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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 16.09.2016

1. FAO-5359-2016 (O&M)

Punjab Health Systems Corporation

... Appellant

Versus

Bhatia Engineers and another

... Respondents

2. FAO-5363-2016 (O&M)

Punjab Health Systems Corporation

... Appellant

Versus

Bhatia Engineers and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Mayank Mathur, Advocate
for the appellant in both the appeals.

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AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two appeals bearing ***FAO No.5359 of 2016*** titled as ***"Punjab Health Systems Corporation V/s Bhatia Engineers and another"*** and ***FAO No.5363 of 2016*** titled as ***"Punjab Health Systems Corporation V/s Bhatia Engineers and another".***

The appellant-Punjab Health Systems Corporation (for short 'Corporation') is aggrieved of the impugned order dated 01.04.2016, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') for setting aside the Award dated 06.05.2014, have been dismissed.

Mr. Mayank Mathur, learned counsel appearing on behalf of the appellant-Corporation submits that the appellant had taken out the tender under aegis of World Bank for supply/procurement of certain hospital furniture i.e. 1538 units of bed side lockers, 1954 units of attendant stools, 262 units of examination tables, 353 unit of revolving stools and 85 units of emergency recovery trolley. The monetary value of the contracts dated 16.11.2000 was ₹ 6,14,790/- and ₹ 9,93,520/- respectively. The contracts, aforementioned, were entered into and as per the tender, it was clearly mentioned that the goods were to be supplied within a period of 60 days of signing of the agreement. The time period was crucial. Respondent No.1-Contractor in order to avoid liability of supply of material in time erroneously sent a letter dated 24.11.2000 asking for inspection of the materials rather than complete goods, which was not so provided in the contract, yet the appellant-Corporation acceded to the request and inspection of two samples was carried out on 07.12.2000. The samples shown, were approved on the same date. However, in order to wriggle out of the obligation to supply the goods in time, again wrote a letter dated 11.12.2000 stating therein that the time limit should start from the date of inspection. The said letter was replied vide letter dated 31.01.2001. Despite all this, the material concerned was still not supplied within time, even though, the contractor had assured that the bulk production had already been started and the inspection would be offered at earliest. By 15.03.2001, 75 % of the material could be inspected by the inspection team and one sample of each item was sent to all the consignees for comparison. The material was supplied and passed on to various hospitals and on uses of the same, many complaints were received regarding the sub-standard quality and manufacturing defects. The appellant-Contractor again sent a letter dated 22.05.2001. The material was re-inspected by an expert of the Post Graduate Institute of Medical College and Research (PGIMER) on 12.06.2001 and major shortcomings were noticed. Having left with no other option, the appellant cancelled the contracts on 22.06.2001 and requested the respondent No.1-Contractor to collect the goods allegedly supplied within 15 days and the intimation thereof was also sent to the Deputy Medical Commissioners. Respondent No.1-Contractor sent many representations, but the same were all rejected. However, taking a lenient view, respondent No.1-Contractor was given a chance to supply 30% of the material provided that the entire 30% be inspected by the inspection team and this fact is evident from the contents of letter dated 31.08.2001. The inspection team deputed to inspect the material on 02.11.2001, but the same could not be done as respondent No.1-Contractor again backed out. Accordingly, the dispute arose and the matter was referred to the Arbitrator as the contracts envisage resolution of dispute through arbitration. Respondent No.1-Contractor lodged the claim to the tune of ₹ 15,96,538.92 in respect of each contract by bifurcating it under various heads. The aforementioned claim was contested, but the Arbitrator has erroneously passed the Award, wherein it has been wrongly held that the appellant-Corporation erroneously cancelled the contract and partly allowed the claim of respondent No.1 granting the compensation to the Contractor to the tune of ₹ 2,44,414/- along with interest @ 9% w.e.f. 01.01.2002 till passing of the Award and @ 12% till the payment. In fact, the Award suffers from various infirmities and many errors apparent on record, and accordingly, the objections were filed, but the same have also been dismissed. In fact the Objecting Court and the Arbitrator have not appreciated the fact that the Arbitrator wrongly calculated loss of profit to be granted to respondent No.1-Contractor. Once, the Arbitrator has granted a sum of ₹ 1,70,640/- under the head of price of contracted goods and ₹ 69,591/- in other contract. The price of the goods which has been retained by the appellant-Corporation, also includes the element of profit, therefore, while computing the loss of profit, the amount was supposed to be at least deducted from the amount of ₹ 4,30,350/- i.e. the amount equivalent to 70% of the value of the contract. Once, it is not proved that there is a loss due to the cancellation of the contract and further items could not have been sold, it is unexplainable that how can amount be given towards the loss of profit. The Arbitrator had reserved the matter in the year 2002, but pronounced the Award as late as in the year 2014, therefore, the appellant-Corporation cannot be burdened to pay the interest, thus, urges this Court for setting the impugned order and as well as Award, under challenge.

I have heard the learned counsel for the appellant-Corporation and appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Mayank Mathur, for, the Arbitrator being a retired District and Sessions Judge, had examined the oral and documentary evidence threadbare. The appellant-Corporation has miserably failed to point out any patent illegality in the Award. The erroneous findings of the Award are not a ground of objections as per the provisions of Section 34 of the 1996 Act. In view of the *ratio decidendi* culled out by Hon'ble Supreme

Court in ***"Associate Builders V/s Delhi Development Authority" (2015) 3 SCC 49***, the scope of public policy has been expanded and the word of 'patent illegality' has also been included. In my view, the appellant-Corporation has failed to bring out the case within the aforementioned expressions. The re-appreciation of the evidence, even if the different opinion is required to be found, is not permissible in view of the *ratio decidendi* culled out by the Hon'ble Supreme Court in ***"Navodaya Mass Entertainment Ltd. V/s J.M. Combines" (2015) 5 SCC 698***. Neither the Objecting Court nor this Court can sit in the arm chair of the Arbitrator and re-appreciate the evidence and treat the objections as an appeal. The Arbitrator has rightly held the compensation payable by the appellant-Corporation to respondent No.1-Contractor for user of the goods out of those rejected. In fact certain material had been put to use by the concerned officials of the appellant-Corporation at various centres despite objection.

I am in agreement with the findings rendered by the Arbitrator.

It is now a settled law that as to under what circumstances the award has to be interfered with. The question which has now been 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 31 (3) 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's case*** (supra) and ***"Navodaya's case*** (supra). In the aforementioned judgment 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 embarked on a path by substitution in its own view. The arbitrator has dealt with the dispute which was contemplated and was within the scope of it.

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 claim of respective claimants to the parties to the *lis*.

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 arise from the award as well as order impugned. The award is perfect and justified.

There is no merit in the aforementioned appeals.

The appeals are accordingly dismissed.

(AMIT RAWAL)
JUDGE

16.09.2016
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Whether speaking/reasoned	**Yes/ No**	✓ (Yes)
Whether Reportable	**Yes/ No**	✓ (No)