

114 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. FAO-919-2021 (O&M)
Date of decision : October 26, 2021

EXECUTIVE ENGINEER, PUBLIC HEALTH, ENGINEERING DIVISION,
AMBALA CANTT.Appellant

Versus

M/S ROCK DRILL PROJECT PVT. LTD. AND ANOTHERRespondents

2. FAO-924-2021 (O&M)

EXECUTIVE ENGINEER, PUBLIC HEALTH, ENGINEERING DIVISION,
AMBALA CANTT.Appellant

Versus

M/S ROCK DRILL PROJECT PVT. LTD. AND ANOTHERRespondents

3. FAO-1260-2021 (O&M)

EXECUTIVE ENGINEER, PUBLIC HEALTH, ENGINEERING DIVISION,
AMBALA CANTT.Appellant

Versus

M/S ROCK DRILL PROJECT PVT. LTD. AND ANOTHERRespondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Randhir Singh, Addl. AG, Haryana for the appellant.

LISA GILL, J.

This order shall dispose of FAO Nos. 919, 924, 1260 of 2021, as all the appeals involve similar issue between the same parties.

Brief facts necessary for adjudication of the case are that three tenders were floated by the appellants for provision of laying of different sewage lines/pipes by trenchless technology sewer etc. as is detailed in the tender documents bearing different cost. All the three tenders were allotted to the respondent – firm. Allotted work was to be completed in a time bound manner. Respondent – company after completion of about 70% of the work statedly left the same incomplete, for want of feasible lay out plan not being supplied by the

appellant. Dispute arose between the parties and an Arbitrator was appointed in all the three matters.

For the sake of convenience, facts are being extracted from FAO-919-2021.

Claims raised by the respondent – company were:-

- (i) To waive off the penalty imposed on it alongwith action to execute the balance work through other agency under Clause 2 and 3.
- (ii) For payment of items to be paid as per BOQ rates.
- (iii) For payment of security amount deducted from various account bills.
- (iv) For payment of incomplete final bill.
- (v) For payment of 15% contractor profit of balance work.
- (vi) For payment of interest at the rate of 15% per annum as per Arbitration Act on the claim raised.

Counter claims were raised by the present appellants. It is to be noted that similar issues were involved in all the three matters.

Arbitrator while rejecting the counter claim concluded that entire work could not be completed by the company on account of feasible lay out plan not being furnished by the present appellant. Accordingly, claim amount, as is detailed, was awarded by the Arbitrator in the three separate awards of even date.

Aggrieved therefrom, appellants filed petitions under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside award dated 06.08.2018 in all the three matters. Learned Additional District Judge, Ambala vide impugned decision dated 07.02.2020 on considering the facts and circumstances dismissed the petitions. Aggrieved therefrom, present appeals have been filed.

Learned counsel for the appellant has vehemently argued that learned Additional District Judge has grossly erred on facts and in law in dismissing the appeals filed by the appellants, as it is opposed to all logic, that in case lay out plan was not made available to the respondent – company, it was still able to complete over 70% of work allotted to it. Learned counsel while referring to Clause 25 of the contract agreement submits that contractor was required to verify the water table bearing capacity and other geo-physical conditions before tendering and no subsequent payments of dewatering, pile foundation etc. would be made on that account. It is contended that this in itself indicates that lay out plan was made available to the contractor due to which contractor was able to carry out over 70% of the work in question. Contractor, it is submitted, has tried to adopt this novel method to wriggle out of its obligations and delay the matter. Appellant had to bear extra cost as the work had to be completed by allotment of the same to another contractor. It is, thus, prayed that these appeals be allowed.

Heard, learned counsel for the appellant and have gone through the file as well as some of the record which was produced in Court today.

Allotment of three tenders to the respondent – company is a matter of record as is arising of the dispute between the parties. It is borne out from the record that respondent – company completed approximately 70% of work allotted to it, however, work was not completed and was left in between. Specific case of the respondent – company is that completion of allotted work was not possible due to non-supply of feasible lay out plan whereas it is the case of the appellant that it is only a tactic adopted by the respondent – company to wriggle out of its liability. Much stress has been laid by learned counsel for the appellant on the fact that 70% of work was completed by respondent – company and it could not have been done

without an approved lay out plan. However, I do not find any merit in this argument as is rightly observed by the Arbitrator as well as learned Additional District Judge, Ambala that the approved lay out plan was clearly not a part of DNIT. Furthermore, minutes of meeting held under the Chairmanship of the Superintending Engineer on 03.03.2016 clearly reveal that the approved lay out plan was never handed over to the respondent – company. Detail of the “agreement wise scope and balance work which is to be completed” coupled with the remarks as mentioned in the meeting held on 03.03.2016 make a clear mention that alignment of the sewer line is to be decided within a week and final payment made after completion of the said work. It is relevant to note that a copy of minutes of this meeting were produced in Court at the time of arguments. It is opposed to all common sense that if 70% of the work could have been completed by the respondent – company, why rest of it could not be completed, if feasible lay out plan was supplied to it so as to ensure flow from one end to the other. Similarly, other claims regarding the part rate and security amount etc. have been correctly allowed. Learned Additional District Judge has further correctly observed that jurisdiction under Section 34 of the Arbitration and Conciliation Act, is limited and award can be set aside on the grounds as are laid down under the Act. Section 34 (2) of the Arbitration and Conciliation Act reads as under:-

- “ (2) An arbitral award may be set aside by the Court only if—
- (a) the party making the application furnishes proof that—
- (i) a party was under some incapacity, or
 - (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
 - (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it

contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Learned counsel for the appellant has failed to point out any ground whatsoever, which calls for any interference for setting aside award dated 06.08.2018 or decision dated 07.02.2020 passed by the learned Additional District Judge, Ambala.

No other arguments have been addressed.

All the above said appeals are, accordingly, dismissed.

October 26, 2021

Rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No