

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

102

FAO-930-2017 (O&M)

Date of Decision : 13.12.2018

Chief Engineer (PSRSP)

..... Appellant

Versus

M/s C&C Construction Ltd. and others

.... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Ms. Amarjit Kaur Khurana, Deputy Advocate General
for the appellant.

Mr. Sudhanshu Makkar, Advocate and
Mr. Deepal Hooda, Advocate
for respondent No.1.

AJAY TEWARI, J. (ORAL)

This appeal has been filed by the State against the dismissal of their objections against the award dated 19.09.2012 in respect of upgradation of Tarn Taran-Chabal-Attari Road. The major component on which the Contractor-respondent No.1 had claimed compensation was due to delay which as per the Contractor was attributable to the appellant-State. The two factors which contributed to the delay were the non-regulation of the water supply in the UBDC Canal and the existence of Army bunker due to which the entire road had to be realigned. The case of the appellant was and, continues to be, it was the job of the Contractor to get over these problems. On the other hand, the Arbitrators have noticed that it was for the

regulation of water in the UBDC Canal and the interaction with the Department of Defense and that in every such contract this is the usage even if it may not be specifically stipulated in the contract. The Arbitrators have noticed that in fact these problems were solved only after the State of Punjab had intervened in the matter on the pointing out of the contractor. The sole argument raised by the learned Deputy Advocate General before me is also hinges around this issue. The State insists that it was for the Contractor to have overcome these hurdles.

In my opinion, the appreciation of the fact situation by the Arbitrators is correct. The Arbitrators have noticed as follows:-

“7.3. The agreement is silent on the responsibility for arranging canal closure by the Employer. Also there is no provision to put this responsibility on the Contractor. However, as per terms of the contract; being an item rate contract and there being no provision for coffer dam or sheet pilings etc. in the bill of quantities, it was necessary to arrange canal closure. As per trade practice, such facilities are to be provided by the Employer in the interest of the project as without the help and interaction of the Employer other Govt. departments do not agree to such facilities. It is therefore felt that it was responsibility of the Employer to arrange canals closure. It has been noticed that work of constructions of bridge piers finally could be done only when either there is no flow in the water bodies or the flow was very low which could be possible only with the interaction of the Employer. Canals have restricted water ways and they do not have been open boundaries like rivers. Any obstructions like putting of coffer dams or sheet pilings in the water causes head up of water up streams which are considered possible reasons for breaches in the canals and because of this reason the Irrigation Departments do not allow putting obstructions in the water

ways.

It is seen that in the meeting with the Chief Engineer on 22.12.2008, (P34 -CD-III) to the progress of the Project, the matter regarding canal closure of UBDC canal, for of the Bridge at Kim. 18,750 was discussed and the Chief Engineer directed to immediately take up with Irrigation Department at Chief Engineer level.

The problem of obtaining canal closure was also projected by the Contractor for Bridge at RD 35.990 vide letter dated 05.05.2009 (P10 -CD III) and the problem was solved after the employer took up with the Irrigation Department when the SDO (Irrigation) agreed and regulated the flow at low level to enable completion of the Bridge by 15.06.2009.

The problem of obtaining canal closure was well appreciated by the Chief Engineer who advised immediate action to remove this hindrance to facilitate fact execution of the bridge work. This could not have been tackled without departmental efforts.”

There is no answer to these findings. In the circumstances, no fault can be found with the impugned judgment and order of the Court rejecting the objections filed by the State.

Appeal is dismissed.

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

December 13, 2018
ashish

(AJAY TEWARI)
JUDGE

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