

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

FAO-2298-2019 (O&M)  
Date of Decision:- 11.9.2023

State of Punjab ...Appellant  
Versus  
M/s Daljit Singh & Brothers and Another ...Respondents

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present: Mr. Aman Dhir, DAG, Punjab - Appellant.  
Mr. Dheeraj Mahajan, Advocate for the respondents.

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**GURVINDER SINGH GILL, J.**

1. The appellant/State of Punjab assails order dated 18.12.2018 passed by learned Additional District Judge, Amritsar whereby a petition filed by the appellant/State of Punjab under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') challenging award dated 12.3.2018 has been dismissed.
2. The matter, infact is a second round of arbitration which arises out of a contract between the petitioner and the respondents which had been entered into on 20.11.2006, as per which the respondents had been allotted the repair work of *Harike Khalra* road in District Amritsar. While in the first round of arbitration proceedings initiated by the Contractor, he had been awarded an amount of Rs. 83.82 lacs vide award dated 22.7.2010 passed by the Arbitrator Shri Ashok Kumar Goyal, Superintending Engineer, the instant

petition arises out of the second round of arbitration wherein the appellant-department has raised a claim of Rs. 96 lacs arising out of the same very contract, being the amount of penalty which had been imposed earlier on Contractor on 10.2.2009.

3. In the said second round of arbitration initiated by Department claiming recovery of Rs. 96 lacs which had earlier been imposed as penalty upon respondents vide order dated 10.2.2009, the Arbitrator (Er. B.S.Tuli, Superintending Engineer) while considering the claim of the appellant-department with respect to recovery of an amount of Rs. 96 lacs observed that the department had never chosen to file counter-claim with the sole Arbitrator Shri Ashok Kumar Goyal, Superintending Engineer in the first round of arbitration, though the appellant-department had informed the Arbitrator that the agreement of the contractor had been terminated. It was further observed that the appellant-department had not even chosen to challenge the earlier award dated 22.7.2010 which has attained finality in the shape of a decree under provisions of Section 36 of the Act and that during the execution of the said award when the department had taken a plea that a penalty of Rs. 96 lacs was outstanding against the Contractor, the same had been turned down by executing court on 17.5.2012. The department/JD challenged the same in the High Court by way of filing CR No.5553 of 2012 but the same was dismissed on 1.10.2012. Keeping all these facts in view, the claim of the appellant-department for recovery of said Rs. 96 lacs was declined, vide award dated 12.3.2018.
4. Although, the department i.e. appellant herein had filed petition under Section 34 of the Act against award dated 12.3.2018 but the Court of

Additional District Judge did not find any ground to interfere with the findings of the Arbitrator.

5. The learned counsel for the appellant-State submitted that since the claim in respect of Rs. 96 lacs had never specifically been adjudicated in any of the previous proceedings, therefore, the appellant-State cannot be deprived of its legitimate claim as the said amount admittedly pertains to a penalty imposed upon the Contractor for not having executed the repair work within the stipulated time. It has further been submitted that the appellant-State, in any case, has been vigilant enough and had raised the issue of Rs. 96 lacs even at the time of execution proceedings filed by the Contractor in respect of his outstanding dues.
6. On the other hand, the learned counsel for the respondents has submitted that there is no infirmity in the findings, as recorded by the lower Court, and consequently, the appeal deserves to be dismissed.
7. This Court has considered the rival submissions addressed before this Court.
8. It is not in dispute that when the respondent/Contractor had raised his claim for his outstanding dues in respect of the payment for the work done by him on *Harike Khalra* road, which was terminated vide letter dated 10.2.2009 of the Executive Engineer, the appellant-department never ever filed any counter claim in respect of recovery of the penalty of Rs. 96 lacs. The findings of said award dated 22.7.2010 were never challenged in the Court and attained finality and even the execution filed by the respondents had been disposed of, as having been satisfied. Under these circumstances, there was no occasion for the appellant-State to rake up the issue again by

invoking fresh arbitration in respect of the aforesaid penalty amount of Rs. 96 lacs.

9. This Court does not find any infirmity in the findings, as recorded by the Arbitrator and as upheld by the learned Additional District Judge, while considering petition under Section 34 of the Act. Even otherwise, the scope of interference in a petition under Section 34 of the Act is very limited. There is nothing perverse in the findings or any blatant irregularity, which would justify interference by this Court.
10. Finding no merit in this appeal, the same is hereby dismissed.

11.9.2023

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( Gurvinder Singh Gill )  
Judge

Whether speaking /reasoned  
Whether Reportable

Yes / No  
Yes / No