

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.4729 of 2016 (O&M)

Date of Decision.30.09.2016

Punjab Roads and Bridges Development Board

.....Appellant

Vs.

M/s Som Datt Builders Pvt. Ltd. and others

.....Respondents

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

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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?

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AMIT RAWAL J. (ORAL)

The appellant is aggrieved of the dismissal of the objection petition filed under Section 34(2)(b)(ii) read with Section 18 of the Arbitration and Conciliation Act, 1996 for setting aside the Award dated 14.02.2015 to the extent of allowing of claim Nos.1 and 2 and as well as granting of interest @9% per annum till realization.

Mr. P.S. Bajwa, DAG, Punjab appearing for the appellant-Punjab Roads and Bridges Development Board submits that the claim of the contractor before the Arbitrator was not in consonance with the terms and conditions of the contract. In fact, the work for upgradation of Ludhiana-Malerkotla-Sangrur road (Section 5+938 km to 77+290 km) Punjab, Contract Package No.PSRSP/WB/UG/2/ICB was awarded to the respondent-M/s Som Datt Builders Pvt. Ltd. on 12.07.2007 for a sum of ₹2,26,03,83,802/- . The dispute arose out of the payment of BOQ Item No.10.01, providing services for coordinating towards all pre-construction

activities including land acquisition, utilities, trees, structures, temples etc. as per technical specification clause 110 and as per the direction of the engineer. The dispute was referred for determination of the Engineer under the provisions of Clause 3.5 GCC. Since the Engineer took no cognizance within the period prescribed, the matter was referred to the Arbitral Tribunal. The Arbitral Tribunal has committed illegality and perversity, much less, the Objecting Court on the ground that since item No.10.01 was subject to clause 110, as such clause 110.4, which specifically laid down that in respect of the aforementioned item which is coordination, payment shall not be made separately, thus, findings of the Objecting Court are totally in disregard/violation of the provisions of contract agreement. The Arbitral Tribunal did not assign reasons for relying upon the Rule of *contra proferentum* which should not have been applied to the facts and circumstances of the case.

The finding of the Arbitral Tribunal holding that Item No.10.01 of BOQ was payable to the contractor is totally in disregard to the proviso to this clause contained under clause 110. The Arbitral Tribunal, however, committed illegality in awarding interest @9% on the amount of ₹53,26,198/- which includes the element of interest of ₹13,13,928/-, for, interest on interest cannot be award, thus, urges this Court for setting aside the order under challenge.

He further submits that all the clauses of the agreement are plain and simple and there was hardly any occasion to misinterpret them. Misinterpretation of the agreement is not within the domain of the Arbitrator.

I have heard learned counsel for the appellant, appraised the

paper book and of the view that there is no force and merit in the submission of Mr. Bajwa, for, the Arbitral Tribunal has taken into consideration the Order of Precedence i.e. Clause 1.5 of the Particular Conditions of the Contract which are as under:-

- (a) The Contract Agreement
- (b) The Letter of Acceptance
- (c) The record of pre-award clarifications (if any)
- (d) The letter of the Tender.
- (e) The addenda (if any)
- (f) The Particular Conditions-Part A
- (g) The particular Conditions-Part B
- (h) The General Conditions
- (i) The Specifications-Special Provisions
- (j) The Specifications-General Specifications
- (k) The Drawings
- (l) The Priced Bill of Quantities
- (m) The Environment Management Plan (EMP) and
- (n) Any other document forming part of the Contract.

It is the conceded position on record that the payment against the item and price adjustment under clause 13.8 (escalation) was made upto IPC-20 which was recovered in IPC-21 and IPC-22. As per sub-clause 110.4 which deals with Special Provision of Specifications, it is mentioned that work carried out under specification clause 110 qua removal of encumbrances shall be deemed to be part of the contract and no extra payment shall be made. However, in spite of this provision, the framer of the contract i.e. the Employer decided to make the work done under this item as payment item (priced BOQ Item 10.01) and invited rate for the execution of this item, much less, included the same in the bid amount. The bid amount is part of Acceptance Letter.

In my view, the Arbitral Tribunal has rightly interpreted the clause while giving finding in favour of the contractor. For the sake of brevity, the finding given by the Arbitrator reads as under:-

Specification, it is mentioned that work carried out under specification clause 110 for the removal of encumbrances shall be deemed to be part of the Contract and no extra payment shall be made for the same. However, in spite of this provision the framer of the contract i.e. the Employer decided to make the work done under this item as payment item (Priced BOQ item 10.01), invited rate for the execution of this item, included the same in the Bid Amount and Contract Price. This Bid Amount is part of Acceptance Letter making a binding contract between the parties and is higher in the order of precedence over Special Provision of Specifications. This makes the intention of the Employer very clear. Mentioning of clause 110 in the nomenclature of Priced BOQ item 10.01 is to specify the nature and scope of work to be carried out under this clause as stipulated under sub-clause 110.1, 110.02 and 110.3. AT is therefore unable to appreciate the interpretation of the Claimant-Employer now on this issue.”

As regards the charging of interest on interest, I am of the view that there is no force in the submission of Mr. Bajwa, as charging of interest on the principal is permissible, in view of the ratio decidendi culled out in **Hyder Consulting (UK) Limitd Vs. State of Orissa through Chief Engineer (2016) 6 SCC 362** wherein the view expressed in **M/s Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa through Chief Engineer 2015 (2) SCC 189** has been reiterated. The Objecting Court and as well this Court cannot sit in the arm chair of the Arbitrator to re-appreciate the evidence unless and until there is patent illegality. It appears

that the appellant has made an attempt to re-appreciate the evidence both oral as well as documentary which is not permissible as per the ratio decidendi culled out in **Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698.**

For the reasons aforementioned, I do not find any illegality and perversity in the order under challenge passed by the Objecting Court. No ground for interference is made out. The appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 30, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No