

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO no. 1091 of 2022 (O&M)
Date of Decision:24.03.2022

State of Punjab

.....Appellant

Versus

M/s Oasis Contractors and Consultant Private Limited and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Sunint Kaur, AAG., Punjab
for the appellant.

LISA GILL, J(Oral).

This appeal has been filed by the State of Punjab through its Executive Engineer, Water Supply and Sanitation Division, Rajpura, challenging order dated 25.10.2021, passed by the learned Additional District Judge, Patiala, in Arbitration Case No. 79 of 2018, whereby application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short Arbitration Act), filed by the present appellant has been dismissed.

Brief facts necessary for adjudication of the matter are that the work of “Providing Sewerage Scheme and Sewerage Treatment Plant’ at village Alampur, District Patiala, was allotted to the respondent-Contractor vide letter no. 4377 dated 02.05.2013 to be completed within nine (09) months from the date of commencement with the scheduled date of completion being 23.02.2014. It is stated that the work was not completed despite respondent no.1 being requested to complete the pending work.

Therefore, as per Clause 49 of the Agreement dated 24.05.2013, the contractor became liable for damages as time was of the essence in the contract. As dispute arose between the parties, respondent no.2 was appointed as an Arbitrator by the Executive Engineer of the appellant. A counter claim was filed by the appellant before the Arbitrator. 14 Claims were raised by respondent no.1, which read as under:-

Claim No.1.	Claim for Rs.55,000/- on account of construction of RCC Elevated
Claim No.2	Claim for Rs.19,697.00/- on account of Lip cutting.
Claim No.3.	Claim for Rs. 66,222/- on account of Excavation for Manholes.
Claim No.4.	Claim for Rs.11,520,000/- on account of providing and fixing granting over collective Tank.
Claim no.5.	Claim for Rs. 51,615/- on account of balling out water.
Claim No.6.	Claim for Rs.3,18,957/- on account of wrong application of item for lining work in Facultative & Masturation tank.
Claim No.7	Claim for Rs. 12,474/- on account of reimbursement of testing charges of Pvc pipes.
Claim No.8.	Claim for Rs. 5,11,035/- on account of illegal retention of security.
Claim No.9	Claim for Rs.13,98,740/- on account of price escalation.
Claim No.10.	Claim for Rs.13,98,740/- on account of compensation of idle labour machinery T&P.
Claim No.11.	Claim for account of loss of business for Rs.13,82,738/-.
Claim No.12.	Claim on account of interest in delayed payment for Rs.1,72,746/-.
Claim No.13.	Claim on account of interest (Pre-Suit, Pendent-lite and future interest 18% P.A) a) Pre-Suit and pendent-lite interest on all claims.
Claim No.14.	Claim for Rs.30,000/- on account of cost of arbitration.

Two (02) counter claims were raised by the appellant.

Learned Arbitrator, on considering the facts and circumstances, partly allowed the claim of respondent no.1 and rejected the counter claim filed by the appellant, summary of which is reproduced as under:-

Sr. No.	Description of claim in brief	Amount of claim in Rupees	Amount as per Award in Rupees
1.	2.	3.	4.
Claim no.1.	Claim on account of construction of RCC elevated tank	55000.00.	NIL
Claim No.2	Claim on account of lip cutting	19697.00	19697.00
Claim No.3	Claim on account of excavation of Manholes	66222.00	66222.00
Claim No.4	Claim on account of providing & fixing grating over Collective Tank	11520.00	NIL
Claim No.5	Claim on account of bailing cut water	51615.00	51615.00
Claim no.6	Claim on account of wrong payment of lining work for Facultative and Maturation Ponds	318957.00	318957.00
Claim No. 7	Claim on account of reimbursement of Testing charges	12474.00	12474.00
Claim No.8	Claim on account of illegal retention of security	511035.00	511035.00
Claim No.9	Claim on account of price escalation	411960.00	411960.00
Claim no.10	Claim on account of compensation for Idle labour machinery and T&P	1398740.00	335697.00
Claim No.11	Claim on account of loss of Business	1382738.00	921825.00

