IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.5732 of 2015 (O&M)
Date of decision:18.10.2016

Union of India and others ... Appellants

Vs.

M/s Unique Construction Co. ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Karminder Singh, Advocate
for the appellants.

Mr. Surjeet Bhadu Veer Singh, Advocate, for
Mr. Abhinav Kansal, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

The appellants – Union of India are 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 the award dated 16.09.2011 rendered in favour of the respondent-contractor.

Mr. Karminder Singh, learned counsel appearing on behalf of the appellants submits that as per Clause 64(3) of the General Condition of Contract 1989, on receipt of the intimation regarding the completion of work, the contractor was required to submit the bills within a period of 30 days, whereas, the same were submitted after a gap of 1½ years, therefore, the claim *ex facie* barred by law of limitation. Even otherwise, while accepting the amount assessed had given `No Dues Certificate', therefore, no dispute survived, thus, the reference to the Arbitrator is nothing but a farcical exercise. All these facts have been ignored by the Arbitrator, much less, the Objecting Court.

Per contra, Mr. Surjeet Bhadu Veer Singh, Advocate for Mr. Abhinav Kansal, learned counsel appearing on behalf of the respondent submits that as per the provisions of Section 21 of 1996 Act, the limitation to file the claim by interpreting the provisions of Article 137 of the Limitation Act is 03 years. The party cannot reduce the period of limitation which is against the Statute. Once the Statute provides the limitation of 03 years, the contractor cannot redeem the same which is against the public policy.

As per the ratio decidendi culled out by the Hon'ble Supreme Court in **Chairman and M.D. N.T.P.C Ltd. vs. Reshmi Construction 2004 AIR 1330,** the contractor can still seek the resolution of the dispute that as per his calculation, amount received is less and thus, urges this Court for affirming the findings under challenge as the objections were not falling within the realm of Section 34 of 1996 Act and therefore cannot be said to be patent illegality.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submission of Mr. Karminder Singh, for, limitation to file the claim as per the Statute is 03 years, thus, the contractor cannot initially file his bill/claim. On preparation of the final bill, it can be filed within a period of 90 days. The said condition is against the public policy and Statute.

The submission qua 'No Dues Certificate' with regard to claim assessed by the appellants and received by the contractor, I am of the view that the aforementioned argument is also fallacious and misplaced in view of the ratio decidendi culled out by the Hon'ble Supreme Court in the judgment cited supra, wherein it has been held that even after issuance of No Dues Certificate, he could not be estopped/prevented/precluded from raising the claim through resolution as the contract envisages the same through intervention of the Arbitrator.

In my view, the objections were not falling within the parameters of Section 34 of 1996 Act.

For the reasons aforementioned, I do not find any illegality and perversity in the order under challenge. No ground is made out for interference.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

October 18, 2016
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No