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

FAO No.2280 of 2005 (O&M)
Date of Decision: May 20, 2019

Union of India

... Appellant

Versus

M/s SMT Construction and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Anil Chawla, Advocate
Panel Counsel for the appellant-UOI.

None for respondent No.1.

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JAISHREE THAKUR, J. (Oral)

1. This is an appeal that has been filed seeking to challenge the order dated 06.01.2005 passed by the Addl. District Judge, Ambala, dismissing the objections filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for setting aside the award of the Arbitrator qua decisions taken on claims No.2 and 5.

2. In brief, the facts are that the appellant-Union of India had given a contract to respondent No.1 for carrying out roof repair of certain buildings in Headquarters 2 Corps and Kharga Officers Mess at Ambala Cantt. A dispute arose between the parties arising of the contract and the same was referred to the sole Arbitrator, who gave his award and published it on 29.06.2001. The appellant challenged the decision of the Arbitrator

qua two claims i.e. claims No.2 and 5, on the ground that the Arbitrator had misconducted himself. The Addl. District Judge, Ambala on appreciating the objections raised by the appellant-objector in the objection petition filed under Section 34 of the Act, dismissed the same. Aggrieved the instant appeal has been filed.

3. Learned counsel appearing on behalf of the appellant vehemently contends that the Arbitrator had erred in allowing the claim No.2, which pertained to refund of recovery made from the contractor for the alleged difference in the cost of ISI marked fiber glass. It is contended that the contractor-claimant was supposed to use ISI marked fiber glass, but had not used the same and had claimed payment on the basis of having used ISI marked fiber glass, and therefore, he would be entitled to the same price. It is also argued that amount of interest awarded at the rate of 18% per annum in claim No.5 is not justifiable.

4. I have heard learned counsel for the appellant and find that there is no ground made out to interfere with the impugned order as well as the award of the Arbitrator. As far as claim No.2 is concerned, the Arbitrator observed as under;-

> *"From the above, I conclude that although ISI marked Fibre Glass Tarfelt was included in the Contract Agreement but same was not available in the market. The claimant quoted his rates based on the availability of Fibre Glass Tarfelt Conforming to IS Specification only. The respondent approved the fibre glass felt of Shalimar make STP in the first instance and then change the approval for M.K. Petro Product in lieu of Shalimar make. Hence I conclude no price adjustment to be done*

> *for provision of fibre Glass Felt conforming to IS as ISI marked product was not manufactured/available during that period.*
>
> *I also conclude that GE is empowered to approve any of the available make in the market. Hence no adjustment of price is warranted from changing from M/s STP make Shalimar to M/s M.K. Petro products.*
>
> *In view of above, no Star Rate is justified and no recovery is to be done. I award Rs.1,01,804.89 on this account to the Claimant (3622.95 sq. m @ Rs.28.10 sq. m)"*

The reasoning of the Arbitrator for allowing the refund was on the basis that no ISI marked product was available in the market during that period and the appellant itself had approved the fibre glass to be utilized. Initially Fibre Glass Tarfelt was to be utilized and subsequent thereto, the appellant had approved the change to a product made by M/s M.K. Petro Products, and therefore, this court is of the opinion that the Arbitrator rightly held that the respondent-contractor would be entitled to refund

5. As far as contention raised that award of interest @ 18% is on the higher side, the same is also not sustainable since, the appellant itself had not laid any challenge to the interest awarded @ 18% per annum against claim No.3. Once the appellant itself has accepted paying interest @ 18% per annum against claim No.3, there is no justification for challenging the interest payable against claim No.5. The Addl. District Judge, Ambala has rightly dismissed the objections filed under Section 34 of the Act.

6. In view of the above, no ground is made out to interfere with the impugned order so passed. Accordingly, the appeal in hand is hereby

dismissed.

(JAISHREE THAKUR)
May 20, 2019 **JUDGE**
vijay saini

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