

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-146-2020 (O&M)

Date of Decision: 10.05.2022

GIAN CHAND

..... Appellant(s)

Versus

MUNICIPAL COMMITTEE TARAORI AND OTHERS

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ashwani Talwar, Advocate
for the appellant.

LISA GILL, J.

This appeal has been filed challenging order dated 16.11.2010, passed by learned Additional District Judge, Karnal, whereby petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Arbitration Act), filed by the appellant for setting aside award dated 18.12.2006, passed by the Arbitrator (Deputy Commissioner, Karnal) has been dismissed.

Brief facts as pleaded by the appellant are that he was allotted six work orders for development of roads between the period 1987 to 1988. Dispute arose with respect to payment of about Rs.2,75,000/-. The dispute, it is stated, went up to Financial Commissioner-cum-Secretary Government of Haryana, who vide order dated 04.04.2000 directed that if any matter regarding arbitration is pending, same be decided at the earliest. Appellant's claim was rejected by the Deputy-Commissioner, Karnal, who dismissed the reference vide order dated 03.07.2002. Objections were filed by the

appellant before the learned Additional District Judge, Karnal. The matter is stated to have been remanded before the Deputy Commissioner, Karnal, who vide order dated 18.12.2006 dismissed the appellant's claim again. Objections under Section 34 of the Arbitration Act, were preferred by the appellant which were dismissed by the learned Additional District Judge, Karnal on 16.11.2010. Aggrieved therefrom present appeal has been filed.

Learned counsel for the appellant submits that appellant being a regular contractor of the Municipal Committee, Taraori, six work orders were allotted to him. Stand of the respondents from very beginning is that the alleged work orders were prepared by one Bhagat Singh, Junior Engineer, a dismissed employee of Municipal Committee, Taraori in connivance with Didar Singh, Administrator, who was a habitual drunkard and was suspended pending a vigilance inquiry and ultimately dismissed from service. Bhagat Singh, Junior Engineer was also dismissed from service on 23.06.1986 and he thus had no authority to approve the form or work orders when one Roshan Lal, regular Junior Engineer posted at Municipal Committee, Taraori was in charge. Documents in question were prepared on holidays without any resolution of Municipal Committee, Taraori, without knowledge of the Secretary Municipal Committee and without the same being signed by the Principal officer/Secretary, Municipal Committee, Taraori. It is further the stand of the respondents that bogus notice dated 05.07.1987 which was admittedly a Sunday was issued for inviting tenders for 10.04.1987, which was again a Sunday. Notice was reflected to be issued from Municipal Committee, Karnal and not Municipal Committee, Taraori.

Payment in question was refused by the President, Municipal

Committee, Taraori as the document was forged. It was noticed that fraudulent work orders and illegal tenders were prepared, which were not even signed by the Administrator, Municipal Committee, Taraori. The objector-respondent represented before the Deputy Commissioner in this regard and the matter was sent to the City Magistrate, Karnal for verification. Report was submitted by the City Magistrate, Karnal but the Deputy Commissioner, Karnal did not agree with the report. Respondent requested the case to be sent to the Superintendent Engineer, PWD (B&R) as Arbitrator without there being any provision for the same in the Municipal Act. Evidence was recorded. In the meantime an application for injunction was filed before the Senior Sub-Judge, Karnal but as the appellant did not appear, the matter was dismissed. After passing of two years a suit for declaration was filed by the appellant in the Court of Senior Sub-Judge, Karnal on 30.09.1996. Written statement was filed by Municipal Committee, Taraori on 28.11.1996. Suit is stated to have been withdrawn and a representation moved before the Secretary, Local Government, Chandigarh, after two or three years, which was dismissed on 04.04.2002 with the observation that Deputy Commissioner may adjudicate the matter as an Arbitrator.

