

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

FAO No. 1041 of 2003 (O&M)
Date of decision: 6.2.2019

Satwinder Pal Singh

...Appellant

Versus

Executive Engineer and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Surinder Garg, Advocate,
for the appellant.

Ms. Akshita Chauhan, AAG, Punjab.

JAISHREE THAKUR, J.

1. Aggrieved against the order dated 07.11.2002, passed by District Judge, Faridkot, dismissing the objections filed under Section 34 of the Arbitration and Conciliation Act 1996 against the award of the Arbitrator, the instant appeal has been filed.

2. In brief, the facts are that the appellant was allotted contract for work of construction of Dual Carriage Way on Ludhiana—Ferozpur Border area from Kotkapura to Akalsar Chowk in Moga City. Subsequently, the scope of the work was changed by the Department and the work for some additional items was got executed as well. It is alleged that though the contractor, the appellant herein, had completed his part of the contract but the respondents failed to make full payment of the work executed by him.

The matter was referred to the Arbitrator and the appellant submitted

submitted total 9 claims amounting to ₹14,87,269/- on the basis of less payments being released for different items. However, the appellant submitted 8 revised claims amounting to ₹7,67,901/- along with interest. A counter claim was filed by the respondents claiming a recovery of ₹25,971/- from the appellant. The Arbitrator gave his award dated 05.04.2000, allowing claims stated at serial No. 3, 7 and 8, but disallowed the claim stated at Sr. No. 1, 2 and 4 to 6, as submitted by the appellant. Aggrieved against the rejection of the claims, objections were filed under Section 34 of the Arbitration and Conciliation Act 1996, which came to be rejected by the District Judge Faridkot. Aggrieved against the said order the instant appeal has been filed.

3. Mr. Surinder Garg learned counsel appearing on behalf of the appellant would contend that the order dated 7.11.2002 of the District Judge is patently illegal and deserves to be set-aside.

4. Per contra, Ms. Akshita Chauhan, Assistant Advocate General, Punjab, appearing on behalf of the respondents, argues that the Arbitrator gave a well reasoned award and the objections filed were rightly rejected. It is further argued that the appellant herein had failed to implead the State of Punjab as a necessary party and had instead impleaded the Executive Engineer only in his personal capacity, therefore, while relying upon Order 27 rules 5A of the Code of Civil Procedure, the District Judge dismissed the objection petition.

5. I have heard the counsel for the parties and have perused the order under challenge.

6. Order 27 Rule 5A CPC reads as :-

‘5A. Government to be joined as a party in a suit against a public officer Where a suit is instituted against a public officer for damages or other relief in respect of any act alleged to have been done by him in his official capacity, the Government shall be joined as a party to the suit.’

7. From a bare reading of the aforesaid order and the rule, it is clear that in case a suit is instituted against a public officer for damages or other relief in any act alleged to have been done by him in his official capacity, the government shall be joined as a party to the suit. Section 79 of the Code Of Civil Procedure 1908 pertains to suits by or against government, wherein it is specified that in case of a suit by or against the State government or the Union, the authority to be impleaded would be the State Government or the Union of India, as the case may be.

8. In the case in hand, a tender came to be floated by the State of Punjab for construction of a dual Carriage Way. The tender document was signed by the Executive Engineer acting in his official capacity as a representative of the State of Punjab. Therefore, in case there was any dispute regarding non-payment of dues or any other dispute arising out of the said contract/tender, the necessary party would have been the State of Punjab and not the Executive Engineer, who was acting in his official capacity. The argument raised that it is the Executive Engineer who had signed the tender documents is of no consequence since he did not act in his personal capacity, and was acting for and on behalf of the State of Punjab.

The Executive Engineer would have no personal gain or involvement in the

tender that was floated and in case there was any dispute, it was with the State of Punjab.

9. Having failed to implead the State of Punjab, the objection petition was rightly dismissed. No interference is called for in the instant case.

10. Resultantly the appeal being devoid of any merit is dismissed.

6.2.2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No