

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

**FAO No.7036 of 2015 (O&M)
Date of decision:28.01.2016**

Executing Engineer H.S.A.M.Board

... Appellant

Vs.

The Diwan Khaper Co.op L&C Society Ltd.

... Respondent

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. Vishal Garg, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.22064-CII-2015

Deficiency of the Court fees, has been made good.

C.M. stands disposed of.

FAO No.7036 of 2015 (O&M)

The appellant is in appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short '1996 Act') against the impugned order dated 06.07.2015, whereby, the objections seeking setting aside of the Award dated 30.12.2013, have been dismissed.

Mr. Vishal Garg, learned counsel for the appellant has

raised multi-fold arguments which are enumerated herein below:-

An agreement to construct the vegetable market was entered into with the respondent-contractor on 20.08.2008 and the construction was to be completed within a period of 12 months, i.e., upto 19.08.2009. Since, he was in some problem, the work was started in November, 2009 and contract was extended upto 31.08.2010. Clause II of the agreement contains the imposition of penalty upto 10% of the total contract, in case, the contractor does not execute or start the work, much less, Clause III envisages the incurring of the damages by getting the work done at his own risk and costs. Accordingly, vide letter dated 24.07.2010, as per Clause III, the contract was extended upto 28.02.2011. Since the Contractor did not start the work for setting up vegetable market upto 29.11.2010, Clause III was invoked and the matter was referred to the Arbitrator in the month of February, 2011. The Arbitrator upon entrance rejected the claim vis-a-vis 10% penalty and as well as, Clause III on the premise that appellant is not entitled for the same. He further submits that Arbitrator is none else but S.E and therefore, he did not comply with the provisions of Section 12(3) of 1996 Act, therefore, biasness on the part of the Arbitrator cannot be ruled out. It was also specifically objected to in the objections that Arbitrator could not have entered into reference and participated into certain works and same has erroneously been dismissed.

I have heard learned counsel for the appellant and

appraised the paper book.

I am of the view that appeal deserves to be dismissed for the following reasons:-

Section 12(3) of 1996 Act provides that in case, there was apprehension in the mind of the appellant vis-a-vis partiality of the Arbitrator, the appellant could have moved an application under Section 16(2) of 1996 Act. However, no such application has been moved. In my view, vis-a-vis objections, appellant has waived his right as per Section 4 of 1996 Act which reads thus:-

“4. Waiver of right to object.- A party who knows that-

(a) any provision of this Part from which the parties may derogate, or

(b) any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.”

Section 12(3) of 1996 Act reads thus

An Arbitrator may be challenged only if-

a) Circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

b) he does not possess the qualifications agreed to by the parties.”

Since the appellant-department has failed to take any objections, vis-a-vis partiality and jurisdiction of the Arbitrator, I am of the view that he could not be permitted to raise such objections for the first time supported by ratio decidendi culled out in various judgments rendered by the Hon'ble Supreme Court and this Court in **Narayan Prasad Lohia vs. Nikunj Kumar Lohia and others 2002 AIR (SC) 1139, M/s Gupta Rice Mill (P) Ltd. vs. Markfed and another 2011(1) PLR 626 and FAO No.1576 of 2008 titled as State of Haryana vs. M/s Mehta Construction Co. and another, decided on 23.12.2015.**

In view of the aforementioned, there is no merit in the appeal and the same is hereby dismissed.

(AMIT RAWAL)
JUDGE

January 28, 2016
savita