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

FAO-3881-2015(O&M)

Date of decision : 22.01.2016

State of Punjab

...Appellant

Versus

M/s R.S. Builders and Engineers Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Piyush Bansal, DAG, Punjab.

Mrs. Kamini Sharma, 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)

CM-1377-CII-2016

The application is allowed and final bill (Annexure R-1) is taken on record subject to all just exceptions.

CM stands disposed of.

FAO-3881-2015

The appeal at the instance of the State of Punjab is against the order dated 30.10.2014 whereby the objections filed

(hereinafter called 'the 1996 Act') have been dismissed. This Court vide order dated 30.07.2015 had confined the notice of this appeal to claim No.7, whereby the Arbitrator had awarded the contractor difference of laying of the bitumen of 60/70 grade instead of 80/100, as per the Contract.

Mr. Piyush Bansal, DAG, Punjab appearing on behalf of the appellant, submits that as per the NIT Agreement, the Contractor was to lay down bitumen of grade 70/80. No doubt the contract also envisaged 80/100 grade. However, the upper level grade was required to 60/70 grade, therefore, the Award, viz-a-viz the claim No.7 was not in accordance with the terms of the agreement and was against the public policy and, therefore, the objections were within the purview of Section 34 of the 1996 Act. In support of his contention, he has placed a reliance of the judgment of Hon'ble Supreme Court in **"Delhi Development Authority V/s M/s R.S. Sharma & Co., New Delhi" 2008(4) RCR (Civil) 165.**

Mrs. Kamini Sharma, learned counsel appearing on behalf of respondent No.1, submits that the scope of the interference of objections under Section 34 of the 1996 Act is limited. The Court cannot sit in appeal to decide the matter and assume the role of an expert, the Arbitrator being an expert has already interpreted the terms and conditions of the Contract and decided the matter, rightly so, the objections have been dismissed.

I have heard the learned counsel for the parties and

appraised the paper book.

The findings of the Arbitrator on claim No.7, read thus:-

"32. Claim No.7 - ₹13,15,915/-

The claimant has stated that the bitumen of grade 80/100 was to be used in the work for bituminous work as per agreement. However, he was asked to use bitumen of grade 60/70 and he has cited the instructions of the Chief Engineer (IP) in this regard. In view of this position, the Claimant has asked for the difference of cost of the two grades of bitumen. The respondent has opposed the claim on the ground that the grade of the bitumen to be used in the work had to be 60/70 as per clause 507.2.1 of the MoRT&H specifications. In this connection, it is seen that the agreement provides for use of straight-run bitumen preferably of grade 80/100 as per page 464. Since, bitumen of harder grade has been used which is not as per agreement, the Claimant is entitled to the difference of cost of the two materials. Since, the respondent has not commented upon the quantification of the claim, I am left with no choice but to bank upon the amount indicated by the Claimant. Therefore, an amount of ₹ 13,15,915/- is awarded in favour of the Claimant."

I am also gone through the NIT Agreement which contains the providing of the B.L of grade 80/100 as well as 60/70.

It is to be seen portion of which grade of the bitumen is to be laid down for laying the up-gradation of the road, the matter is to be

examined by an expert and not by this Court. Once, the contract envisaged using of the bitumen of both the grades, the Arbitrator being an expert examined the same and awarded the compensation, viz-a-viz claim No.7. There is no dispute in the ratio decidendi culled out by Hon'ble Supreme Court, viz-a-viz the interference in the Award, in case, the Award is not in accordance with the terms and conditions of the Contract, but as per the terms of contract noticed above, the ratio, in my view, is not applicable.

In view of what has been observed, the contract envisaged using of both the grades of bitumen, I am of the view that the objections were not within the parameters of Section 34 of the 1996 Act and the Award cannot be said to have been against the public policy.

Accordingly, the appeal dismissed.

22.01.2016
yogesh

(AMIT RAWAL)
JUDGE