

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

125

FAO-3234-2017 (O&M)

Date of Decision : 26.11.2018

Executive Engineer, PWD (B&R), Amritsar

..... Appellant

Versus

M/s Satish Aggarwal & Company and another

.... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Ms. Amarjit Kaur Khurana, D.A.G., Punjab
for the appellant.

Mr. Naresh Markanda, Sr. Advocate
with Ms. Kavita Markanda, Advocate and
for the respondent No.1.

AJAY TEWARI, J. (ORAL)

This appeal has been filed against the judgment and order of the Additional District Judge, Amritsar dated 29.11.2016 dismissing the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 against the award dated 25.11.2014.

The respondent No.1 had got the contract for a highway which was scheduled to be completed within six months. Ultimately, it took 25 months for the contract to be concluded and the disputes were referred to arbitration who passed the award in favour of the respondent No.1. The key ground on which the Arbitrator awarded different amounts to the respondent No.1 were the fact that the delay had been occasioned due to the circumstances beyond the control of the respondent No.1, and rather was on account of the appellant and thus the respondent No.1 was justified in claiming not only interest on delayed payments but also under heads like

overhead charges and price escalation. One of the arguments raised by the State is that the price escalation clause was scored out and therefore the the Arbitrator erred in granting escalation and likewise, there could be no escalation on overhead charges. However, the Arbitrator justified these amounts on the ground that had the delay not been caused by the appellant, then the contractor would have been barred from claiming escalation on overhead charges but once the delay was on the part of the appellant, the fact that there was no escalation clause could not bar the Arbitrator from awarding the same. By way of illustration, in this case, the respondent No.1 had claimed that after the initial period of contract was over, the price of various inputs had registered a sharp increase, and at least for the period beyond six months, he was entitled to the price escalation. Likewise, it was the claim of the respondent No.1 that it had to block its resources for a long period due to the delay of the payments and was therefore entitled for overhead charges.

Learned Deputy Advocate General is not in a position to controvert the finding that the delay was on the part of the appellant and once that is so, I do not find that the parameters of Section 34 of the Act are attracted to the award or to the impugned order.

Consequently, the appeal is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

November 26, 2018

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(AJAY TEWARI)
JUDGE

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