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

FAO No. 5632 of 2005 (O&M)
Date of decision: 30.4.2019

M/s Haryana Vidyut Parasaran Nigam

...Appellant

Versus

M/s Tata Project Limited and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Gaurav Mohunta, Advocate,
for the appellant.

Mr. KDS Sidhu, Advocate,
for respondent No.1.

JAISHREE THAKUR, J.

1. The appellant herein seeks to challenge the order of the Additional District Judge, Panchkula, dated 26.9.2005, whereby the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (henceforth called **'the Act'** for short) for setting aside the award of the Arbitrator dated 29.11.2002 have been dismissed.

2. In brief, the facts are that an agreement was entered into between the appellant—M/s Haryana Vidyut Parasaran Nigam and M/s Tata Project Limited for erection and commissioning of 220KV transmission line. This was a turn key project and required to be completed in 18 months. Being the lowest bidder at ₹11,70,20,833/-, the contract was awarded to the respondent M/s Tata Projects Limited. In the contract, it was mentioned that

4% CST would be paid extra over and above the bid price for the work done. After the work was concluded, the respondent raised a claim of ₹32, 12,474.58 paise being 4% sale tax in terms of the letter of award. Since the amount was not paid and a dispute arose between the appellant and the respondents, the matter was referred to an Arbitral Tribunal consisting of a nominee of the appellant, a nominee of the claimant/respondent and Shri Gauri Shankar who was jointly nominated by the two Arbitrators as the Presiding Arbitrator. Evidence was led and counsel for the claimant/respondent laid stress on the conditions as specified in the letter of award stipulating that 4% CST against form 'C' will be paid extra on ex-works price of the equipments amounting to ₹34,08,497/-. It is argued that the Department had, in fact, paid a portion of the said amount and balance of ₹32,12,474.58 still remain to be paid.

3. On the other hand, the appellant contended that in terms of Clause 52.5 of the General Conditions of the Contract, CST was not to be paid by the appellant and, therefore, said clauses would over ride any condition specified in the letter of award. The Arbitral Tribunal was of divergent view as one of the Arbitrators allowed the claim along with interest @ 10% per annum, whereas the Arbitrator as appointed by the appellant disagreed with the view taken on the ground that the Clauses 52.5 and 52.6 of the General Conditions of the Contract, which were part of the Governing Condition of the Contract would override any condition specified in the letter of award. Aggrieved against the said majority view of the Arbitrators, objections under Section 34 of the Act were filed which were dismissed by the Additional District Judge, Panchkula, leading to the

instant appeal.

4. Learned counsel for the appellant contends that apart from the letter of award, the respondent had also signed the contract which clearly specify that all the terms and conditions of the contract including the general conditions of the contract would be applicable and, therefore, he would be governed by Clauses 52.5 and 52.6 of the General Conditions of the Contract. It is also argued that in case payment is allowed it will amount to double taxation.

5. Whereas learned counsel appearing on behalf of the respondent/claimant would contend that there is no infirmity either in the award or with the order of the Additional District Judge, upholding the award of the majority view.

6. I have heard the counsel for the parties and with their assistance have perused the pleadings.

7. Admittedly, there is letter of award allocating work to the respondent No.1 herein and document C-2 clearly mentions that *4% CST against form 'C' will be paid extra on ex-works price amount of ₹34,08,497/-*. There is no dispute that the work was completed as specified under the letter of award and a dispute arose only on the claim of 4% CST for a sum of ₹32,12,474.58, since part payment had been made against ₹34,08,497/-. The letter of award and Clauses 52.5 and 52.6 of the General Conditions of the Contract are clearly at variance with each other. The letter of award allows extra payment of sales tax @ 4% amounting to ₹32,12,474.58 paise and other stipulates that the sale tax was not to be paid in case the equipments were supplied directly by the sub vendor. Clauses

52.5 and 52.6 of the General Conditions of the Contract are re-produced as under:-

> "***Clause 52.5:***
>
> *In case of local supplies and services, all custom duties and levies, duties, sales tax payable on equipments, components, sub-assemblies, raw materials and any other items issued for their consumption or dispatched directly to the employer from their sub-supplier (i.e. sale-in-transit at confessional rate) shall be included in the Bid price and any such taxes, duties, levies additionally payable will be to contractor's account and no separate claim on this behalf will be entertained by the employer. Employer, shall however, issue requisite sales tax declaration on forms.*
>
> "***Clause 52.6:***
>
> *In case of local supplies, sales tax (but not surcharge in lieu of sales tax), local taxes and other levies solely in respect of the transaction between the employer and the contractor under the contract, if any, shall not be included in the bid price, but those shall be indicated separately wherever applicable. These amounts will be payable (along with subsequent variation, if any) by the employer, on the supplies made by the contractor but limited to tax liability on the transaction between the Employer and the Contractor, Employer shall, however, issue requisite sales tax declaration form."*

8. The argument as raised by the counsel for the appellant is without any valid foundation and the issue has been dealt with by the Additional District Judge and in the opinion of this Court, rightly so. In the contract agreement (also called the letter of award), which was executed on 21.8.1998, in Article 2, various documents, which form part of the contract, were listed, which state that in case of ambiguities, precedents of documents

shall be as follows: (1) letter of award, (2) special conditions of Contract; (3) technical specification; (4) General Conditions of Contract and (5) any other documents forming part of the contract. This aspect is also found in Clause 5.3 of the General Conditions of Contract, which pertains to priority of contract document and reads as under:-

> *"(1) The letter of award.*
> *(2) The Special Conditions of Contract*
> *(3) The Technical Specification*
> *(4) The General Conditions of Contract*
> *(5) Any other documents forming part of the contract."*

In other words, it would the terms and conditions in the letter of award, which would have precedent over the General Conditions of the Contract, which is placed at serial No. 4 as against the letter of award at serial No.1. The majority view of the Arbitrators as well as the order of the Additional District Judge, concluded that the M/s Tata Project Limited would be entitled to payment of sales tax as extra payment based on the conditions as specified in the letter of award. The argument as raised by the respondent/claimant that in case the provisions of Clauses 52.5 and 52.6 of the General Conditions of the Contract were to prevail, there was no point in quoting extra payment of sales tax amounting to ₹34,08,497 in the contract that was issued certainly has merit.

9. The counsel for the appellant herein has also has not been able to satisfy the court as to the infirmity in the order of the District Judge seized of objections filed under section 34 of the Arbitration and Conciliation Act 1996. It is well settled that the District Judge/Court has not to sit in an appeal and re-appreciate evidence while deciding objections filed

against the award to the arbitrator. Reference may be made to **Oil and Natural Gas Corporation Limited and Others vs Saw Pipes Ltd. 2003 (2) RCR (Civil) 554** and a catena of judgments thereafter. The Court can interfere in the award in case any of the grounds specified in Section 34(2) of the Arbitration And Conciliation Act 1996 are satisfied, which grounds are not therein the instant case.

10. Therefore, finding no infirmity in the award as well as the order passed by the Additional District Judge, Panchkula, this appeal is dismissed.

30.4.2019 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned Yes
Whether reportable No