

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2642-2007 (O&M)

Date of Decision: 09.10.2023

State of Haryana & others	...Appellants
Versus	
M/s Poddar Industrial Corporation	...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Samarth Sagar, Additional Advocate General, Haryana,
for the appellants.

Mr. Rajat Chopra, Advocate, for respondent No.1.

GURVINDER SINGH GILL, J.

1. The appellants/State of Haryana assail judgment dated 24.03.2007 passed by the Additional District Judge, Panchkula, whereby a petition under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') filed on behalf of the appellants challenging award dated 30.12.2004 passed by the Arbitrator, has been dismissed.
2. The appellants/State of Haryana had invited tenders for the supply of 'A.C. Pressure Pipes with A.C. Couplings' and the bid made by respondent No.1 was accepted and consequently, a supply order dated 07.01.1999 was placed by the appellants with respondent No.1 for supplying 'Class-15, ISI marked, as per IS No.1592-1989 including upto date amendment with A.C. couplings manufactured through Class 15 A.C. Pressure Pipes cut into pieces of

suitable lengths and machined for grooves accurately to seat a set of three rubber rings, one space, O-ring AC Pressure Pipes and two V-Rings Rubber Rings being anti termite'. The specifications and rates approved for the said articles are as follows:

- (i) 80 mm A.C. Pressure Pipes 92307 Mts. @ 67/- P.M.
- (ii) 100 mm A.C. Pressure Pipes 70000 Mts. @ 93.50 P.M.

3. Admittedly, the aforesaid articles were to be supplied by 06.05.1999 and out of the aforesaid articles, only 62307 Mts. of 80 mm A.C. Pressure Pipes (out of 92307 Mts.) was supplied by respondent No.1 within the prescribed period i.e. 06.05.1999. Thereafter, pursuant to the request made by respondent No.1, the period for supply was further extended upto 30.06.1999 and by the said date, respondent No.1 supplied another 30000 Mts. of 80 mm A.C. Pressure Pipes and 10000 Mts. of 100 mm A.C. Pressure Pipes (out of 70000 Mts.). In other words, by the extended date i.e. 30.06.1999, respondent No.1 had supplied the entire quantity of 80 mm A.C. Pressure Pipes, but out of ordered 70000 Mts. of 100 mm A.C. Pressure Pipes required to be supplied, respondent No.1 was able to supply only 10000 Mts. However, later i.e. after the expiry of the extended period, respondent No.1 supplied another 50000 Mts. of 100 mm A.C. Pressure Pipes leaving a balance of undelivered 10000 Mts. of 100 mm A.C. Pressure Pipes.
4. Since the appellants/State of Haryana during the said period had started negotiating with another vendor and had identified a vendor, namely, M/s Kalani Industries, Indore, who had agreed to supply 100 mm A.C. Pressure Pipes at the rate of 75.50 P.M., the appellants while invoking 'Fall Clause'

i.e. Clause 21 of the Contract proceeded to make payment for 100 mm A.C. Pressure Pipes delivered by respondent No.1 at the rate of Rs.75.50 P.M. instead of agreed price of Rs.93.50 P.M. i.e. Rs.18 P.M. lesser than the agreed price. Aggrieved by the same, respondent No.1 invoked arbitration, wherein the appellants also submitted a counter-claim. Learned Arbitrator while considering all the claims awarded the following relief:

“Relief:

17. In view of the above findings, the claimant is entitled to recover from the respondents the price of the material supplied at the following rates:
- a) 80 mm dia pipes

