

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

**F.A.O.No.5618 of 2016 (O&M)**

**Date of Decision: September 22<sup>nd</sup>, 2016**

**The Punjab State Power Corporation Limited, Patiala**

**...Appellant**

**Versus**

**M/s Bansal Generations Limited, Chandigarh & another**

**...Respondents**

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

**Present: Mr.Praveen Chander Goyal, Advocate,  
for the appellant.**

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

**CM No.19310-CII of 2016**

For the reasons mentioned in the application, which is duly supported by an affidavit, delay of 7 days in filing the appeal is condoned.

CM stands disposed of.

**FAO No.5618 of 2016**

Appellant-Punjab State Power Corporation Limited, Patiala is aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") seeking setting-aside of the award dated 1.9.2013 rendered in favour of the respondent-contractor.

Mr.Praveen Chander Goyal, learned counsel for the appellant submits that the contractor had supplied 1007 transformers at a lower rate in August, 2009 to January, 2010 and now cannot turn around and say that undertaking was under protest. Both the Arbitrator and the Objecting Court

have failed to notice the important fact that the furnishing of undertaking to accept the lower rates was made by the contractor, may be under protest, which may not save him from awarding full rate. The award is totally biased and non-speaking and suffers from illegality and perversity, much less against provisions of Section 31 of the Act and, thus, urges this Court for setting-aside the award and the impugned order.

I have heard the learned counsel for the appellant, appraised the paper book and of the view that neither this Court nor the Objecting Court can re-appreciate and re-examine the evidence even if a different opinion is to be formed. The aforementioned view of mine is supported by the ratio decidendi culled out by the Hon'ble Supreme Court in **Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698.**

The Arbitrator, in extensive, has dealt with the terms and conditions of the contract and held that the action of the appellant in making a conditional offer of accepting the old rates with the penalty or new rates whichever is lower rate is not in order as there was no provisions of price fall clause in the contract agreement. The Arbitrator also noticed the fact that the claimant had to supply 2400 nos. 100 KVA transformers upto 31.12.2008 as per contractual delivery period, but upto 31.8.2009 had supplied 589 transformers with penalty of rates Q-3830 (C-224). The Arbitrator after taking into consideration the evidence and the terms and conditions of the contract found that once there was no provision in the contract agreement and the appellant had admitted at C-117, Line 1-4 that the old rates with penalty or new rates were offered to the claimant, which was contrary to the offer made as the claimant was offered lesser of two rates. The reduction in the rates was not as per the terms and conditions.

The Arbitrator also noticed the fact that extension in contractual delivery period for the deferred period was allowed by the competent authority without financial liability, but no month-wise delivery schedule was given for deferment. The contractor was informed about one month delivery period extension only through letter dated 29.8.2009. Allowing of the extension of one month in delivery period without any financial liability in August, 2009 was not proper as the deferment was lifted way back in 2009.

In my view, the appellant has not taken care of any terms of purchase contract. The intimation given to the contractor after acceptance of new rates was under protest. This clearly implies that new delivery schedule given by the appellant expired on 30.9.2009 and rightly so, the contractor has been held entitled to compensation.

In my view, the objections were not falling with the parameters of Section 34 of 1996 Act and the award cannot be said to be against the public policy or suffers from patent illegality as noticed by 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 in the award while sitting on the arm chair of the Arbitrator. No ground for interference is made out.

Appeal stands dismissed.

**September 22<sup>nd</sup>, 2016**  
**ramesh**

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

**Whether speaking/reasoned**

**Yes/No**

**Whether Reportable:**

**Yes/No**