction. Once the work had been completed, it was to be re-tendered and re-allotted. The respondents could not have withheld/deducted the amount from the final pending bill. Even the proof of getting the work done at higher rate from an independent contractor has not been proved. Though the 1<sup>st</sup> Arbitrator was appointed in the year 1995 but the Award has been passed in the year 2007 and the appellant has unnecessarily been dragged for all this period. The Award had not been passed as per the terms

and conditions of the contract and therefore, liable to be set aside being against the public policy and other provisions of Section 34 of the Arbitration and Conciliation Act, 1996 but the Objecting Court has failed to notice the aforementioned facts, thus, there is gross illegality and perversity.

Per contra, Mr. Namit Kumar, learned counsel appearing for the respondents submits that from 1995 till the commencement of the arbitration proceedings, during the interregnum, number of Arbitrators have been replaced and there is no undue enrichment or benefit granted to the UOI as the element of interest has not been granted, thus, there cannot be any grievance of the appellant on this point.

The contractor had not completed the work rather abandoned the work. Various letters in this regard have been proved on record which have gone unrebutted. There is very limited scope of interference unless and until the Award is an outcome of patent illegality, which is not the situation in the present case, thus, urges this Court for confirming the Award and the order under challenge.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Dwivedi, for, the documentary evidence noticed by the Arbitrator reveals that the contractor-appellant had not completed the work. Even the letters post flood are indicative of the fact that the work was still pending with the contractor. Having failed to complete the work, the conduct and act of the contractor as found by the Arbitrator was abandonment of the work. It is in this background of the matter, the work was got conducted through another contractor namely Surinder Kumar who had submitted the bills Ex.C20 and the expenses incurred, thus, sought to be recovered from

the appellant-contractor.

In my view, the objections were not falling within the parameters of Section 34 of the 1996 Act as the Award is not based upon non-appreciation of evidence or against the terms and conditions of the agreement. None of the letters indicated above and noticed by the Arbitrator, have been rebutted.

For the reasons aforementioned, I do not intend to differ with the finding rendered by the Objecting Court as well as the Arbitrator. No ground for interference is made out. The appeal is dismissed.

**(AMIT RAWAL)**  
**JUDGE**

**December 08, 2016**

Pankaj\*

Whether speaking/reasoned      Yes

Whether reportable                No