

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

FAO No.6646 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 allowed, whereas the counter claim filed by the appellants had since been declined. Being aggrieved by 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 21.08.2003, for up-gradation of outdoor plant in the area of Jalandhar SSA (Phillaur SDCA). And the work orders were issued for 28 exchanges in the area of Phillaur 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 Lallian, Sarhal Mundi, Dosanjh Kalan, Jandiala, Bundala, Virk, Bara Pind, Sangh Dhesian, Rurka Kalan, Talwan,

Umarpur, Sunnar Kalan, Kot Badal Khan, Dyalpur, Shahpur, Pharwala, Lasara, Nagar, Muthada Khurd and Kang Jagir. Whereas, at the other stations; Goraya, Nurmahal, Bilga, Phillaur, Haripur Khalsa and Apra, work was partially carried out. The Arbitrator, on an analysis of the matter in issue and the evidence on record reached a conclusion that if the work had not been completed at all the stations as alleged by BSNL, the same would have been got completed departmentally or through another contractor at the expense of the claimant as provided in the agreement which step admittedly was not taken justifying adverse inference against BSNL. Thus, it could be safely concluded that the respondent-claimant had successfully executed the works allotted to him. Consequently, the appellant-BSNL was directed to pay a sum of ₹ 4,71,540/- with simple interest @ 10% per annum w.e.f. 23.01.2009 i.e. the date of reference till payment of the amount.

In so far as the counter claim of the appellants, it was concluded that the BSNL had claimed a sum of ₹ 1,23,032/- for five pending store items, namely, 5 Pr Cable worth ₹ 78,020/-; 5 Pr. DP box (134) worth ₹ 24,120/-; 10 Pr DP box (50) worth ₹ 10,500/-; jointing kit (25) worth ₹ 4,500/- and drop wire 3928 meter worth ₹ 5,892/-, 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