IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.471 of 2015 (O&M)
Date of decision:25.10.2016

Bharat Sanchar Nigam Ltd. & another ... Appellants

Vs.

M/s Varinder Kumar and Company and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Madan Mohan, Advocate
for the appellants.

Mr. P.S.Rana, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The appellants – BSNL are aggrieved of the impugned order 7.11.2014, whereby, the objections filed under Section 34 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as “1996 Act”) for setting aside the award dated 21.10.2010, passed by respondent No.2, have been dismissed.

Mr. Madan Mohan, learned counsel appearing on behalf of the appellants – BSNL submits that a contract for execution of work relating to laying of underground cable and associated work, vide agreements dated 16.01.1997, 16.10.1997 and 16.01.1998 respectively, was entered into between the parties. The dispute arose in respect of the aforementioned agreement and the matter was referred to the Arbitrator. The Arbitrator has

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committed illegality and perversity in relying upon the report of JTO for the purpose of ascertaining the authenticity of the measurement book, though it was required to be done by the SDO. During the course of arguments, he submits that role of Divisional Engineer was also involved. He submits that the claim of the respondents was *ex facie* barred by law of limitation as the Arbitrator entered into reference in the year 2009 and work was not falling within the Arbitration Clause, as the terms and conditions of the same have not been read by the Arbitrator, much less, the Objecting Court. The award was also not given on a proper stamp paper.

He further submits that the contractor raised the bills, details of which have been given in the grounds of appeal for which no order was placed, but this fact has not been appreciated by the Arbitrator, much less, by Objecting Court. The award is not based upon the bills raised by the respondents mentioned in the grounds of appeal. However, vis-a-vis bills no.309, 283 and other bills, there was no work order. He further submits that awarding of 18% interest is not in accordance with the terms and conditions of agreement. The objections were falling within the parameters of Section 34 of 1996 Act, as the award was against the public policy but the Objecting Court has not appreciated the aforementioned facts and urges this Court for setting aside the award, much less, the impugned order.

Per contra, Mr. P.S.Rana, learned counsel appearing on behalf of the respondents - contractor submits, that Measurement Books (MBs) submitted by the contractor reveals that it were checked by the concerned officer, i.e., JTO/SDO, i.e., 50% by the SDO and remaining 50% by the

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JTO. The work done by the contractor and the bills submitted were also in respect of the aforementioned work. Once the measurement book had been compared and verified, the bills also commensurated with the measurement book, therefore, it does not lie in the mouth of appellants -BSNL to raise such plea with regard to submissions of the bills, beyond work order.

Clauses 28 and 29 of the terms and conditions of the agreement had been appreciated by the Arbitrator as it is the only JTO and SDO, who have checked the bills with regard to the entries in the measurement book. All these facts have been examined by the Arbitrator. The objections are/were not falling within the parameters of Section 34 of 1996 Act. Entire documents have been examined by the Arbitrator, who is none-else but an expert, i.e., Deputy General Manager and yet the appellants had been audicious enough to challenge the award. Even the jurisdiction of the Arbitrator was never challenged. The filing of the present appeal and objections were nothing but an attempt to harass and humiliate the contractor, much less, to delay the payment of the aforementioned bills. He further submits that Arbitrator has not awarded any interest pre-reference, during reference but only post reference @ 18% per annum has been granted from the date of the award, in accordance with law and thus, urges this Court for affirming the findings under challenge.

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

In the **National Highways Authority of India vs.**

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Cementation India Limited 2015(3) R.A.J.1 , the Hon'ble Supreme Court had an occasion to deliberate upon the provisions of Section 34 of 1996 Act to bring into its ambit expression “Patent Illegality” within the meaning of “Public Policy”. On going through the award, I am of the view that the appellants have not been able to point the “Patent Illegality” in the award rendered by the Arbitrator, who is an officer of rank of Deputy General Manager. The bills as noticed in the award, were duly checked by the SDO and JTO. The same are in respect of the entries made in the measurement book and found that the contractor had executed the work.

It is strange that despite everything done, as per the terms and conditions of the agreement and noticed by the Arbitrator, yet the appellants have challenged the same without realizing the fact that hardly there is a ground for interference. As per the ratio decidendi culled out by the Hon'ble Supreme Court in **Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698**, it has been held that if the Court after examining the objections found/observed that different opinion is required to be formed, but the same cannot be done until and unless there is “Patent Illegality”, i.e., on re-appreciation of the evidence which is not permissible in law. The objections initially filed as a matter of right but not to be treated as an appeal without realizing the fact that there is a little scope of interference under the provisions of Section 34 of 1996 Act. None of the provisions envisaged in statute are wanting.

There is no force in the submission of Mr. Madan that as per

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the terms and conditions of the agreement, there would not be any element of interest qua earnest money, security or any money payable under law.

I am afraid the aforementioned argument is totally misplaced, in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **M/s Hyder Consulting (UK) Ltd. vs. Governor State of Urissa through Chief Engineer 2016(6) SCC 362**, wherein, it has been held that the Arbitrator is well within the jurisdiction to award compensation by awarding the interest on interest in accordance with the provisions of Section 31(7) of 1996 Act. It is post reference, thus, there is no element of pre-reference or during reference period.

I am of the view that the officer responsible for examining the award should ponder upon as to whether it should be challenged or not, in routine manner or not, in essence, whether it falls within the parameters of Section 34 of 1996 Act or not. It is almost 6 years, the award is under challenge and element of interest is recurring. It is public money being dealt with irrationally which is to be recovered from the officer responsible for the management or looking after the required affairs of the appellants. They should be wary and meticulous for conforming the opinion to challenge the same as it tantamounts to undue benefit of interest to the contractor

It is a fit case where I am of the view that the objections and appeal having been filed before this Court without there being any force and merit. In fact, the objections before the Objecting Court were completely devoid of merit, much less, misconceived.

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For the reasons aforementioned, I do not intend to differ with the findings rendered by the Arbitrator, much less, the Objecting Court.

Accordingly, the appeal is dismissed with costs of ₹20,000/- to be recovered from the officer, who is responsible in pursuing the matter before this Court, in accordance with law.

(AMIT RAWAL)
JUDGE

October 25, 2016
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Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No

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