

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

FAO No. 3064 of 2015 (O&M)
Date of decision: 9.7.2019

Karnail Singh

...Appellant

Versus

Punjab Mandi Board, Chandigarh and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Anupam Singla, Advocate,
for the appellant.

Mr. T.V.S. Lehal, Advocate,
for the respondents.

JAISHREE THAKUR, J.

1. This is an appeal that has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short '**the Act**') seeking to challenge the order passed by the Additional District Judge, Chandigarh, dismissing the objections of the appellant filed against the award dated 18.1.2011 passed by the Arbitrator.

2. In brief, a few facts that need to be noticed for proper adjudication of the case, are that construction work of Microsoft Academy at Senior Secondary School, Phase 3B-1, S.A.S. Nagar, Mohali, was allotted to the appellant by respondent No.1 on 12.7.2007. However, an agreement was entered regarding the construction work on subsequent date i.e. 5.6.2008. The work was to be completed within a period of six months from

the date of allotment i.e. 12.7.2007. Pursuant to the said agreement, the appellant started construction on 17.10.2007 and completed construction work upto the plinth level. However, the work was stopped on the asking of the Director General School Education as the drawings of the building to be constructed were to be revised. On account of the fact that the construction work was not completed within the specified time, the Executive Engineer by order dated 9.5.2008 imposed penalty under Clause 2 of the Agreement. The appellant challenged the action of the Executive Engineer before the Superintendent of Engineer, who vide his order dated 11.12.2008 held that the penalty cannot be imposed upon the appellant as the delay in completion of work could not be attributed to the contractor, appellant herein. Respondent No.1 herein allotted the work to some other contractor and forcibly took the possession of the assets of the appellant from the site of construction. On account of this fact, the appellant suffered huge losses and consequently raised a claim before respondent No.1 for appointment of an Arbitrator. On appointment of an Arbitrator, the appellant raised six claims, as would be reflected in the award so passed. The Arbitrator by his award dated 18.1.2011 rejected the claims of the appellant, which was challenged by way of objection petition under Section 34 of the Act before the Additional District Judge, Chandigarh, who too dismissed the same. Aggrieved against the dismissal of the claim petition and the objection petition, the instant appeal has been filed.

3. Mr. Anupam Singla, learned counsel appearing on behalf of the appellant, would contend that after allotting the work to the appellant, as per

the allotment letter dated 12.7.2007, the appellant could not complete the work on account of the fact that the land that was provided was not free from encumbrances since there were trees and sewerage line passing through the area earmarked for construction of building. Moreover, it is an admitted fact that the appellant herein was asked to stop work since the Director General Education wanted to make changes in the building plan and make the building 4-5 storey, whereas the work that was allotted to the appellant was for construction of a two storey building. It is argued that the appellant had addressed a letter dated 10.1.2008 to respondent No.1 herein, which is available on the record as Annexure Ex. P5, in which it has been clearly been requested for closure of the agreement and to make the payment against the work done and extra financial burden being borne by the appellant on account of idle period since the work had been stopped on account of the revision in the building plan being made. It is also submitted that another letter dated 10.1.2008 had been written by the appellant, which is available on the record as Ex. P6, wherein the appellant had mentioned that construction work had been stopped as per the order dated 22.11.2007 passed by the Director General, Sarv Shiksha Abhiyan. In the letter addressed, it was stated that the time to complete the construction was going to expire on 12.1.2008, but no action had been taken on his previous letter. It was also requested that in case construction was to commence, he be given further time to complete the construction and if not the payment be made of the work already done by him. It was also requested that that the financial loss suffered by the appellant be assessed and paid to him. It is

also argued that the Arbitrator has acted capriciously in ignoring the said letters. It is also argued that the Arbitrator has illegally ignored claim No.1 of the appellant asking for compensation for breach of contract of the agreement by taking over the work site without terminating the agreement. It is argued that the letter dated 10.1.2008 Exs. P5 and P6 were never acceded to and without terminating the agreement work could not have been allotted to a third party. It is argued that the Arbitrator instead of deciding whether the appellant would be entitled to the claim has held that the penalty imposed by the Executive Engineer for non-completion of work seems to be on the higher side and has reduced the same, which was not the issue to be decided by him. The imposition of penalty by order dated 9.5.2008 has already been settled by the Superintendent of Engineer, who, vide his order dated 11.12.2008, had opined that the penalty was not sustainable and, thus, argued that the award of the Arbitrator ought to be set aside.

