

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.1035 of 2016 (O&M)

Date of decision:18.02.2016

Union of India

... Appellant

Vs.

M/s Gurdev Singh Deva

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Gautam Kaile, Advocate, for
Mr. Rajiv Sharma, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.3161-CII-2015

For the reasons stated in the application, duly supported by an affidavit, delay of 79 days in filing the appeal is condoned.

C.M. stands disposed of.

C.M.No.3160-CII-2015

For the reasons stated in the application, duly supported by an affidavit, delay of 215 days in re-filing the appeal is condoned.

C.M. stands disposed of.

C.M.No.3159-CII-2015

Deficiency of the Court fee, has been made good.

C.M. stands disposed of.

FAO No.1035 of 2016 (O&M)

The appellant-Union of India is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "1996 Act") for setting aside of the award dated 28.03.2013, whereby, compensation of ₹1,09,027/- along with interest @ 12 % per annum, has been awarded to the respondent.

Mr. Gautam Kaile, learned counsel appearing on behalf of the appellant-Union of India submits that compensation awarded by the Arbitrator is against the public policy. Thus, the objections were falling within the realm of Section 34 of 1996 Act. The Railway Administration is entitled to recover ₹29,56,648/- being the 10% penalty on the original costs of work as the contractor did not complete the work as per the agreement. The contract was accordingly terminated and the amount has been adjusted. The Arbitrator failed to notice the aforementioned facts and awarded the compensation. The claimant-contractor is not entitled to recover any amount as the final bill passed is for the less amount than the amount of penalty imposed for non completion of the work as awarded to him. The Arbitrator has ignored the fact that the costs of entire work was ₹29,56,486/-.

I have heard learned counsel for the appellant-Union of India and appraised the paper book and am of the view that there is no merit in the aforementioned submissions and appeal lacks merit

for the reasons, that the Arbitrator being an expert and the Director of the Track Modernization, Railway Board, after considering the evidence led on record found that the contractor was liable for compensation, aforementioned. The counter claim has rightly been rejected and the Arbitrator calculated the amount on the basis of the work done by the claimant as entered in the measurement book signed by the Union of India. Even recovery of ₹65,000/- entered in the official book based upon the conditions of the contract and after calculating the amount on the basis of the work done, ordered for refund of security deposit, income tax and recoveries etc, i.e., total amounting to ₹1,09,027/-.

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 to 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 dismissed.

(AMIT RAWAL)
JUDGE

February 18, 2016
savita