

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.3723 of 2010 (O&M)

Date of Order:26th September, 2017

M/s Filtrex Engg. & Consultants

..Petitioner

Versus

Union of India and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aashish Chopra, Advocate,
for the petitioners.

Mr. Pankaj Jain, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

Petitioner-contractor was awarded a contract on 16.10.1987. As per Clause 70 of the IAFW-2249, forming part of the contract, all the disputes between the parties to the contract were to be referred to the sole Arbitrator- “an Engineer Officer” to be appointed by authority mentioned in the tender document.

The dispute arose between the parties on the request made by the petitioner. The dispute was referred to respondent no.2.

The Arbitrator entered into reference. The Arbitrator repeatedly informed the petitioner, however, petitioner did not participate in the arbitration proceedings. Claim of the contractor as listed in Appendix-A to the Engineer-in-Chief's letter dated 14.07.1994 was taken up for hearing. The Union of India also filed a counter claim. Learned Arbitrator, after discussing each claim of the petitioner as well as of the Union of India, gave

its detailed award on 13.01.1995.

The Union of India filed an application on 25.01.1995 under Sections 14 and 17 of the Indian Arbitration Act, 1940 for getting the award filed in Court and for making the award a rule of the Court. Notice of the application was given to the respondent. The award was filed in the Court on 13.02.1995 by the Arbitrator. Petitioner appeared on 07.12.1995, and filed objections.

In the present case, petitioner alleges that the Arbitrator was biased against it. Petitioner filed a petition under Sections 5, 8 , 11, 12 and 20 of the Arbitration Act, 1940 in Delhi High Court on 01.12.1994. However, the petition was dismissed vide order dated 19.12.1994 on the ground that Delhi Courts lacks territorial jurisdiction.

Petitioner filed an appeal before the Division Bench of Delhi High Court on 11.01.1995. By an interim order, the Division Bench stayed the publication of the award. It is asserted by the petitioner that a letter was sent to the Arbitrator vide speed post dated 12.01.1995. However, on 13.01.1995, the Arbitrator gave its award. It is the case of the petitioner that the award was passed in violation of stay order passed by the Delhi High Court. Whereas on the other hand, it is the case of the Union of India and the Arbitrator that award was announced before any communication was received from the petitioner-contractor.

As per the evidence available on the file, the Arbitrator intimated the contractor vide letter dated 17.01.1995 that he received letter dated 12.01.1995 on 16.01.1995, whereas he had already given the award dated 13.01.1995.

Ultimately, Division Bench of Delhi High Court dismissed the

appeal after noticing that the award has already been announced by the Arbitrator and the petitioner would be at liberty to challenge the award before the competent Court.

After framing of issues, Arun Khosla, appeared as PW1 on behalf of the petitioner. He admitted that he had knowledge about the filing of the application under Sections 14 and 17 of the Arbitration Act on 24/25.01.1995. It is further clear from the order dated 08.09.1995 that a telegram was sent by the petitioner seeking exemption, therefore, the petitioner did receive notice of the case before 08.09.1995. However, petitioner filed objections on 07.12.1995, which is beyond 30 days after receiving notice from the Court regarding filing of the award.

As per Article 119 of the Schedule of the Limitation Act, 1963, the period prescribed for filing objection is 30 days from the date of intimation, therefore, Civil Judge found that the objections filed by the petitioner were barred by time.

Learned counsel for the petitioner tried to take benefit of the fact that the Union of India filed another application for making the award a rule of the Court on 07.08.2000 and, therefore, in any case the objections filed by the petitioner were within time. It may be noticed here that petitioner did file fresh objection on 13.12.1999. He has submitted that objections dated 13.12.1999 have not been considered.

I have considered the submission of learned counsel for the petitioner. However, the objections dated 07.12.1995 have been found to be barred by time. Therefore, the second objection petition dated 13.12.1999 was further barred by time.

