

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

CM No. 1598 and 1599 CII of 2019 in/and
FAO No. 437 of 2019 (O&M)
Date of decision: 22.1.2019

Divisional Canal Officer, Hisar and others

...Appellants

Versus

Manish Kumar and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Pawan Kumar Jangra, Additional Advocate General,
Haryana, for the appellant.

JAISHREE THAKUR, J.

CM No. 1598 and 1599 CII of 2019

These are the applications that have been filed seeking for
condonation of delay of 300 days each in re-filing and filing the appeal.

For the reasons stated in the applications, which are supported
by the affidavits, the delay in re-filing and filing the appeal is condoned.

Main case

This first appeal has been filed against the judgment dated
12.1.2017 passed by the Additional District Judge, Hisar, whereby the
objection filed by Manish Kumar—respondent herein under Section 34 of
the Arbitration and Conciliation Act, 1996 (henceforth called '**the Act**' for
short) has been allowed and the arbitral award dated 12.3.2014 has been set
aside.

In brief, few facts need to be noted for proper appreciation of the case. The case of the petitioner/respondent herein is that he is resident of Village Kaimri and a share holder of outlet RD 4600/L Kaimri minor and owner of garden comprised in rectangle 64//26/3 situated in Village Kaimri in Chak of outlet RD 4600/L Kaimri Minor. It was contended that the petitioner and other family members as shown in the jamabandi for the year 2007-2008 were getting extra supply of canal water for their orchard/garden as per the provisions contained in the rules for extra supply of canal water to the garden since 1943 and according to the agreement, the petitioner was maintaining the garden property with the help of the Horticulture Department. It was contended that the Deputy Collector/Executive Engineer has wrongly recommended the case for withdrawal of extra supply of canal water and the order was passed against the principles of natural justice, while further contending that there was no notice served upon him regarding withdrawal of the extra supply of canal water. The matter was referred to Engineer HSE-I, Bhakra Water Services Circle-I, Hisar for arbitration, who held the proceedings in this regard, whether the claimant Munish Kumar would be entitled to extra supply of water from the canal. The respondent contended before the Arbitrator that Munish Kumar, the land owner, was not maintaining his garden properly and, therefore, since the whole area under question was in poor condition, it was rightly decided to withdraw the extra supply of water. An independent person was deputed for site inspection and the report of Shri J.S. Kundu, Executive Engineer, Water Services Division, Hansi was taken on record. As per the report, the maintenance of the whole area under question was in a poor condition and based on the report, an

award was passed in favour of the appellants and the order to withdraw extra supply of sanction for water for the garden was upheld. The award of the Arbitrator dated 12.3.2014 was challenged by the respondent herein by filing objection under Section 34 of the Act.

The Additional District Judge, Hisar, after hearing counsel for the parties, set aside the award. Aggrieved against the said judgment, the instant appeal has been filed by the Department.

Learned counsel for appellant submits that the Arbitrator had rightly come to the conclusion that the garden was not being maintained by the respondent herein and, therefore, extra supply of water from Outlet RD 4600-L of Kaimri minor was rightly withdrawn.

I have heard learned counsel for the appellant as well as perused the impugned judgment. The respondent—Munish Kumar challenged the award primarily on the ground that it was against the principles of natural justice in so far the inspection report of Shri J.S. Kundu was accepted without giving any opportunity of hearing to the claimant and without supplying a copy of the said report to him. The well settled law in a catena of judgments clearly specify that the award of the Arbitrator ought not to be interfered with and the scope of interference is limited. In this regard, reference can be made to the jugements rendered in **Mcdermott International Inc. Versus Burn Standard Co. Ltd. And others 2006 (2) ArbiLR 498** and **M.P. Power Generation Co. Ltd. & Anr. Versus Ansaldo Energia SPA & Anr. 2018 (5) R.C.R. (Civil) 208**. An interference in a award would be warranted if the parameters, as specified in Section 34 (2) (b) of the Act are satisfied. Section 34 (2) (b) of the Act is

reproduced as under:-

“34. Application for setting aside arbitral award. (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application furnishes proof that—

- (i) a party was under some incapacity, or*
- (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or*
- (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*
- (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:*

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

- (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or*
- (b) the Court finds that—*

- (i) *the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or*
- (ii) *the arbitral award is in conflict with the public policy of India.”*

In a judgment rendered in **Oil & Natural Gas Corporation Ltd. V. Saw Pipes Ltd., 2003 (5) Supreme Court Cases 705**, a wider meaning to the expression “public policy” as mentioned in Section 34 (2) (b) of the Act has been given. While dealing with the phrase “public policy” the Supreme Court held as under:-

“Therefore, in our view, the phrase 'Public Policy of India' used in [Section 34](#) in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term 'public policy' in Renusagar's case (supra), it is required to be held that the award could be set aside if it is patently illegal. Result would be - award could be set aside if it is contrary to: -

- (a) fundamental policy of Indian law; or*
- (b) the interest of India; or*
- (c) justice or morality, or*
- (d) in addition, if it is patently illegal.*

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the

public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court. Such award is opposed to public policy and is required to be adjudged void.”

In the instant case, the District Judge, while rightly interpreting the judgment of the Supreme Court, held that the award of the Arbitrator has to be set aside since the rules of natural justice were not complied with. In para 14 of the impugned judgment passed by the District Judge, he has taken into account the various dates/proceedings which took place before the Arbitrator. It was noted that Shri J.S. Kundu, Engineer, had been directed to inspect the garden and submit his report before 25.10.2013. The report dated 2.12.2013 was filed before the Arbitrator in December, 2013. Further there is no order available of the Arbitrator fixing the date for hearing on 12.3.2014, on which date he passed the impugned award itself. The record also reveals that on 12.3.2014, an appearance had been caused on behalf of the respondent herein for an adjournment as his counsel was unwell. However, the same was not exceeded to and the award came into existence. The District Judge came to the conclusion that no opportunity had been given to the claimant/Objector to rebut the report of the Executive Engineer; nor copy thereof was supplied to him, holding that there was no compliance of the rules of natural justice. The learned counsel appearing on behalf of the appellant vehemently argues that the supply of extra water was rightly stopped as the orchard was not being maintained. However, he has not been able to satisfy the Court as to whether a copy of the report had been supplied to the landowner. The rules of natural justice would have enjoined the Arbitrator to ensure a fair hearing in the matter and given an opportunity to

object the report. Fairness is the least of expectation when one is appearing before a person appointed to do justice. The same is lacking herein. The impugned award was against the public policy and passed in utter violation of principles of natural justice. The District Judge has rightly interfered in setting aside the award.

For the reason afor-stated, there is no merit in this appeal.

Dismissed.

22.1.2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No