

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

FAO No.6627 of 2016(O&M)
Date of decision: 21.03.2017

Bharat Sanchar Nigam Limited and another

... Appellants

Versus

M/s Sahil Builders and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Ms. Deepali Puri, Advocate for the appellants.

ARUN PALLI, J. (Oral)

Vide arbitral award dated 05.09.2013, claim of the respondents was partly accepted, whereas the counter claim filed by the appellants had since been rejected. Being aggrieved against the said award, the appellants filed objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act'). But, as the learned Additional District Judge, Jalandhar, has dismissed those objections, vide impugned judgment dated 17.08.2016, the appellants are before this Court.

Appellants are engaged in providing telecommunication services across the country. Parties to the lis had entered into an agreement dated 29.07.2003, for up-gradation of outdoor plant in the area of Jalandhar SSA (Nakodar SDCA). And the work orders were issued for 15 exchanges in the area of Nakodar SDCA. The respondent-claimant was required to execute the work within the time specified in the agreement, but he failed to even commence the work in the area of Lohian, Shankar, Chanian, Mehatpur, Kular, Mallan Kalan, Uggi, Gidderpindi, Sohal Jagir, Seachewali, Malhian and Nangal Ambian. Whereas, at the other stations; Sarih, Nakodar

and Shahkot, only partial work was carried out. The Arbitrator, on an analysis of the matter in issue and the evidence on record reached a conclusion that the respondent-claimant had executed the work allotted to him vis-à-vis job item Nos.1 to 3 at Sarih, Nakodar and Shahkot, therefore, he was entitled to full payment of the amount at the agreed rates in respect of the work under job item No.1(b) and item No.2. Whereas, his claim was restricted as regards job item No.3(a) to the quantum as admitted by BSNL in its reply and the supporting evidence. But, as it was found that the respondent-claimant had failed to execute the work at the other two stations, his claim was rejected. Thus, the claim of the respondent was partially granted as regards the work done in three stations and he was awarded a sum of ₹ 1,83,635.00 with simple interest @ 10% per annum from the date of reference till retention of the amount.

In so far as the counter claim of the appellants, it was concluded that the BSNL had claimed a sum of ₹ 15,490/- for two unused store items, namely, 5Pr Cable and 5Pr DP issued to the contractor. As the appellants failed to adduce any evidence in this regard, and even Kewal Krishan, AGM (NWP) conceded in his cross-examination that department had no supporting material to substantiate their claim, the counter claim of the appellants was dismissed.

The only objection raised by the appellants that the Arbitral Tribunal granted the claim of the respondent-claimant in contravention of Clause 15(v) of the Contract Agreement, was also rejected by the Additional District Judge. It was observed that the said Clause required the contractor to get his work inspected by the SDE (Acceptance Testing) or any BSNL Agency nominated by G.M.T., Jalandhar, thus, before the payment could be

released to the contractor, the acceptance testing of the work purport to have been executed was necessary. The technical staff of BSNL had assessed the work done by the respondent which is why the appellants had pointed out the discrepancy in the work executed by the respondent. Though, the Arbitrator, on the strength of the evidence on record, held that the same were minor in nature. Therefore, after the work had been assessed and flaws therein were noticed by the technical staff, the appellants could not, at that stage, make a grievance that no acceptance testing was done, and, therefore, the claim of the respondents could not be granted.

Needless to assert that the Court while considering the objections against the arbitral award, under Section 34 of the Act, does not examine the dispute as Court of Appeal or re-adjudicate the issue. The appellants failed to demonstrate as to how the arbitral award was unsustainable in terms of the provisions of Section 34 of the Act. Learned counsel for the appellants could not show that the conclusion arrived at by the Arbitrator or even the Additional District Judge was contrary to the record or legally unsustainable.

That being so, the only and the inevitable conclusion that could be reached is that the appeal is bereft of merit and is accordingly dismissed.

March 21, 2017
Rajan

(Arun Palli)
Judge

Whether speaking / reasoned:
Whether Reportable:

YES/NO
YES/NO