The Union of India did file a second application for making the

award a rule of Court on 07.08.2000, however, once the Union of India had already filed an application under Sections 14 and 17 of the Indian Arbitration Act, 1940 on 25.01.1995, which was pending and notice was duly served upon the petitioner, the petitioner cannot take benefit of the second application, which was obviously on account of mistake.

The jurisdiction of the Court to interfere with the award of the Arbitrator is very limited. Section 30 of the Indian Arbitration Act, 1940, lays down that the award of the Arbitrator can be set aside only on three grounds:-(i) an arbitrator or umpire has misconducted himself or the proceedings (ii) an award has been made after issuance of order by the Court superseding the arbitration or after the arbitration proceedings have become invalid under Section 35; (iii) An award has been improperly procured or is otherwise invalid.

Both the Courts after appreciating the evidence available on the file have held that the award passed by the Arbitrator is not liable to be set aside as the petitioner has failed to make out case which may fall within the scope of Section 30 of The Arbitration Act, 1940.

Learned counsel for the petitioner has tried to impress upon that the petitioner had alleged biased against the Arbitrator vide letter dated 18.08.1994 and, therefore, the Arbitrator should not have proceeded with the matter. Learned counsel for the petitioner has further submitted that once the Delhi High Court had stayed the publication of the award on 11.01.1995, Arbitrator could not have proceeded with the award. He further submits that the Arbitrator was a Chief Surveyor (Works), whereas as per Clause 70, the Arbitrator had to be an Engineer Officer.

I have considered the submissions of learned counsel for the

parties and with their able assistance gone through the judgment passed by the Courts below as well as the records.

No doubt, the petitioner had alleged biased against respondent no.2-Arbitrator. However, merely on the allegation of being biased, the Arbitrator was not supposed to stop the arbitration proceedings. It is admitted position on the record that the application filed by the petitioner before the Delhi High Court was dismissed. Even appeal filed by the petitioner before the Division Bench was dismissed, of course, on the ground that the petitioner should file his objections and challenge the award before the competent Court. Petitioner could not produce any evidence on the file to prove that the Arbitrator was biased or his award is not in accordance with law. Therefore, I do not find any force in the submission of learned counsel.

With regard to the second submission, it is suffice to mention that it is not proved on the file that the Arbitrator gained knowledge of the stay order, before the award was pronounced. Petitioner claims that he sent a communication on 12.01.1995, award is dated 13.01.1995. The Arbitrator has communicated to the petitioner that he received the intimation only on 16.01.1995. There is no material on the record to prove that before the announcement of the award, Arbitrator had received communication sent by the petitioner. Therefore, it shall not be appropriate to set aside the award particularly when Delhi High Court had ultimately dismissed the petition filed by the petitioner.

In the present case, on the one hand, the petitioner was prosecuting his case in Delhi High Court before the Division Bench, upto 21.09.1999 when the petition was dismissed by the Division Bench,

whereas on the other hand, the petitioner had filed objections before the Court at Hissar on 07.12.1995.

With regard to the next submission of learned counsel for the petitioner, it is suffice to say that similar argument was raised by M/s Shastri Construction Company in civil Revision No.6614 of 2009. This Court after noticing that Chief Surveyor of Engineer works is also a Engineer Officer, rejected the argument. The Special Leave Petition filed before the Hon'ble Supreme Court of India against decision in Civil Revision No.6614 of 2009 was also dismissed.

It is not the case of the petitioner that Chief Surveyor Works is not an Engineer. Expression "Engineer officer" used in the Arbitration Clause has not been defined in the agreement. Arbitrator in the present case was holding a degree in engineering besides qualification as surveyor, therefore, the Arbitrator holding a degree in engineering was qualified to act as an Arbitrator.

In view of the discussion made above, I do not find any good ground to interfere with the orders passed by the Civil Judge, affirmed in appeal by the Additional Sessions Judge, Hissar. The revision petition is dismissed.

26th September, 2017
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No