

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

FAO No.4045 of 2003 (O&M)  
Date of Decision: May 10, 2019

PGIMER

...Appellant

Versus

M/s Kalsi Construction Company and another

...Respondents

**CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR**

Present:- Mr. Vinod Bhardwaj, Advocate  
for the appellant.

Mr. Naresh Markanda, Senior Advocate with  
Ms. Lakshita Sahni, Advocate and  
Ms. Kavita Markanda, Advocate  
for respondent No.1.

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**JAISHREE THAKUR, J.**

1. The instant appeal has been filed seeking to challenge the order dated 17.04.2003 passed by the Additional District Judge, Chandigarh whereby, the objection filed by the appellant herein under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for setting aside the award dated 31<sup>st</sup> December, 1999, has been dismissed.

2. In short, the facts of the case are, that a contract for construction of Advanced Pediatrics Centre was allotted to respondent No.1-contractor by the appellant and in this regard, a contract agreement was drawn and executed by the parties. The work was not completed within time, as such, the final bill could not be raised for want of agreed

measurements. Respondent No.1-contractor raised the dispute for arbitration and Sh. S.S. Mongia was appointed as the sole Arbitrator. Both the parties raised their claims and counter-claims before the Arbitrator, who came to pass the award dated 31<sup>th</sup> December, 1999. Aggrieved against the award, the appellant herein challenged the same under Section 34 of the Act before the Addl. District Judge, Chandigarh, who came to dismissed the objection by its order dated 17.04.2003, which order is under challenge in this appeal.

3. Mr. Vinod Bhardwaj, learned counsel appearing on behalf of the appellant argues; that the Arbitrator has proceeded beyond the agreement by granting ₹ 3 lacs in claim No.14 without any proof and has misread the evidence; that regarding claims No.1 and 2 the Arbitrator has awarded more payment than agreed between the parties; that claim No.19 is about interest and Section 31 of the Act deals with the same, but no reason has been given for allowing interest @ 18%, as such, finding of Addl. District Judge is not sustainable; that with regard to claim No.3 for the escalation, it is submitted that once market rate has been paid, the contractor is not entitled for escalation as per clause 12 of the contract; that similarly the finding of the arbitrator on claim No.7 cannot be sustained because the rates were approved by the Superintending Hospital Engineer and the same were accepted and forwarded by the Hospital Engineer, as such, these are deemed to have been accepted and presented by the Hospital Engineer; that with regard to claim No.8, it is submitted that the Arbitrator has worked out his own rates, without any reasoning and the same did not show any workable formula; and that similarly the approach of the Arbitrator and

learned Addl. District Judge with regard to claim No.11 (Final Bill) cannot be sustained because the Final Bill can be submitted after joint measurements of the work. It is also contended that the Arbitrator cannot change the agreed terms of the contract. Regarding claim No.14, it is argued that there was a separate construction allotted to M/s Coxwell Domes, New Delhi and payment due to that company cannot be paid to the contractor/respondent No.1. The Arbitrator has awarded compensation and ignored the agreed terms of the contract for RCC payment as well as claims No.14 and 18.

4. Per contra, Mr. Naresh Markanda, learned Senior counsel along with Ms. Lakshita Sahni, Advocate and Ms. Kavita Markanda, Advocate appearing on behalf of respondent No.1 argues that the arguments so raised by learned counsel for the appellant have been dealt with in detail by the learned Addl. District Judge and the same are not sustainable. It is contended that a bare perusal of the award running into 117 pages shows that the arbitrator has taken into consideration all the material/evidence/document available on record and the findings of the arbitrator are well reasoned. It is also argued that the award of the Arbitrator is in consonance with the rule of law and the learned Addl. District Judge has rightly dismissed the objection petition filed with the detailed order. In support of his arguments, he relied upon judgments rendered in ***Gautam Constructions and Fisheries Ltd. vs. National Bank for Agriculture and Rural Development, (2000) 6 SCC 519, Bhagwati Oxygen Ltd. vs. Hindustan Copper Ltd., (2005) 6 SCC 462.***

5. I have heard learned counsel for the parties and have gone

through the case file.

6. The Addl. District Judge, while dismissing the objection petition filed under Section 34 of the Act, has observed as under;-

*“15. In the present case, the objector has failed to show that arbitrator has acted beyond jurisdiction. Rather it has come on record that arbitrator has operated within the four corners of the agreement and has dealt with only those disputes which were submitted by the parties before him. The objector's witness namely Jagroop Singh Sandhu while appearing as AW2 admitted the fact that constructions have been carried out in accordance with the terms of the agreement as well as the CPW specifications.*

*16. Since the objector has failed to prove the fact that the award is contrary to the terms of the contract and submissions made by the parties, therefore, there is no justification to interfere with such an award.*

xxx xxx xxx

*24. In Section 34 of the Arbitration and Conciliation Act, 1996, it has categorically been mentioned that award maybe set aside by the court after it deals with a dispute not contemplated by or not falling within the terms of submission of arbitration or it contains decisions on the matters beyond the scope of submission to the arbitration. A perusal of the award dt. 31.12.99, which runs into 117 pages shows that award has been passed qua the dispute between the parties which was submitted before the Arbitrator. Even in the office order dt. 27.8.98 issued by PGI, Chandigarh it categorically stands mentioned that Sh.SS Mongia, Chief Engineer (retd.) Punjab PWD B&R, is appointed as Arbitrator who shall adjudicate*

