

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

FAO No.2621 of 2004 (O&M)
Date of Decision: March 19, 2019

M/s Shiva Woollen and Textiles

...Appellant

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Aman Bahri, Advocate
for the appellant.

Mr. Pawan Kumar Jangra, Addl. AG Haryana.

JAISHREE THAKUR, J. (Oral)

1. This is the regular first appeal that has been filed seeking to challenge the order dated 20.02.2004 passed by the Additional District Judge, Panipat dismissing the objections filed by the appellant herein to the award of the arbitrator dated 18.10.1999.

2. In brief, the facts required to be noticed are, that an agreement was entered into between the parties for delivery of blankets by the appellant herein to the respondent. Being the lowest bidder for supply of 4250 blankets, its bid was accepted vide letter No.23888 dated 25.09.1992 and in terms of the said letter, the supply was to be made within 30 days, in consonance with the terms and conditions of the agreement. The appellant offered blankets for inspection of the stock, but the respondent did not

respond to the same. Inspection was only done on 15.01.1993 and consequent thereto, the blankets were delivered and ultimately rejected by the inspecting party namely the respondent herein. A dispute arose regarding said supply of blankets, which led to the appointment of an arbitrator. The arbitrator after giving adequate opportunities to both the parties, passed his award dated 18.10.1999. By the said award, the penalty amount of ₹ 39,908/- was imposed upon the appellant herein, while rejecting the counter-claim of the appellant. Aggrieved against the said award, objections under Section 34 of the Arbitration and Conciliation Act 1996 (for short 'the Act') were filed before the Additional District Judge, Panipat, who dismissed the said objections by an order dated 20.02.2004. Aggrieved against the said rejection, the appellant has preferred the instant appeal.

3. Mr. Aman Bahri, learned counsel appearing on behalf of the appellant contends that the award being a non-speaking one, deserves to be set aside. It is argued that Section 31 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') makes it incumbent upon the Arbitrator to state reasons upon which the award is based. In this regard, he also places reliance upon judgment rendered in ***M/s Anand Brothers P. Ltd. TR. M.D. vs. Union of India & Ors., 2014(9) SCC 212.***

4. Per contra, Mr. Pawan Kumar Jangra, learned Addl. AG Haryana appearing on behalf of the respondent-State would argue that the objections under Section 34 of the Act were rightly dismissed by the Addl. District Judge, in view the fact that none of the objections fall in parameters of Section 34 of the Act.

5. I have heard learned counsel for the parties and have also perused the award of the arbitrator, which in the opinion of the court is non-speaking one. It is an admitted fact that on account of dispute that arose between the parties with regard to the agreement, the matter was referred to the Arbitrator. The respondent-State relied upon the penalty clause because the blankets were supplied late whereas, a counter-claim was raised by the appellant herein seeking interest and damages on account of the fact that goods delivered were rejected; inspection was carried out late; and that the goods, after having been accepted, were rejected. Evidence was led by both the parties and a perusal of the award would reflect that there are no reasons coming forth as to why the claim for penalty has been allowed or any reasons given as why the counter-claim has been rejected. The findings under the award are reproduced as under:-

“Whereas I have perused and duly considered all the evidence adduced before me and I have also heard both the parties. I now hereby declare and award that claim for penalty amount of Rs.39,908/- filed by Director, Supplies & Disposals, Haryana is allowed in the matter, as per condition No.14 of Schedule. The counter-claim filed by M/s Shiva Woolen & Textiles Industries, E-7 D, Indl. Area, Panipat is not tenable and is therefore rejected.

Both the parties are allowed to bear their own costs.”

6. Section 31 of the Act requires reasons to be given, which are wholly lacking in the instant case. The award can at best be held to be perfunctory. In ***M/s Anand Brothers P. Ltd. TR. M.D. vs. Union of India &***

Ors. (supra) a question was posed before the Hon'ble Supreme as to whether an award which is a non-speaking one can be aside and it was held as under:-

“9. Reference may also be made to The Arbitration and Conciliation Act, 1996 which has repealed the Arbitration Act of 1940 and which seeks to achieve the twin objectives of obliging the Arbitral Tribunal to give reasons for its arbitral award and reducing the supervisory role of Courts in arbitration proceedings. Section 31(3) of the said Act obliges the arbitral tribunal to state the reasons upon which it is based unless the parties have agreed that no reasons be given or the arbitral award is based on consent of the parties. There is, therefore, a paradigm shift in the legal position under the new Act which prescribes a uniform requirement for the arbitrators to give reasons except in the two situations mentioned above. The change in the legal approach towards arbitration as an Alternative Dispute Resolution Mechanism is perceptible both in regard to the requirement of giving reasons and the scope of interference by the Court with arbitral awards. While in regard to requirement of giving reasons the law has brought in dimensions not found under the old Act, the scope of interference appears to be shrinking in its amplitude, no matter judicial pronouncements at time appear to be heading towards a more expansive approach, that may appear to some to be opening up areas for judicial review on newer grounds falling under the caption 'Public Policy' appearing in Section 34 of the Act. We are referring to these developments for it is one of the well known canons of interpretation of statutes that when an earlier

enactment is truly ambiguous in that it is equally open to diverse meanings, the later enactment may in certain circumstances serve as the parliamentary exposition of the former.”

7. In view of the fact that despite detailed claims have been raised and arguments held, there are no reasons detailed in the award for either rejecting the counter-claim or allowing the penalty.
8. In view of the above discussion, the impugned award is hereby set aside, leaving it open to the parties to invoke arbitration, if so desired. The appeal stands allowed accordingly.

March 19, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

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