

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

**F.A.O.No.4710 of 2016 (O&M)**

**Date of Decision: October 06, 2016**

**Chief Engineer (IP), Punjab PWD (B&R) & another**

**...Appellants**

**Versus**

**M/s Jagsons Constructions Ltd.& another**

**...Respondents**

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE**

**Present: Mr.P.S.Bajwa, DAG, Punjab,  
for the appellants.**

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**AMIT RAWAL, J. (Oral)**

**CM No.16048-CII of 2016**

For the reasons mentioned in the application, which is supported by an affidavit, delay of 23 days in filing the appeal is condoned.

CM stands disposed of.

**FAO No.4710 of 2016**

Appellant-department is aggrieved of the dismissal of the objections filed under Section 34 and 18 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act"), whereby Claims No.1, 3, 8 and 9 have been awarded in favour of the contractor.

Mr.P.S.Bajwa, learned Deputy Advocate General, Punjab appearing for the appellants submits that the work for up-gradation of Pathankot-Sujanpur Road to Pathankot-Shahpur Kandi Road along Khadi Khad RD 0.00 to RD 2.80 (2.80 Km) near Civil Hospital, including 4 span 1400 mtr each bridge over Madhopur Beas link/Nalwa Nallah at RD 0.09

Km in District Gurdaspur was awarded to the contractor. The contract agreement provided the extension on the intended date of completion and the contractor applied for the same. He had given an undertaking that he would not claim any extra charges for the extension. The extension was granted upto 14.8.2012, but on 28.6.2012 the contractor served a legal notice for termination of the contract and since a dispute arose, the matter was referred to the Arbitrator as the contract envisages resolution of dispute through arbitration. The department has imposed penalty of 20% as per the terms and conditions of the contract. The Arbitrator has not taken this fact into consideration and awarded the claims, aforementioned, by ordering due balance payments of the work done, 12% interest and refund of the security. In fact, the work was got done at the risk and costs of the contractor and, therefore, the award is not sustainable in the eyes of law. All these facts have not been taken care of by the Arbitrator and as well as the Objecting Court, much less the undertaking dated 07.04.2012, thus, urges this Court for setting-aside the impugned award and the order.

I have heard the learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit in the submission of Mr.Bajwa, for, the claims, aforementioned, were for payment of the balance amount of the work done and refund of the security. The contractor has not claimed any accepted loss and profit. There was no counter claim on behalf of the department claiming the difference of rate regarding the work having been awarded to the different contractor at the risk and costs.

Be that so, in my view, the award of the Arbitrator is totally in consonance with the terms and conditions of the contract. The imposition of

penalty to the extent of 20% could not have been done as there was no fault of the contractor. Even otherwise, contract envisages the imposition of penalty from 1% to 10%. The Court cannot re-examine the evidence, which has been taken note of by the Arbitrator even if a different opinion is to be formed in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698.**

In my view, the objections were not falling within the expression “patent illegality” which would bring the same within the ambit of the public policy as per the judgment of the Hon'ble Supreme Court in **Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49.**

For the foregoing reasons, I do not intend to differ with the findings rendered by the Objecting Court vis-a-vis the award. No case for interference is made out.

Appeal stands dismissed.

**October 06, 2016**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**

**Whether speaking/reasoned**

**Yes/No**

**Whether Reportable:**

**Yes/No**