4. Per contra, learned counsel appearing on behalf of the respondents submits that there was a delay on the part of the appellant in completion of the project and that is why the respondents were compelled to allot and get the work completed from to a third party. It is argued that the appellant herein would not be entitled to claim any amount under Claim No.1. It is also argued that the Arbitrator on due appreciation of the evidence and the pleadings available before it, rejected the claim petition, which does not warrant any interference by this Court.

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

pleadings of the case with the assistance of the learned counsel for both the parties.

6. It is not disputed that the work was allotted to the appellant herein and he had commenced the construction work in terms of the work order. It is also not in dispute that the construction had to be stopped at the behest of the Director General School Education, who directed the work to be stopped on account of changes to be made in the building plans and to revise the same by adding 4-5 storey instead of a two storey building. It is also not in dispute that the Executive Engineer imposed penalty on the appellant under Clause 2 of the agreement, which order was challenged before the Superintendent of Engineer, who set aside the penalty by his order dated 11.12.2008. The decision taken by the Superintendent of Engineer is re-produced hereunder:-

“After taking into consideration the evidence produced by the Executive Engineer (P.M.P.), Punjab Mandi Board and Sh. Gulwant Singh, Special Power of Attorney Sh. Karnail Singh and arguments advanced on 3.12.2008, the undersigned came to the conclusion that in this case the contractor has not delayed the work intentionally, therefore, the action taken by the Executive Engineer (P.M.P.) under Clause 2 of the agreement, against the contractor is ordered to be set aside.

The Executive Engineer (P.M.P.) has not claimed anything from the contractor, therefore, no Award is passed in favour of the department.

Both the parties will bear their own costs.

Dated 11.12.2008

*Sd/-
Arbitrator
(Subash Mahajan)”*

This order has attained finality as it has not been challenged by the respondents herein.

7. A perusal of the award passed by the Arbitrator clearly reflects that he has not given a decision on claim No.1 instead has gone beyond the said claim by holding that the penalty imposed upon the appellant herein by invoking Clause 2 of the agreement is highly excessive and he reduced the same. The question of penalty was not to be decided by the Arbitrator as the same had already been settled by the Superintendent of Engineer holding that no claim can be made from the contractor on coming to the conclusion that the contractor had not delayed the work intentionally. Furthermore, a reading of the award also reflects that the Arbitrator has taken into account the admission of the respondents that the work was stopped on account of the fact that the Director General Education wanted changes in the building design. Once, there is a finding by the Superintendent of Engineer and the Arbitrator himself has noticed (in para dealing with claim No.1) that there had been delay on the part of the Department, the claim of the appellant ought to have been addressed. The Arbitrator has also come to the finding that the contractor could have started the work after the revised plan had been submitted, but there is nothing on the record to establish that the contractor was ever supplied the revised plan for him to start the work. In fact, without addressing request made by the appellant in his letter dated 10.1.2008, seeking extension of time to complete the work, the respondents allotted the work to a third party, nor is there any order on the record terminating the work order before allocating the job to a third party.

In fact, the Arbitrator has clearly not addressed the issue in hand.

8. Consequently, finding that the Arbitrator did not address the claims and has given a decision on an issue not pending before him, this Court set aside the impugned award and the subsequent order of the Additional District Judge, Chandigarh, dismissing the objections filed by the appellant. It is left open to the appellant t7o initiate fresh proceedings in accordance with law.

9.7.2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No