

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

FAO No.5323 of 2016 (O&M)

Date of Decision.08.09.2016

Union of India

.....Appellant

Vs

M/s Akash Enterprises and another

.....Respondents

Present: Mr. Karamjit Verma, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.18179-CII of 2016

For the reasons stated in the application, delay of 12 days in
refiling the appeal is condoned.

The application is allowed.

C.M. No.18180-CII of 2016

For the reasons stated in the application, delay of 1 day in filing
the appeal is condoned.

Application is allowed.

FAO No.5323 of 2016

The appellant-Union of India is aggrieved of the dismissal of
the objections filed under Section 34 of the Arbitration and Conciliation
Act, 1996 for setting aside of the Award dated 28.06.2013 whereby the
earnest money was ordered to be released, much less, encashment of bank
guarantee i.e. total sum of ₹4,35,000/- along with interest@9% w.e.f.
4.7.2011 till the date of award and @18% per annum from the date of award
till realization.

Mr. Karamjit Verma, learned counsel appearing for the

appellant submits that the tender was called on 23.07.2010 and the contract

was awarded by issuance of acceptance letter dated 27.12.2010 to the contractor. The contractor was to complete the work upto 13.06.2011. The work was for improvement of station area, sewer line in platform line and circulating area and improvement to drain and sewer system in station yard washing line and coaching yard at Amritsar. The matter was referred to the Arbitrator and the Arbitrator has awarded the aforementioned amount without taking into consideration the fact that the Contractor did not perform his duty. The forfeiture of the bank guarantee was as per clause 62 of the contract, much less, earnest money. As per clause 6 of the Railway Board Instructions dated 28.9.2007 whenever the contract is rescinded, the security deposit is to be forfeited, much less, the performance guarantee. This fact has totally been ignored by the Arbitrator, much less, the Objecting Court.

He further submits that the work did not start despite numerous reminders and letter and therefore, the forfeiture of earnest money and bank/performance guarantee was strictly as per the terms and conditions of the contract. The finding of the Arbitrator that the appellant has failed to sign the agreement in time and caused delay, is totally wrong and against the fact. The interest awarded is too phenomenal as Clause 16(3) of the General Conditions of Contract specifically envisaged that the contractor shall not be entitled for interest, thus, urges this Court for setting aside the award and order under challenge as the objections were falling within the realm of Section 34 of the Arbitration and Conciliation Act, 1996.

I have heard learned counsel for the appellant, appraised the paper book and of the view that the validity of the tender was 90 days which expired in October, 2010. It is a matter of record that thereafter the

contractor made a request for refund of the earnest money and bank guarantee. It is also proved on record that funds were not available with the department for particular work which entailed into delay in acceptance of the contract which was done only on 27.12.2010 i.e. after expiry of period of 150 days from the date of opening of tender and the contract was cancelled.

In my view, the cancellation of the contract was not justified as the validity of the period of the acceptance of tender had been over and non-availability of the fund has also been proved on record. The Arbitrator had examined the oral and documentary evidence, much less, terms and conditions of the contract and found that the appellant was at fault as the appellant could not have accepted the contract beyond the expiry of 90 days. The award of the Arbitrator by granting refund of the earnest money and bank guarantee and cost is perfectly legal and justified and the award of interest is also in consonance with the provisions of Section 31(7) of the 1996 Act.

It is now a settled law that in what circumstances, the award has to be interfered with. The question, which is now 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 34 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 judgments, 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 embark on a path by substituting its own view in support of the Arbitrator's view. It is not the case of the appellant that the award is against the public policy or has violated the principles of judicial approach, much less against the statute and other provisions of Section 34 of the Act. The Arbitrator has dealt with the dispute, which was contemplated and was within its scope. The parties to the *lis* had participated in the proceedings and were given proper notice not only with regard to the appointment of the Arbitrator but vis-a-vis proceedings. In my view, the award of the Arbitrator does not suffer from any illegality in as much as the Arbitrator, who is expert, has dealt with the matter and decided the claims of respective parties to the *lis*.

In my view, the award read as a whole is just, fair and reasonable. 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 arises from the award and the order impugned. The same are perfect and justified.

There is no merit in the appeal. The same is accordingly dismissed.

(AMIT RAWAL)
JUDGE

September 08, 2016
Pankaj*