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

FAO No.6655 of 2016 (O&M)
Date of decision:11.11.2016

Union of India and others ... Appellants

Vs.

Sh. Nirmal Singh and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Nitin Kumar, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellants -Union of India are aggrieved of the dismissal of the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "1996 Act") for setting aside the award dated 29.10.2010.

Mr. Nitin Kumar, learned counsel appearing on behalf of the appellants submits that the Objecting Court has erroneously dismissed the the objections as the award was suffering from "Patent Illegality", much less, against the public policy. On 07.01.2003, the contractor was awarded the work for extension of IRS Type PF Shelter towards ASR on UP PF at Beas on SNL-ASR Section in the year 2002 which was accepted as noticed above. The work was to be executed for ₹4,51,558/- but the claimants, wrote a letter dated 22.01.2003 that rates quoted of certain items were wrongly entered due to some family tension and he did not want to continue with the work and the letter should be treated as withdrawal. The appellants gave 48 hours time to do the same. The claimant failed to start the work and the contract was finally rescinded on 4.6.2003, at the risk and costs of the contractor. The work was again awarded to the claimant but on a different rate for an amount of ₹5,05,820/- vide contractual agreement dated 29.01.2004. The claimant completed the work according to the contract. However, the respondents deducted an amount of ₹54,262/- from the running bill on 12.10.2004. It is the aforementioned deduction which has been challenged by raising the dispute as the contract envisaged the resolution of dispute through arbitration and the matter was referred to the Arbitrator. The Arbitrator has erroneously awarded compensation of ₹54,262/- along with interest @ 6% from 12.10.2004 to the date of award and @ 18% from the date of award to actual payment and the costs of the proceedings to the tune of Rs.11,000/-. The deduction of the aforementioned amount at the behest of the Railway was justified as there is apparent difference of the rates of contract. This aspect has totally been ignored by the Arbitrator, much less, by the Objecting Court, thus, there is gross illegality and perversity in the findings under challenge.

I have heard learned counsel for the appellants and appraised the paper book and of the view that the action of the appellants in deducting the amount was not justified. If at all there is difference in the rates of the contract, they are well within their rights to invoke the arbitration clause as per the previous agreement by invoking the clause of risk and costs. Having failed to do so, the Arbitrator has rightly treated this contract as independent one as the contractor had not faulted in completion of the work.

In my view, the appellants were estopped to deduct the amount and the objections at instance of the Railway were not falling within the provisions of Section 34 of 1996 Act as the award could not be said against the public policy and no “Patent Illegality” has been pointed out.

As per the ratio decidendi culled out by the Hon'ble Supreme Court in **Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698**, it has been found that if the Court after examining the objections found/observed that different opinion is required to be formed, but the same cannot be done until and unless there is a “Patent Illegality”, on re-appreciation of the evidence.

No ground is made out for interference in the impugned order.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

November 11, 2016
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No