

F.A.O.No.5011 of 2016 (O&M)

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

F.A.O.No.5011 of 2016 (O&M)

Date of Decision: September 05, 2016

Union of India

...Appellant

Versus

M/s Faith Builders Pathankot & another

...Respondents

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

**Present: Mr.Pritam Singh Saini, Advocate &
Mr.Rajesh Goyal, Advocate,
for the appellant.**

**Mr.Vishal Gupta, Advocate,
for caveator-respondent No.1.**

AMIT RAWAL, J. (Oral)

Notice of motion.

**Mr.Vishal Gupta, Advocate, who is on the caveat, accepts
notice on behalf of respondent No.1.**

**Union of India-appellant is aggrieved of the dismissal of the
objections filed under Section 34 of the Arbitration and Conciliation Act,
1996 (for short "1996 Act") for setting-aside the award dated 23.5.2014,
whereby the claim of the contractor, i.e., Claim Nos.2, 4, 5, 6, 8, 11 and
12 have been allowed.**

Mr.Pritam Singh Saini, learned counsel for the appellant-

Union of India submits that the Arbitrator had declined to entertain claim No.1 which was on account of damages suffered due to delay. He submits that Clause 11 of the contract specifically provides that where the extension of time for execution has been granted, the contractor will not be entitled to claim compensation, for, that claim Nos.4 and 6 are co-related. In this regard, he has drawn the attention of this Court to the findings rendered by the Objecting court, whereby Arbitrator dealt with the aforementioned claims and awarded the compensation. The same reads thus:-

“Claim no:-2 Loss suffered due to unexpected sharp rise in prices of steel, cast iron products, GI pipes, CGI/PGI sheets etc. It was partly allowed to the extent of ₹5,25,000/-.

Claim no.4:- Loss suffered due to freezing of indices of prices in respect of material and fuel due to extension of time granted beyond the original contract period though granted under condition 11 A (vii) of IAFW 2249. It was allowed to the extent of ₹3,23,584-60 paise.

Claim no.5:- Reimbursement of extra expenditure incurred for watch and ward of work site during the extended period of 2.82 years. 3 Chowkidars were deployed \$3000/- per month each. It was allowed to the extent of ₹2,50,000/-.

Claim no.6:- Loss suffered due to reduction in scope of work on account of non availability of site/land. It was allowed to the extent of ₹3,22,000/-.

Claim no.8:- Damages suffered in loss of turnover and

profit due to late payment of final bill. It was allowed to the extent of ₹1,20,000/-.

Claim no.11:- Cost of reference, arbitration consultant, technical consultant and pleading assistant's fees, clerkage, misc. expenses etc. It was allowed to the extent of ₹50,000/-.

Claim no.12:- Interest @ 18% PA for the three period i.e. Pre-reference period, pendente-lite and future interest on the amounts becoming due from the respondent UOI. Past and pendente-lite simple interest @ 9% PA was awarded on the amounts of claims no.4 and 5 from 25.09.2009 upto the date of award. Future interest was awarded @ 12% PA from the date of award till actual payment if the same was not paid within three months from the date of award.”

This aspect has totally escaped the notice of the Objecting Court. In fact, the objections were falling within the realm of Section 34 of 1996 Act and as per the policy, much less terms and conditions of the contract.

He further submits that the claim was lodged on 16.7.2012, whereas the final bill was issued on 24.3.2009, therefore, it was barred by law of limitation and, thus, urges this Court for setting-aside of the impugned order and the award.

Per contra, Mr.Vishal Gupta, learned counsel for respondent No.1 submits that Claim No.1 was not declined on account of the fact that the contractor cannot claim the damages on account of delay, but for

want of evidence on such fact, whereas the other claims, aforementioned, granted are no longer related to Claim No.1. In fact, this aspect has been examined by the Arbitrator as the respondent had reduced the work from 79,53,611/- to 32,21,767-99 on 11.7.2008, whereas the extension was in pursuance to the agreement dated 13.1.2004, therefore, Claim Nos.4 and 6 are the damages/compensation on account of that head and not with regard to the extension. Even the payment was withheld and released on 6.12.2014, therefore, the reference of claim before the Arbitrator on 16.7.2012 cannot be said to be barred by law of limitation.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submission of Mr.Saini, for, it is conceded position on record that after the preparation of the final bill on 24.3.2009, the amount was released on 6.12.2014, in essence the acknowledgment of the amount due by the appellant-department was to be reckoned from that date and, therefore, the claim cannot be said to be barred by law of limitation.

As regards grant of claims, aforementioned, particularly Claim Nos.4 and 6 having been covered in respect of Claim No.1, I am of the view that Claim Nos.4 and 6 do not fall within the category of 11-A dealt with by the Arbitrator for not granting the compensation for want of

evidence. In fact, it contained the element of losses on account of reduction of work, as noticed above. The Arbitrator, being the Expert, examined all the aspects, including documentary evidence on record.

Mr.Saini, during the course of hearing, also raised a contention that once no objection has been issued by the contractor, he was estopped to raise the dispute, but the fact remains that a letter by the Engineer in Chief of the department with regard to escalation clause written on 27.8.2008 itself shows that the department was contemplating to compensate the contractor with regard to escalation charges, thus, there is no force in the aforementioned submission. Even the appellant had not been able to produce on record the abstracts and the vouchers. The Arbitrator has taken into consideration all the facts and the Objecting Court cannot sit as Court of appeal while trying the objections as it was a first appeal and rightly so, the same was declined.

Foregoing reasons, I do not intend to differ with the findings rendered by the Arbitrator and as well as the Objecting Court. No ground for interference is made out.

Appeal stands dismissed.

September 05, 2016
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(AMIT RAWAL)
JUDGE