IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.4009 of 2016 (O&M)
Date of decision:16.08.2016

Punjab State Electricity Board ... Appellant

Vs.

M/s Fenner (India) Limited and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vinod S.Bhardwaj, Advocate for the appellant.

Mr. Arun Bansal, Advocate for the caveator/respondent (s).

AMIT RAWAL J. (Oral)

Appellant-Punjab State Electricity Board 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 25.10.2011.

Mr. Vinod S. Bhardwaj, learned counsel appearing on behalf of the appellant submits that claim of the contractor before the Arbitrator in the year 2005 was ex facie barred by law of limitation as part payments were made in April 2000 and June, 2001. Even if taking the provisions of Section 18 of Limitation Act 1963, acknowledgment of denial was in 2001. All these facts, aforementioned have not been noticed by the Arbitrator, much less, objecting Court and therefore, urges this Court for setting aside the award and impugned order.

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

In the first instance, the argument is found to be very attractive but on minutely going through the award, I am of the view that a letter dated 17.02.2003, much less, other documentary evidence shows that appellant had acknowledged the outstanding amount, therefore, in my view, the limitation would start running from such date and invocation of the reference/filing of claim in 2005 cannot be said to be beyond limitation as it was after 2 years. The other arguments raised in the grounds of appeal, in my view, are redundant as the appellant has not been able to make the payment. This aspect has been noticed by the Arbitrator. For the sake of brevity, relevant portion of the award reads thus:-

> *"53 The claim petition has been filed through proper person as L. Ram Kumar President and Director has been authorised by the company Fenner (India) Limited to sign and file the claim petition as mentioned in Vol. CD-II.*
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> *The claim petition is within time as the payments were made by the respondent vide cheques from 25.4.2000 to 12.6.2001. Thereafter no payment was made by the respondent. However, respondent had lastly acknowledged liability to pay amount vide letter dated 17.2.2003 which is at Page 138 Vol.CD-II and also mentioned in para no.20 of the claim statement.*
>
> *To appreciate the full meaning of acknowledgment of liability*

occurring in Sec. 18 of the Limitation Act, 1963 clause (a) of the Explanation to the Section is also to be kept in mind and that is important. Clause (a) of the Explanation to Sec. 18 runs as follows: "the acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right.'

54. The Supreme Court has spoken about 'acknowledgment of liability' in reference to the question of limitation, when the Court considered Sec.19 (1) of the Limitation Act, 1908, which is in pari material with Sec. 18(1) of the current Act 1963 Act. In its decision in Khan Bahadur Shapoor Freedom Mazda vs. Durga Prasad Chamaria and others, reported in AIR 1961 SC 1236, the Supreme Court says, inter alia, in para 6 of the judgment "it is thus clear that acknowledgment is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledgment must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with intention to admit such *jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is fairly clear then the intention to admit jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the Court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement. In construing words used in the statements made in writing on which a plea of acknowledgment rests oral evidence has been expressly excluded but surrounding circumstances can always be considered. Stated generally courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred, or where a statement was made clearly without intending to admit the existence of jural relationship such intention could be fastened on the maker of the statement by an involved or far-fetched process of reasoning."*

55. It is submitted that clause (a) of Explanation to Sec. 18 of the 1963 Act, and the law laid down in the aforesaid decision of the Supreme Court, indicates that the respondent had made the acknowledgment of liability in writing in letters, so as to create a fresh period of limitation for the claimant, on each of the dates of those letters dated 12.6.2001 to 17.7.2002, *13.10.2002, 29.10.2002 and 17.2.2003.*

56. The present claim for arbitral proceedings commenced on 22.7.2005 that is within three years of the acknowledgment of liability in writing by respondent on 17.2.2003. Hence the claim petition is within time. The claimant has abandoned its claim of Rs.9,34,520/- as compensation for unjustified cancellation of contract. Therefore, this claim is disallowed."

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, inasmuch 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

August 16, 2016
savita

Wheather speaking/reasoned Yes/No

Whether Reportable Yes/No