

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

FAO-818-2019 (O&M)

Date of Decision: April 04, 2022

DHARMVEER JINDAL

..... APPELLANT

Versus

PUNJAB STATE POWER CORPORATION LIMITED AND OTHERS

..... RESPONDENTS

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sehaj Mahajan, Advocate for
Mr. Ashwani Talwar, Advocate for the appellants.

LISA GILL, J.

This appeal has been filed by the appellant challenging order dated 12.10.2018 passed by the learned Additional District Judge, Ropar whereby petition under Section 34 of the Arbitration and Conciliation Act, 1966 (for short – ‘Arbitration Act’) filed by the appellant has been dismissed.

Present appellant was allotted work of construction and allied activities at Anandpur Sahib Hydel Project and Miss Colony Ganguwal. Appellant was allotted different work orders in 1979-80 onwards. It is pleaded that respondents did not make full and final payment due towards the petitioner as per terms of the work orders. Amount due and payable was towards 22 works executed by the petitioner. Despite request, payment it is stated was not released. Request for appointment of an Arbitrator was turned down by respondent No. 2 on 31.12.1997 on the ground that there was no clause for Arbitration. Petitioner filed application under Section 11 of the Arbitration Act for appointment of

Arbitrator before the Civil Judge (Senior Division), Rupnagar, which was dismissed on 19.01.2000. Revision petition under Article 227 of the Constitution of India was filed challenging order dated 19.01.2000. Revision petition was allowed by this Court on 14.11.2002, while observing that clause 5 of the agreement, which provided that, “in the matter of disputes, the case shall be referred to the Superintending Engineer of the Circle whose order shall be final”, in fact constitutes an arbitration clause. In respect to the question of claim being time barred, no definite opinion was given while observing that it is for the Arbitrator to decide as to whether claim is within time or not. Hon’ble Supreme Court in SLP No. 3391 of 2003 preferred by the respondent – Punjab State Electricity Board in supersession of order dated 14.11.2002 appointed Superintending Engineer, Anandpur Sahib Hydel Project as Arbitrator with the consent of parties vide order dated 04.02.2005.

Claim was submitted by the appellant before the Arbitrator for adjudication. 22 claims were set up by the appellant. Major claims of the appellant, it is stated have been erroneously rejected with only minor payments being allowed. Moreover, meagre interest it is stated to have been allowed. Aggrieved therefrom, petition under Section 34 of the Arbitration Act was filed by the appellant, which was also dismissed by the learned Additional District Judge, Rupnagar vide order dated 12.10.2018. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant argues that award has been incorrectly passed and is liable to be set aside in terms of Section 34 of the Arbitration Act. Claim set up by the appellant, it is stated, was not considered by the Arbitrator in true spirit and intent and material on record has been ignored.

Learned counsel submits that it has wrongly been held by the Arbitrator that the claim set up by the appellant was time barred. Learned Additional District Judge, it is submitted, has not appreciated arguments raised by the appellant in the correct perspective and has wrongly dismissed petition under Section 34 of the Arbitration Act.

I have heard learned for the appellant and have gone through the file with his assistance.

Allotment of work as above vide different work orders to the appellant between the year 1979 and 1980 is not in dispute. Learned counsel for the appellant further does not dispute that request for appointment of Arbitrator was raised by the appellant in the year 1997 and not before that. After request of the appellant for appointment of an Arbitrator turned down on 31.12.1997, Arbitrator was admittedly appointed in terms of order dated 04.02.2005 passed by the Hon'ble Supreme Court in SLP No. 3391 of 2003 in supersession of order dated 14.11.2002 passed by this High Court. It is further not in dispute that this Court while passing order dated 14.11.2002 while making a passing reference regarding the claim being time barred or not, has specifically observed that no definite opinion is being given whether the claim of the appellant is within time or is time barred. Learned Arbitrator has rejected some of the claims of the petitioner on the grounds as have been culled out by the learned Additional District Judge as under:-

- “(i) For making use of the work done the incomplete work left by the contractor might have been done from the departmental labour in 1979.

- (ii) The appellant raised the issue of balance payment in 1997 after 18 years, when he came to know that the record of A.S.H.P. lying at Nangal have been burnt by the anti-reservation mob.
- (iii) The respondent submitted that the record of AHC has been burnt by the mob in 1990. The claimant was asked to submit affidavit for detail of securities held with the department for different works. He submitted affidavit. On scrutiny of record available and consulting with other offices, it was observed that for many works, securities have been released on the request of the claimant. On submission of proof of payment of security, claimant had admitted in this court that he had forgotten it as the matter is very old and was based on faded memory.
- (iv) From the record available in the contractor's security schedule, no security of this work is pending. Hence, no security payable as well as interest is also not payable.
- (v) As per clause 5(A) of the contract agreement, the contractor was liable to submit in writing about the work contract agreement, the Contractor was liable to submit in writing about the work or part of work done/carried out by him on or before 10th day of every month.
- (vi) Moreover, as per arbitration clause 25, the claimant has failed to prove that he had completed the work and raised the issue regarding non-payment before the respective superintending Engineer in charge within the specified period of three years under the Limitation Act, hence the claims under the contract have been forfeited and absolutely barred."

Learned Arbitrator has specifically observed that applicant –
appellant has raised the issue of balance payment in the year 1997 after about 18

years only when he came to know that record of AHSP lying at Nangal was burnt by some anti-reservation mob. It is to be noticed that learned Arbitrator in award dated 27.08.2013 has clearly observed that claimant had submitted an affidavit for refund of balance securities with the department which was found false and claimant admitted that after lapse of 25-26 years nothing was remembered exactly and that the claimant – appellant failed to lead evidence in support of his claim(s) especially in the wake of no security found to be pending with the department in its records. It is pertinent to note at this stage that scope of interference for setting aside an arbitral award is indeed limited.

Learned counsel for the appellant is unable to point out anything on record to indicate that the learned Arbitrator has misconducted himself or has ignored the terms of contract, has not decided the dispute in accordance with substantiated law for the time being in force or that the award is patently illegal suffering from an error apparent on the face of it. Therefore, in the given factual matrix I do not find any ground whatsoever to interfere in this appeal.

No other argument has been addressed.

Appeal is, accordingly, dismissed with no order as to costs.

April 04, 2022

rts

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No