*all the claims and counter-claims submitted by the parties to the agreement. As such, the findings given by the Arbitrator were well within his jurisdiction and the objector has failed to prove the fact that Arbitrator exceeded his jurisdiction. In view of the detailed speaking award, much reliance cannot be placed on evidence of Ramesh Chander Tulli AW-1 and Jagroop Singh AW-2. On the other hand, the evidence of Darshan Singh Kalsi as RW-1 categorically proves the fact that award is legal and valid and well within the jurisdiction of the Arbitrator and there is no justification to set aside the same.*

*25. Perusal of the award and its proceedings clearly shows that both the parties and their counsel were heard at length by the Arbitrator and award was passed only after going through the evidence brought on record. Sh. Darshan Singh Kalsi RW-1 deposed in his evidence that PGI never questioned the technical competency of the Arbitrator during the hearing. Section 4 of the Arbitration and Conciliation Act, 1996 clearly mentions that a party who knows that (a) any provision of this part from which the party may derogate (b) any requirement under the arbitration agreement has not been complied with and yet proceeds with arbitration without stating his objection to such non-compliance without undue delay or if a time limit is provided for stating that objection, within that period of time, shall be deemed to have been waived his right to so object. As already referred in the authority mentioned above (Narain Parshad Lohia vs. Nikung Kumar Lohia & ors., 2002(3) Supreme Court Cases Page 572), the party should have raised an objection before the arbitrator during the*

*proceedings of arbitration. As such, in view of Section 4 of the Act, it is held that party (PGI being objector) has now waived its right to object.*

*xxx xxx xxx*

*54. In view of the authorities mentioned above and keeping in view the facts of this case, I am of the considered view that grant of interest at the rate of 18% by the arbitrator was well within his discretion which he judicially exercised. It is to be kept in mind that grant of interest at the rate of 18% per annum in such types of transactions which are business/commercial in nature cannot be considered to be on higher side under the prevailing circumstances. Accordingly, the objection raised is held to be devoid of any merits”*

7. In the judgment rendered by the Double Bench of the Supreme Court in ***Navodaya Mass Entertainment Ltd. vs. J.M. Combines, (2015) 5 SCC 698*** it was observed as under;-

*“8. In our opinion, the scope of interference of the Court is very limited. Court would not be justified in reappraising the material on record and substituting its own view in place of the Arbitrator’s view. Where there is an error apparent on the face of the record or the Arbitrator has not followed the statutory legal position, then and then only it would be justified in interfering with the award published by the Arbitrator. **Once the Arbitrator has applied his mind to the matter before him, the Court cannot reappraise the matter as if it were an appeal and even if two views are possible, the view taken by the Arbitrator would prevail.** (See: *Bharat Coking Coal Ltd. Vs. L.K. Ahuja, (2004) 5 SCC**

*109; Ravindra & Associates Vs. Union of India, (2010) 1 SCC 80; Madnani Construction Corporation Private Limited Vs. Union of India & Ors., (2010) 1 SCC 549; Associated Construction Vs. Pawanhans Helicopters Limited, (2008) 16 SCC 128; and Satna Stone & Lime Company Ltd. Vs. Union of India & Anr., (2008) 14 SCC”*

In view of the above ratio of law and after going through the award, this court is of the considered view that in the instant case the Arbitral Tribunal had gone through all the relevant material placed before it and after going through the same, passed the award. Once the Arbitrator had applied his mind, no ground is made out to interfere with the award. An award can be set aside under Section 34 of the Act, if it is (a) contrary to the fundamental police of Indian law; (b) contrary to the interests of India; (c) contrary to justice or morality; or (d) patently illegal. The patent illegality should go to the very root of the matter and not a trivial illegality. However, an award could be set aside if it is so unfair and unreasonable that it shocks the conscience of the court.

8. In the instant case, a detailed award has been passed by the Arbitrator running into 117 pages. A perusal of the impugned order dated 17.04.2003 passed by the Addl. District Judge goes on to show that all the contentions so raised before this court, were also raised before him and by a detailed order, the Addl. District Judge has met with each and every contention of the appellant in detail, after discussing the award and the evidence led before him. The Addl. District Judge, in the impugned order, has discussed the summary of the award and has also dealt with the

objections so raised by the appellant and found the award of the Arbitrator to be legal and valid.

9. Learned counsel for the appellant also vehemently argues that the Arbitrator has erred in allowing claim No.14, which pertains to payment of ₹ 3,00,000/- sought for supply of scaffolding to M/s Coxwell Domes for the work done for Block-E. It is argued that payment of ₹ 3,00,000/- was rightly being withheld as the work done on the dome was by M/s Coxwell Domes and not the respondent No.1-claimant. However, a perusal of the award would reflect that the Arbitrator has taken into account the letter addressed by the appellant itself asking the respondent No.1 to supply scaffolding to M/s Coxwell Domes and thereby, holding that the respondent No.1 would be entitled to claim of ₹ 3,00,000/- on account of supply of scaffolding. There is no infirmity with the reasoning of the Arbitrator in allowing the said claim.

10 In the instant case, the appellant has miserably failed to point out any illegality or infirmity in the impugned order so passed by the Addl. District Judge, as such, no ground is made out to interfere with the same.

11. In view of the above discussion, the appeal is hereby dismissed, being devoid of any merits.

**May 10, 2019**  
*vijay saini*

**(JAISHREE THAKUR)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No