

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

FAO No.5210 of 2013 (O&M)
Date of decision : 17.02.2016

M/s H.P. Construction Company Engineers and Contractors

...Appellant

Versus

Union of India and ors.

...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. Vikas Bahl, Sr. Advocate with
Ms. Balpreet Sidhu, Advocate for the appellant.

Mr. Pankaj Jain, Sr. Panel Counsel for UOI.

AMIT RAWAL, J. (Oral)

The appellant-company is aggrieved of the order dated 11.09.2013, whereby objections filed on behalf of Union of India against the award dated 25.04.2008, has been allowed on the ground that arbitration proceedings commenced under 1996 Act was not maintainable as originally arbitration proceedings commenced on 06.05.1992.

Mr. Vikas Bahl, learned Senior Counsel assisted by Ms. Balpreet Sidhu, learned counsel appearing on behalf of appellant submits that earlier with the consent of the parties, new arbitrator appointed in the

year 2007 and the parties did not raise objection in view of Section 16 and thus deemed to have waived his right as per Section 4 of the Act, thus, objection in this regard under Section 34 was not maintainable, much less does not fall within its realm

Mr. Pankaj Jain, learned counsel appearing on behalf of respondent-UOI submits that he relied upon the provision of Section 21 and Section 85(2) to contend that in case proceedings have been initiated, it is settled law until and unless parties consented for applicability of the rule and thus rightly so, objections have been dealt with and the award has been set aside.

I have heard learned counsel for the parties and appraised the paper book.

It would be apt to reproduce the Section 21 and 85(2) of the Act:-

“21. Commencement of arbitral proceedings.—Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

85 Repeal and savings.—

(2) Notwithstanding such repeal-

(a) the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before this Act came into force unless otherwise agreed by the parties but this Act shall apply in relation to arbitral proceedings which commenced on or after this Act comes into force;

(b) all rules made and notifications published, under the

said enactments shall, to the extent to which they are not repugnant to this Act, be deemed respectively to have been made or issued under this Act.”

Since, new arbitrator was appointed with the consent of the parties in 2007, Union of India did not raise the objection as envisaged under Section 16 of the Act vis-a-vis as per provision conducted in the arbitration proceedings and thus deemed to have waived his right. Objections filed are with regard to maintainability of claim and not with regard to the jurisdiction vis-a-vis the proceedings under 1996 Act. In support of the observation, I rely upon the first two judgments of this Court in *CR No.953 of 2014 titled as Union of India and ors. Vs. M/s S.R. Engineering Construction and another*, and *2001(2) RCR (Civil) 244, Punjab Agro Rice Bran Extractions Ltd. Vs. M/s Banwari Lal Suresh Kumar*, to hold that where arbitrator with the consent of the parties has been appointed after commencement of 1996 Act, no action can be taken as per old Act and proceedings shall hold and conducted under new Act.

Keeping in view the aforementioned fact, impugned order dated 11.09.2013 is set aside, award dated 25.04.2008 is restored.

Appeal stands allowed.

17.02.2016

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**(AMIT RAWAL)
JUDGE**