Thereafter, the then Deputy Commissioner, Karnal took up the matter and after affording opportunity to the parties dismissed the reference vide order dated 03.07.2002. Objections were then filed by the respondent before the learned Additional District Judge, Karnal. Written statement was filed on 27.11.2002 with no evidence being recorded and the matter remained pending for about 1½ years. In the meantime respondent filed an application before the respondent-authorities and a direction was given vide

order dated 07.03.2005 to re-examine the matter and simultaneously Municipal Committee, Taraori passed resolution no.9 dated 14.05.2005 that no amount could be paid to the contractor as the matter was subjudice before the Court of learned Additional District Judge, Karnal. In a peculiar fashion, resolution no.2 dated 25.09.2005 was passed by Municipal Committee, Taraori to the effect that in case respondent withdrew his case from Court and did not claim any interest or cost etc., his claim for payment may be considered. One Rameshwar Dass Gupta, Clerk, Municipal Committee, Taraori appeared before the Court of learned Additional District Judge, Karnal and suffered a statement that in case the objector (appellant) withdrew the case and did not claim any interest etc., his claim for payment may be considered. It is, however, explained that said Rameshwar Dass Gupta, Clerk was never authorised by Municipal Committee, Taraori to suffer such a statement.

It is to be noted that resolution dated 25.09.2005 was rendered inoperative in terms of letter No.7269 dated 21.10.2005 by the Deputy Commissioner, Karnal. Departmental enquiry was directed to be initiated against Rameshwar Dass Gupta, Clerk. Stand of the appellant himself is that this resolution no.2 was incorrectly cancelled without any notice to him instead of being sent to the council for confirmation is duly noted by the learned Additional District Judge. It has thus been succinctly explained in the award dated 18.12.2006 that Rameshwar Dass Gupta, Clerk was not authorised to suffer a statement in the absence of a valid resolution.

Learned counsel for the appellant has argued that once the respondent Committee suffered a specific and categoric statement before the learned Additional District Judge, Karnal and the appellant withdrew the

case filed by him on such assurance it is not open to the respondent-authorities to go back on the same.

Though, attractive at first flush, this argument is devoid of any merit in the given factual matrix as explained above. It is apparent that complete facts were not even placed before the learned Additional District Judge, Karnal, at the time of passing of Award dated 18.12.2006, remanding the matter, therefore, it cannot be said that the Arbitrator exceeded his jurisdiction in passing award dated 18.12.2006. Moreover, it is a settled position of law that this Court is not to sit as a Court of appeal while exercising jurisdiction under Section 37 of the Arbitration Act. There is a clear cut finding that the work orders in question have been prepared by manipulating the dismissed employee by throwing all Rules to the wind. Learned counsel for the appellant is unable to point out any illegality or any ground which leads to vitiation of the award in terms of the specific provisions of the Arbitration Act. Conclusion arrived at by the arbitrator is reasonable and justified in the facts and circumstances of the case. There is nothing on record to indicate that the Arbitrator has misconducted himself in any manner.

It is relevant to note at this stage that there is a delay of 2224 days in filing of this appeal and 853 days in re-filing the same. To support the application for condonation of delay in filing of the appeal, it is submitted that appellant had entrusted all relevant documents to a counsel but for reasons best known to said counsel, appeal was not filed. Appellant, it is stated filed a complaint dated 05.05.2016 against the said lawyer before the Bar Council, which was however, dismissed on 30.11.2016. This appeal was thereafter, filed on 30.03.2017.

In so far as delay in re-filing of the appeal is concerned, it is submitted that the Registry raised certain objections on 09.05.2017, specifically seeking the filing of copy of award dated 26.12.2006. Appellant, it is stated, applied for a certified copy of award dated 26.12.2006 and it transpired that date of award was wrongly mentioned in the impugned award which was ultimately corrected on 31.05.2019, therefore, delay in re-filing occurred. It is submitted that a liberal approach should be adopted while condoning the delay as the appellant has nothing to gain by delay in filing of the appeal.

Keeping in view the facts and circumstances, I do not find any ground to condone the delay as well. It is apparent that even after filing of the complaint against the counsel to whom the appellant had allegedly handed over the file, no steps were taken to file the appeal. Appeal was filed after few months of conclusion of the said proceedings.

No other argument has been addressed.

In my considered opinion, there is no ground whatsoever for interference in this appeal, which is dismissed on merits as well as on account of delay and laches. Pending applications, if any, are disposed of accordingly.

10.05.2022
Sunil

(LISA GILL)
JUDGE

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