

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

206

FAO No. 6640 of 2012 (O&M)

Date of Decision : 9.3.2018

Jain Construction Company

....Appellant

VS

Union of India and others

....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. K.K.Gupta, Advocate
for the appellant.

Mr. Pankaj Jain, Advocate
for the respondents.

AJAY TEWARI, J.(Oral)

This appeal has been filed against the dismissal of the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996.

Brief facts of the case are that the appellant had entered into a contract to provide external electrification works. When a dispute arose, Arbitrator was appointed. The Arbitrator held that the contract was rightly terminated by the respondents; the risk and costs clause was rightly invoked by the competent authority; and consequently respondents were entitled to be paid the extra amount which had been spent at the risk and cost of the appellant; and further was entitled to compensation for the delay as well as to escalation. Further detailed reference to the facts would not be necessary because on 30.8.2016 when the case came up for hearing the following order was passed :-

“Learned counsel for the appellant confines his argument to the escalation clause on the premise that once the work had been done at the risk and cost, escalation could not have been granted and

compensation also.

Notice of motion for 08.11.2016.

Notice regarding stay as well.”

Learned counsel for the respondents has argued that admittedly the time provided for completion of the contract was seven months for phase-I i.e. 27.4.1995 and twelve months for phase II i.e. 27.9.1995. The contract was cancelled on 5.1.1996. The Arbitrator found as follows:-

“A look at the works diary of this work indicates that :-

- (i) The contractor worked only for 36 days in the total period of over 15 months commencing from 28 Sept. 94 to 05 Jan 96, the date of cancellation. No work force what soever, even for one day, was employed on the work after 28 jan 95.
- (ii) Phase I of the work which was required to be completed by 27 Apr 95 was only 46% complete.
- (iii) Total work done till the date of completion was worth Rs.2.11 lakhs with additional stores worth Rs. 3.23 lakhs at site against the contract amount of almost Rs.17/- lakhs.
- (iv) The only hinderance brought out by him against the Union of India is an approval of two samples which took 15 to 20 days while all other samples were approved almost on the day they were submitted for approval. This delay in approval of two items cannot be considered any thing substantial in the overall context of the work.
- (v) No justification what soever could be given by the contractor for such indifferent attitude towards the work.
- (vi) Infact, it can be treated as a very good example of non performance by a contractor due to not progressing the work with due diligence.”

Learned counsel for the appellant has argued that no evidence was led by the respondents as to whether they had suffered any damage for the delay and further, once the work had been done at its

risk and cost no compensation could be awarded. In my considered opinion, both the arguments are misconceived. Of course, in a situation where unspecified damages are claimed it is necessary for the claimant to prove what damages it has suffered but where the contract itself specifies damages for delay no further evidence except delay has to be seen. The argument that once the risk and cost clause is invoked compensation for delay cannot be granted must also be rejected. Risk and cost is only to cover the extra expenditure which the principal has had to incur to get the work completed but does not include the loss which it may have suffered because of the delay in completion of the work. Learned counsel for the appellant has further argued that the interest is also wrongly levied. Having restricted his claim as per the order dated 30.8.2016, this argument is not open.

As regards the escalation learned counsel for the respondents has stated that it would not press the escalation clause.

Consequently, the appeal is allowed qua the escalation clause and dismissed on other grounds.

Since the main case has been decided, the pending C.M, if any, also stand disposed of.

9.3.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No