

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

FAO No.3320 of 2015 (O&M)
Date of Decision: May 22, 2019

Gyanendra Sharma

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. N.C. Kinra, Advocate
for the appellant.

Mr. Rohit Arya, AAG Haryana.

JAISHREE THAKUR, J.

1. The instant appeal has been filed seeking to challenge the order dated 25.11.2014 passed by the Addl. District Judge, Chandigarh, where the objection petition filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for setting aside the award dated 09.08.2011 has been dismissed.

2. The brief facts need to be noted are that the appellant applied for adoption of "VIKALP SCHEME" floated by the Health Department of Haryana for adoption of BPL families and he was allowed the same. As per the scheme, the appellant had to open private dispensary/hospital to provide health services to the families allotted to him by respondents No.1 to 3 in the area allocated to him. The appellant had not to charge anything for such

services from the families but the prescribed amount had to be paid to him by respondents No.1 to 3. The appellant had to execute the agreement dated 31.01.2007/01.02.2007 in this regard. On account of work done, there was a dispute with regard to the payment. The appellant served legal notice in this behalf, which was responded to by the respondents *inter alia* admitting the claim of the appellant, but deferring a part of the payment on account of financial constraints and accord of the budget. The matter was referred to the arbitration of respondent No.4, who gave his award dated 09.08.2011 partly allowing the claim of the appellant. The appellant herein challenged the said award by filing objection petition under Section 34 of the Act, which came to be dismissed by an order dated 25.11.2014 by the Addl. District Judge, Chandigarh, which order has been impugned in the instant appeal by the appellant.

3. Mr. N.C. Kinra, learned counsel appearing on behalf of the appellant argues that the appellant has been denied fair trial of the matter, as such, the award passed by the Arbitrator is not sustainable. It is submitted that the Arbitrator did not consider the documents submitted to him, as the same were detached from the Arbitration file. It is contended that the award dated 09.08.2011 is based on irrelevant material, surmises and conjectures. It is submitted that the Addl. District Judge has erred in affirming the award without any cogent and convincing material to do so. It is also argued that reply of the respondents to the legal notice has been ignored and excluded from consideration by the Arbitrator as well as by the Addl. District Judge. It is also contended that the Arbitrator of his own divided the services into four segments, whereas, there was no such agreement to allow splitting of

the services to be rendered by the appellant.

4. On the other hand, Mr. Rohit Arya, learned AAG appearing on behalf of the respondent-State argues that the award of the Arbitrator as well as the order passed by the Addl. District Judge are well reasoned. It is argued that the Arbitrator had given his award on the basis of facts placed before him and the terms of agreement entered into between the parties. It is argued that the Arbitrator had gone into the question of exact amount of work that was done by the appellant herein and on that basis, the award had been passed. The Addl. District Judge, on appreciation of the entire record, came to the conclusion that there was no infirmity, hence, there is no ground made out for interference by this Court.

5. I have heard learned counsel for the parties and with their valuable assistance, have gone through the record of the Arbitrator as well as court below.

6. The Addl. District Judge, while dismissing the objection petition filed by the appellant under Section 34 of the Act, has observed as under;-

“10. xxx xxx xxx From the terms of the agreement, the Arbitrator divided the services into four parts:-

(a) OPD consultations and provision of free medicines;

(b) Gynae & obstetrics services;

(c) Various National Programmes including family welfare;

(d) Preventive & Immunization services.

11. Considering the fact that no services were rendered in the last three group and OPD and free medicines services were rendered to some extent, the Arbitrator divided the claimed payment into four parts and admitted the claim to the extent of ¼ of the total claimed amount observing that non-rendering of other services might have damaged the health of vulnerable persons and patients. The reasons recorded by the Arbitrator are

logical, based on record and the findings in the award were within his domain, purview and competence. The award is a speaking one and does not suffer from any infirmity warranting exercise of jurisdiction of section 34 of the Act. Learned counsel for the petitioner has failed to satisfy how the award is against public policy. Though reply of respondents to petitioner's legal notice u/s 80 CPC is not on record, even if the respondents did not challenge the claim of the petitioner in the first instance, the Arbitrator was not precluded from examining the entire official record to arrive at a just finding. The reasoning of the Arbitrator cannot be challenged before this court as in an appeal nor it can be concluded that it was the Arbitrator who mis-conducted by removing valuable documents from record. The Arbitrator was final judge of law and facts and he was only required to indicate the manner in which his mind worked to come to the conclusion which was adequately done in the case. The objections do not fall within the four corners of section 34 of the Act and have not merit. After considering the terms and conditions of the agreement, according to which payment was to be made only for services actually rendered coupled with the reasons recorded by the Arbitrator, the court is satisfied that the conclusion of the Arbitrator is legal and valid and there is no ground to interfere with the award.”

