

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

FAO No.8603 of 2014 (O&M)

Date of decision : 05.02.2016

Secretary, Ministry of Road Transport & Highways, Government of India and
ors.

...Appellants

Versus

M/s Kurali Toll Bridge Co. Pvt. Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Sanjay Joshi, Senior Counsel, Special Engagement-UOI.

Mr. P.S. Rana, Advocate for the respondent No.1.

AMIT RAWAL, J. (Oral)

The appellant is aggrieved of the order dated 02.08.2014, whereby objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside of the award dated 25.01.2012 signed by the Arbitrator on 09.10.2012, has been dismissed.

Mr. Sanjay Joshi, learned counsel appearing on behalf of appellants submits that there was no basis for grant of extension of 53 days in concession period on account of change alignment of diversion road and the claim was awarded on this ground which is contradictory and incomplete and total disregard to the terms and conditions of the Contract. Rather the

Contractor was instrumental in causing the delay and cannot be permitted to take the advantage of the same. Claimant was not entitled to seek enhancement of concession period of 67 days on account of delay of the installment of gate on level crossing at the intersection of diversion road and railway track by the Railways. The Arbitrator has wrongly allowed the enhancement of 109 days of concession period on account of repeated agitation by the residents of the Kurali. Claim No.7 has also been erroneously allowed which is totally disregard to the categorical and mandatory clauses of the contract. This fact has not been noticed by the Objecting Court. The objections were falling within the purview of Section 34 of the Act.

Mr. P.S. Rana, learned counsel appearing on behalf of claimant submits that aforementioned objections cannot be said to be within the provision and parameter of Section 34 as the Arbitrator being Expert, after deliberation of the oral and documentary evidence extenso has given the award in favour of the claimant. This Court cannot sit in appeal and re-appreciate the evidence.

I have heard learned counsel for the parties and appraised the paper book.

I am in agreement with the findings rendered by the Objecting Court vis-a-vis the fact that the objections noticed above were not falling within the provision of Section 34 of the Act. This Court cannot sit in appeal and decide the matter. Had it been the case of non-consideration of the certain claims, it could be understood that the Arbitrator has failed to advert to such claim but in the instant case, the award cannot be said to be suffering from perversity of justice and wanting the reasons.

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 or for want of reasons 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 Vs. Delhi Development Authority (2015) 3 SCC 49 and Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698.** 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. 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 award read as a whole is just, fair and reasonable. It is now a settled law that the Arbitrator or Committee is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

There is no merit in the appeal.

Dismissed.

05.02.2016

pawan

**(AMIT RAWAL)
JUDGE**