

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

129

FAO-6786-2018 (O&M)
Date of Decision : 15.11.2018

State of Punjab through Executive Engineer

....Appellant

vs.

M/s Satish Aggarwal and another

....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

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

AJAY TEWARI, J. (Oral)

CM-23961-CII-2018

For the reasons recorded, the application is allowed. Delay of 118 days in filing the appeal is condoned .

Main Case

This appeal has been filed against the Award of Arbitrator and the judgment of the learned Additional District Judge, Amritsar dismissing objections filed by appellant under Section 34 of the Arbitration and Conciliation Act, 1996.

Brief facts of the case are that the respondent No.1 was allotted the time bound work namely 'Beautification of Amritsar-Ajnala Road (SH-25) (Section Mirankot chowk to Airport) on 30.6.2011 for a total amount of Rs. 18.57 Crores approximate with a time limit of six months. After the work was completed the respondent No.1 filed a claim before the Arbitrator in which his major grouse was that though it was time bound work yet the

complete site clear from all obstructions was not handed over to him even three months after the work was allotted. His further claims were that the drawings etc. were unnecessarily delayed and the third component was that after some work was made the site was changed. He therefore prayed for compensation for the extra work, for the loss of profit due to idling of the machine, lack of man power and on account of price variation for the prolonged period of contract. Total amount of Rs.5,27,01526/-was claimed.

The case of the appellant on the other hand was that there was no delay on the part of the appellant and whatever delay was caused was due to mismanagement or lack of expertise of the respondent No.1. The Arbitrator awarded a sum of Rs.1,78,88,675 with interest @ 10%. The objections having been dismissed, the present appeal has been filed.

Though the Court has rightly held that all the objections were factual and hence not justiciable under Section 34 of the Arbitration and Conciliation Act yet at the instance of learned Deputy Advocate General, I have gone through the Award and the evidence. Two main reasons which weighed with the Arbitrator to accept claim were that an inspection note dated 17.9.2011 written by the Chief engineer of the appellant in which he accepted that even till that date the stems of the trees which had to be cut were still in the ground; the electricity poles were still in the process of being removed and the contention of the respondent that marshy soil was more than projected in the contract document were prima facie correct.

The second reason which weighed with the Arbitrator was that the respondent had sought extension of time in which he had clearly mentioned these very factors and unconditionally time was granted except

that an undertaking was obtained from respondent No.1-contractor that he would not claim anything except price increase. Learned Deputy Advocate General has argued that it was pleaded in the rejoinder that the machine and the man power for which the respondent was claiming charges were actually not idle at that time but were sent to some other work. This issue was raised before the Arbitrator also but the Arbitrator noticed that no evidence was led by the appellant on this account.

In this view of the matter, I am not satisfied that the award or dismissal of the objections can be interfered with. The appeal stands dismissed.

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

15.11.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No