Claim No.12	Claim on interest on account late payment	172476.00	15365.00
Claim No.13	Interest- Pre-suit, Pendent lite and future interest @ 18 %	Pre-suit, pendent lite and future interest @18%	Interest @12% PA with effect from 01.07.2015 on the awarded claims till the date of pronouncement of award and future interest @12% PA on total awarded amount till the release of actual payment.
Claim No.14.	Cost	30,000.00	30,000.00
	Counter Claims		
Sr. No.	Description of Claim in brief	Amount of Claim in Rupees	Amount as per Award in Rupees.
1.	2.	3.	4.
Counter Claim No.1	Counter claim on account of making water supply connection	7030.00	NIL
Counter Claim No.2	Counter Claim of part B of the contract for O&M for two years	320000.00	NIL

Aggrieved therefrom, present appellant filed objection under Section 34 of the Arbitration Act, which have been dismissed by the learned Additional District Judge, Patiala, vide impugned order dated 25.10.2021.

Present appeal has been filed by the appellant-State of Punjab through its Executive Engineer, Water Supply and Sanitation Division, Rajpura challenging order dated 25.10.2021 passed by the learned Additional District Judge, Patiala.

Learned counsel for the appellant has vehemently argued that

Award dated 12.02.2018 well as order dated 25.10.2021, passed by the

learned Additional District Judge, Patiala, should be set aside. It is submitted that at the first instance and in terms of the specific terms and conditions of the Agreement, the matter should have first been placed before the Adjudicator. Reference is made to Clause 24.1 of the Agreement, which is reproduced as under:-

“24.1. If the contractor believes that a decision taken by the Engineer was either outside the authority given to the Engineer by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Engineer’s decision.”

It is submitted that during the process of execution of the said work, the Contractor i.e., respondent no.1 never submitted any claim to the Adjudicator as per Clause 24.1 of the Agreement and therefore, respondent no.1 did not exhaust this remedy and there was no question of Arbitration proceedings being commenced. It is further submitted that respondent no.1 also did not explore the alternate measures available as per Clause 32.1 and 32.2 of the Agreement for dispute redressal, wherein the contractor is to warn the Engineer at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price or delay the execution of works. Similarly reference has been made to Clause 44.2 of the Agreement. Learned counsel further submits that excessive interest has been awarded by the learned Arbitrator, which needs to be set aside. It is thus prayed that this appeal be allowed and the impugned order 25.10.2021, be set aside.

I have heard learned counsel for the appellant and have gone through the file with her able assistance.

There is no dispute regarding the allotment of work to respondent no.1 and the dispute arising between the parties. Argument raised

by learned counsel for the appellant regarding alternate dispute redressal measures not being first resorted to by respondent no.1 and setting aside of the Award and the impugned order on this ground is devoid of any merit and is rejected. It is relevant to note that the Arbitrator as well as the learned Additional District Judge, Patiala has correctly dealt with the issue. Learned Arbitrator has concluded that the claimant had approached the Adjudicator as per provisions of the Contract and having received no response had approached the appellant for appointment of the Arbitrator. It is specifically observed by the learned Additional District Judge, Patiala, that respondent no.1 had approached the department and sent as many as three letters for providing him the address of the Adjudicator and after ultimately locating the address himself, the Adjudicator namely Mr. S.S.Ubhi, Chief Engineer, was approached, but he failed to adjudicate the disputes within the prescribed period in the contract and at the expiry of the mandate of the Adjudicator, respondent no.1 had requested the appellant to appoint the Arbitrator.

Learned counsel for the appellant is further unable to deny that the Arbitrator for adjudication of the disputes arising out of the Contract was appointed by an official of the appellant itself and in-fact the Arbitrator is a retired Chief Engineer of the department. Moreover, the appellant-department, had also submitted its counter claim before the Arbitrator. Therefore, it is clear that the department had submitted for arbitration, thus raising of the objection as above, is clearly unjustified and in-fact untenable, hence rejected.

It is a settled position of law that interference by this Court at this stage is limited. Section 34 of the Arbitration Act provides that Award can be set aside only on the conditions as are mentioned therein.

Learned counsel for the appellant has sought to raise the arguments on the merits of the matter, which is clearly not within the purview of these proceedings. There can be no re-appraisal of the matter as if sitting in appeal.

Learned counsel for the appellant is unable to point out the existence of any ground which calls for setting aside of the impugned Award dated 12.02.2018 or any irregularity, illegality or infirmity in decision dated 25.10.2021 passed by learned Additional District Judge, Patiala.

No other argument has been raised.

Present appeal is accordingly dismissed with no order as to cost.

24.03.2022
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.