

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

FAO No. 5818 of 2015 (O&M)
Date of decision: 8.5.2019

Union of India

...Appellant

Versus

M/s Akash Enterprises and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Karamjit Verma, Advocate,
for the appellant.

Mr. Dheeraj Mahajan, Advocate,
for the respondents.

JAISHREE THAKUR, J.

1. This First Appeal against Order has been preferred by the Union of India seeking to challenge the judgment dated 20.12.2014 passed by the Additional District Judge, Amritsar, whereby the objections filed by the appellant under Section 34 of the Arbitration and Conciliation Act (for short '**the Act**') against the award of the sole Arbitrator dated 28.12.2011 has been dismissed.

2. In brief, the facts are that a contract regarding working of manning of unmanned L-xing No. C-35 at KM 494/13-14 and L-xing No. C-44 at KM 472/14-15 on Sahnewal—Amritsar Section under ADEN/ASR was allotted to respondent on 30.7.2007. The approximate cost of the contract was for ₹44,00,520/-. The work was to be completed upto 29.12.2007. On account of a dispute that arose between the parties, the General Manager, Northern Railways appointed an Arbitrator which was not acceptable to the contractor/respondent No.1 herein. He filed a petition in

this Court for appointment of an Arbitrator under Section 11 of the Act, which was contested by the appellant herein. Eventually, this Court by order dated 17.3.2011 appointed respondent No.2 as Arbitrator. The Arbitrator passed his award on 28.12.2011 which was challenged under Section 34 of the Act, primarily taking the ground that the appointment of the Arbitrator was not in consonance with Clause 64 (3) (a) of the General Conditions of the Contract. The Additional District Judge, dismissed the objections, which has led to the filing of the instant appeal.

3. Learned counsel appearing on behalf of the appellant vehemently argues that the appointment of the Arbitrator was dehors the terms and conditions of the agreement executed between the parties and, therefore, any award passed by him was not sustainable. It is argued that after the appointment of the Arbitrator by this Court under Section 11 of the Act, the matter was taken before the Hon'ble Supreme Court by way of filing a Special Leave Petition and the Hon'ble Supreme Court had stayed the order on 12.12.2011 and, therefore, any award passed by the Arbitrator could not be binding upon the appellant herein. This was also the sole argument that was raised before the Additional District Judge.

4. Per contra, learned counsel appearing on behalf of the respondents submits that the appointment of the Arbitrator having been upheld by the Hon'ble Supreme Court, there was no ground for interference in the order of the Additional District Judge, Amritsar.

5. I have heard learned counsel for the parties and have gone through the pleadings.

6. There is no dispute that a contract had been entered between the

parties and in terms of the contract, an Arbitrator was to be appointed to settle the dispute, if any. It is also an admitted fact that on an application moved by respondent No.1, an Arbitrator was appointed by this Court by its order dated 17.3.2011 in a case titled as Arbitration case No. 24 of 2010. This Court appointed Shri B.S. Bedi, District Judge (Retd.) as Arbitrator to settle the disputes between the parties. The appellant herein preferred a Special Leave to Appeal (Civil) 35559 of 2011 which was filed on 1.9.2011 and the matter was stayed by the Hon'ble Supreme Court on 12.12.2011. In the meantime, the Arbitrator made his award on 28.12.2011, which was then brought to the notice of the Hon'ble Supreme Court, which dismissed the SLP by passing the following order:-

“Heard learned counsel for the parties.

This Special Leave Petition has been filed by the petitioner against the order passed by the designated Judge of the High Court appointing Shri B.S. Bedi (Retired District Judge) as an Arbitrator to adjudicate upon all dispute arising between the parties.

We are told that in the meantime, Shri B.S. Bedi, Arbitrator has made the Award on 28th December, 2011 and that the petitioner has also participated in the arbitration proceedings before the aforesaid arbitrator. Hence at this stage, the remedy for the petitioner, if any, is to challenge the Award if the petitioner is aggrieved.

For this reason we are not inclined to interfere with the impugned order of the designated Judge of the High Court appointing the Arbitrator. The Special Leave Petition is dismissed with the aforesaid observations.”

7. The award of the Arbitrator dated 28.12.2011 was challenged on the sole ground that the appointment of the Arbitrator by this Court was

without considering the fact that as per Clause 63 (3) (a) of the General Conditions of the Contract, only a Gazetted Officer could be appointed. No other argument was raised before the Court regarding validity of the claim raised by the claimant/Contractor and allowed by the Arbitrator. The Additional District Judge taking into consideration the order of the Hon'ble Supreme Court dismissing the SLP on 17.4.2014 held that the challenge to appointment of the Arbitrator had been dismissed.

8. The only ground that has again been agitated is that the Arbitrator could not have passed the award since he was not appointed in terms of the agreement executed between the parties. This argument is without any merit as the same argument had been raised before the Hon'ble Supreme Court by filing the aforesaid SLP and the SLP was dismissed holding that since the award had been passed, the Union of India would be at liberty to challenge the award, if it is so aggrieved. Interestingly enough, no other argument has been raised regarding the validity of the claim made by the Contractor and allowed by the Arbitrator. Needless to mention that the appellant participated in the arbitration proceedings before the Arbitrator. Therefore, the Additional District Judge, Amritsar rightly dismissed the objections, which warrants no interference by this Court.

9. Consequently, the appeal is dismissed being bereft of merit.

8.5.2019

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**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No