

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

FAO No.1291 of 2016 (O&M)

Date of decision:14.03.2016

Punjab State through Executive Engineer, PWD,
Ludhiana

... Appellant

Vs.

M/s J.K. Constructions Company and another

... Respondents

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. R.S.Pathania, Deputy Advocate General, Punjab
for the appellant.

AMIT RAWAL J. (Oral)

The State of Punjab is in appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "1996 Act") assailing the order dated 11.09.2015 declining the objections filed under Section 34 of 1996 Act seeking setting aside of the award dated 27.5.2011.

Mr. R.S.Pathania, learned Deputy Advocate General, Punjab appearing on behalf of the appellant submits that in pursuance to the terms and conditions of the contract, a dispute arose with regard to non-payment to the contractor, who was awarded contract for doing the work of P.C.laid 215.90 MT @ ₹860/- MT on Otallan Bhari Road to Manki. The previous award was to the

tune of Rs.1,64,773/- which was set aside by the Objecting Court and the matter was remanded back to the Arbitrator. As per the order dated 27.05.2011, the Arbitrator accepted claim No.4 by granting interest on interest as the contract agreement did not envisage, much less, accepted claim No.1 which was rejected on the ground of quality of bitumen. He further submits that to ascertain the quality of bitumen, an Engineer was appointed, who, gave report but the same was discarded on the ground that such defect was not found and therefore, this fact has not been proved on record, thus, the award is not sustainable in the eyes of law, much less, objections are liable to be accepted.

I have heard learned counsel for the appellant and appraised the paper book and of the opinion that in view of the law laid down by the Supreme Court judgment in **M/s Hyder Consulting (UK) Ltd. vs. Governor, State of Orissa Through Chief Engineer 2015(2) SCC 189**, Arbitrator has power to grant interest on interest, therefore, claim No.4 dealing with such propositions cannot be entertained. Vis-a-vis claim No.1, the Arbitrator while accepting the same, gave the following findings which read thus:-

“i) No opportunity was offered to the claimant for being involved in the checking of the road.

ii) It would have been more appropriate if the checking was done during the construction of road. The results of checking the bitumen content after 3 months of the

completion of work are not always realistic results due to oxidation of bitumen & due to wear and tear of the bituminous surface under the tyres of moving vehicular traffic.

iii) The results of checking of samples of P.C were set to the respondent by the Chief Vigilance Officer-cum-Director Quality Control Chandigarh in Dec., 2004 on the demand of the respondent. The Checking of the road was conducted on 09.9.1998 and reasons for delay in receiving the result after 6 years 3 months have not been explained. No proof on intimation of the findings of the checking of Q.C.C within 6 months or within 1 year have been produced before the Arbitrator.

iv) The name of the road in the forwarding letter sent by the Chief Vigilance-cum-Director Quality Control Chandigarh to the respondent do not match the name of road under dispute.”

I am of the view that such findings are in consonance with the provisions of natural justice, much less, are not being rebutted by any other evidence. The objections allowing such claim do not fall within the parameters of Section 34 of 1996 Act.

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 accordingly dismissed.

(AMIT RAWAL)
JUDGE

March 14, 2016
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