7. A perusal of the record of the arbitration proceedings that has been received would reflect that the appellant herein initially filed a civil suit for recovery of ₹ 7,19,051/- along with interest before the Addl. Civil Judge (Senior Division), Chandigarh. The Addl. Civil Judge(Senior Division), Chandigarh, by an order dated 21.01.2010, while adjudicating an application filed by the respondents herein under Section 8 read with Section 5 of the Act for referring the matter to the Arbitrator, held that the civil suit would not be maintainable in the wake of the arbitration clause in the agreement that had been entered into between the parties. The original plaint was sent to the Arbitrator for 24.02.2010, with a direction to the parties to appear before the Arbitrator on the said date. The Arbitrator, on

consideration of the material/documents produced before him, passed the impugned award on 09.08.2011, while allowing the one forth of the total claim of ₹ 2,02,609/-, out of which ₹ 91,433/- has already been paid to the appellant and thus, an amount of ₹ 1,11,176/- was held to be due and payable to the appellant herein.

8. In the plaint that had been filed before the Addl. Civil Judge (Senior Division), Chandigarh (which plaint was then transferred in original to the Arbitrator for proceedings to be conducted by the Arbitrator) the appellant herein had relied upon several documents, reflecting the amount of work that he had done. Documents Annexures A-5 and A-7 were to the effect that premises and record of the appellant and his clinic were inspected by the concerned authorized officers on 11.05.2007 and 17.07.2007 respectively and as per the inspection reports, the work of the appellant and his hospital as well as record were found up to the mark. Annexure A-6 was to the effect that the appellant herein was sending all the required monthly reports regularly and well in time, as required under the agreement. A detail of the calculations of the amount of money received against his annual dues of ₹ 8,10,434/- was mentioned in para 6 of the plaint. The notice sent by the appellant under Section 80(1) CPC Annexure A-14 and the reply thereto Annexure A-16 acknowledging the fact that an amount of ₹ 7,19,051/- was due and payable, were also relied upon by the appellant in his plaint, beside the other documents.

9. The main thrust of argument before this court is that these documents were not available on record before the Arbitrator. It is argued that in the index as well as in the body of the plaint filed before the Addl.

Civil Judge (Senior Division), Chandigarh, there was a detailed reference of these documents. It is further argued that there is an acknowledgment in the reply sent to the legal notice u/s 80(1) CPC that an amount of ₹ 7,19,051/- is due and payable to the appellant.

10. An award can be set aside under Section 34 of the Act, if it is (a) contrary to the fundamental police of Indian law; (b) contrary to the interests of India; (c) contrary to justice or morality; or (d) patently illegal. In order to hold an award to be opposed to public policy, the patent illegality should go to the very root of the matter and not a trivial illegality. However, an award could be set aside if it is so unfair and unreasonable that it shocks the conscience of the court, only then it would be opposed to public policy. In the instant case, after going through the record of the Arbitrator available before this court, this court finds substance in the arguments advanced by learned counsel for the appellant.

11. A perusal of the impugned award dated 09.08.2011 shows that aforesaid documents [Annexures A-5, A-6 and A-7 i.e. inspection reports and monthly reports regularly sent to the Department as well as legal notice (Annexure A-14) and reply to the legal notice u/s 80(1) CPC (Annexure A-16)], so annexed with the plaint by the appellant herein, though mentioned in the index, are not available on the record. Under these circumstances, once these documents are not available on the record, by any stretch of imagination, it cannot be said that these documents were considered or looked into by the Arbitrator, while passing the impugned award. Further, Annexures A-7, A-7/1, A-7/2 and A-7/3 annexed with this appeal reveals that the Civil Surgeon, Panchkula in reply to the query put forth by the

Director General Health Services, Haryana, sent the calculations of payment to be made to the appellant herein and in the same total balance payment has been reflected as ₹ 7,18,001/- and these documents are also available on the Arbitration file, but these documents have also not been considered by the Arbitrator, during the course of the Arbitration proceedings. Under these circumstances, the impugned award passed by the arbitrator is liable to be set aside.

12. In view of the above, the appeal in hand is allowed. Consequently, the orders passed by the Addl. District Judge, Chandigarh as well as the award passed by the Arbitrator are hereby set aside, leaving it open for the parties to opt for fresh arbitration for adjudication of the matter. The Arbitrator shall consider all the documents relied upon by the appellant either in the plaint or otherwise. It is made clear that anything said or observed by this court is only for the purpose of deciding the present appeal and it shall not prejudice the mind of the Arbitrator in any manner whatsoever. Since the dispute pertains to the year 2007/2008, the Arbitrator to conclude the proceedings within six months of entering the reference.

13. The appeal stands allowed in the aforesaid terms.

May 22, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No