@ Rs.67/- per meter

b) 10000 meters of 100 mm dia pipes supplied within the delivery period

@ Rs.93.50 per meter

c) 50000 meters of 100 mm dia pipes supplied after the delivery period

@ Rs.93.50 per meter

- 2% penalty per consignment per month on the value of the consignment supplied.
- This calculation will be made by the claimant and after adjusting the amount already received from the respondents, he will be entitled to recover the remaining amount from the respondent as the principal amount with interest @ 18% per annum from the date the amount became due till the date of recovery.
- The claimant shall be entitled to recover interest on the amount which was received after 15 days of the date of delivery @ 18% per annum from the date it became due till the date of recovery. This calculation shall also be made by the claimant.
- The claimant shall make the calculation of the principal amount due and the interest thereon till the date of award as indicated above within a period of 15 days from the receipt of the copy of the award and shall send it to the respondents through registered AD post for cross-checking and the respondents shall send the calculation of
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cross-checking to the claimant through registered AD post within a period of 15 days from the receipt of the calculation chart from the claimant and the respondents shall pay to the claimant the amount found due from them on the date of award within a period of 4 months from the date of sending the cross-checking to the claimant with interest @ 18% per annum from the date of award till payment, failing which the claimant shall be entitled to recover the amount found due on the date of award with future interest @ 18% per annum from the date of award till the date of payment through the execution of this award. The parties are left to bear their own costs keeping in view the peculiar circumstances of the case. Signed copies of the award be sent to the parties through registered AD post.”

5. The appellants/State of Haryana aggrieved by the aforesaid Award dated 30.12.2004 filed a petition under Section 34 of the Act before the Court of Additional District Judge, Panchkula, which was dismissed vide judgment dated 24.03.2007.
6. Learned State counsel while challenging Award dated 30.12.2004 passed by the Arbitrator and the judgment dated 24.03.2007 passed by the Additional District Judge, Panchkula, raised the following submissions:
 - (i) that the Arbitrator fell in error in discarding ‘Fall Clause’ on flimsy grounds when there was ample evidence to establish that there were other suppliers, who were approved by the DGS&D and willing to supply 100 mm A.C. Pressure Pipes at the rate of Rs.75.50 P.M. as against the rates quoted by respondent No.1 i.e. Rs.93.50 P.M.
 - (ii) that the Arbitrator discarded the plea of the appellants raised in terms of ‘Risk Clause’ i.e. Clause-14 of the Contract by interpreting the provision that the entire process of fresh purchase order ought to have been completed within 6 months, whereas the practical interpretation

of the said clause is that the proceedings as regards purchase from another vendor should be initiated within 6 months.

- (iii) that respondent No.1 vide letter dated 09.02.2000 by making an offer of supply of 100 mm A.C. Pressure Pipes at the reduced rates of Rs.75.50 P.M. had virtually admitted having charged exorbitant rates previously i.e. at the rate of Rs.93.50 P.M.
- (iv) that the interest awarded at the rate of 18% p.a. is extremely on the higher side and was uncalled for.
- (v) that the Arbitrator did not even discuss the material issues in his Award dated 30.12.2004.

Learned State counsel in order to hammer the aforesaid submissions places reliance upon a judgment of Hon'ble Supreme Court reported as Indian Oil Corporation Limited Vs. Shree Ganesh Petroleum Rajgurunagar, (2022) 4 SCC 463.

7. Opposing the appeal, learned counsel representing respondent No.1 has submitted that the Award dated 30.12.2004 and the judgment dated 24.03.2007 do not suffer from any infirmity and have been passed after taking into account all the facts relevant for adjudication. It has further been submitted that the scope of a petition under Section 34 of the Act is rather limited and unless there is anything perverse in the award or in violation of principles of natural justice, the same cannot be interfered with.
8. This Court has considered the rival submissions addressed before it.
9. As far as factual position regarding the placing of supply order by the

delivered by respondent No.1 is concerned, there is no dispute in respect of the same. Out of the supply order placed by the appellants i.e. (i) 80 mm A.C. Pressure Pipes - 92307 Mts. & (ii) 100 mm A.C. Pressure Pipes - 70000 Mts., the entire consignment of 80 mm A.C. Pressure Pipes (92307 Mts.) stood delivered by the extended date of delivery i.e. 30.06.1999. However, as far as 100 mm A.C. Pressure Pipes 70000 Mts. is concerned, only 10000 Mts. had been delivered by the said extended date and on account of which the appellants started looking an alternate vendor and had negotiated with one M/s Kalani Industries, Indore for supply of 100 mm A.C. Pressure Pipes at the rate of Rs.75.50 P.M., but respondent No.1 subsequently delivered another 50000 Mts. of 100 mm A.C. Pressure Pipes leaving a balance of only 10000 Mts. as undelivered. Further, the appellants upon finding that the claimant had supplied 100 mm A.C. Pressure pipe to State of West Bengal @ Rs.75/- in November, 1999 as against Rs.93.50 quoted and agreed with the appellants, sought to invoke 'Fall Clause' incorporated in the Contract, which reads as under:

“FALL CLAUSE: The price charged in the tenders/quotations for the stores shall not exceed in any way the lowest price at which the tenderers supply the stores of identical description of stores to DGS&D, New Delhi, State Government Institutions/Undertakings/any other person during the delivery period/currency period of the rate-contracts. If at any time, during the delivery period/currency period, the successful tenderers reduced, the rates sale price of quoted stores to any person at the price lower than the price chargeable under this supply order/contract, the tenderers should forthwith notify such reduction and inform this office and the price payable under the supply order/contract for the stores supplied after the date of the coming into force of such reduction of the rates shall stand correspondingly reduced to that level. The successful tenderers shall promptly notify the reduction of rates to this office as well as to the concerned Indenting Officers/Consignees. The tenderers shall also give a certificate on their

bills that the rates charged by them are not in any way higher to these quoted by them from the DGS&D, New Delhi and other State Government etc., during the corresponding period. The Indenting Officer shall be required to ensure that requisite certificate is given by the concerned firm on the bills before releasing their payments.”

10. The plea of the appellants in respect of the same was, however, discarded by the Arbitrator while observing that the Pipes, which had been supplied to Government of West Bengal were confirming to C1-10 pressure and were without A.C. Couplings, whereas 100 mm dia Pipe supplied to the appellants was of C1-15 pressure rating and that too with A.C. Couplings and rubber rings. In this context, a perusal of Schedule ‘A’ annexed with the tender makes it amply clear about the description of articles as under:

“A.C.Pressure pipe couplings manufactured through Class-15; A.C.Pressure pipes cut into pieces of suitable lengths and machined for grooves accurately to seat a set of three rubber rings – One spacer, O-Ring and Two V-Rings rubber rings being anti termite.”

11. There is no dispute that the articles supplied by respondent No.1 were of the designated quality. Since there is nothing on record to show that the supplies made to State of West Bengal were of the same quality i.e. of Class-15 and the pipes were accompanied by couplings, rubber rings etc. and had been duly machined for grooves and cut into pieces, the rates in respect of the pipes supplied to the State of West Bengal cannot be compared with the rates agreed amongst the parties in the present case being of different quality. The contention raised in this regard on behalf of the appellants is devoid of merits and is hereby rejected.

12. In order to examine the contention raised on behalf of the appellants regarding 'Risk Clause' i.e. Clause-14 of the Contract, the same needs to be perused, which reads as under:

“14. The time for and date of delivery of dispatch stipulated in a supply order shall be deemed to be the essence of the contract and should the contractor fail to deliver or dispatch any consignment within the period prescribed for such delivery or dispatch stipulated in the supply order, the delayed consignment will be subject to 2% penalty per consignment per month recoverable on the value of the stores supplied. In case of non payment by the contractor, recovery will be made from his bills or amount of Earnest Money or Security deposited with the Director, Supplies and Disposals, Haryana, provided that:

- (a) No recovery of penalty will be made if the Indenting Officer accepts the delayed supplies by extending the delivery period upto 2 weeks by recording in writing that the exceptional circumstances were beyond the control of the supplier and there was no loss to Government.
- (b) Where the delay on the part of supplies is more than 2 weeks, the matter of extension of delivery period will be referred by the Indenting Officer to the Director, Supplies and Disposals, Haryana, with a certificate that there are genuine reasons for delay on the part of suppliers and that no loss will result to Government in case extension delivery period is allowed. The case will be decided on merits by the office of the Director, Supplies and Disposals. The extension will be allowed by the Assistant Director/Deputy Director, Supplies and Disposals, to the extent of purchasing power delegated to him and in cases above his competence, the extension will be allowed by Director, Supplies and Disposals, Haryana. In case the delivery period is extended, no penalty for supplies, made during the extended period be recovered from the supplier.
- (c) On the failure of the supplier to make supply within the extended period or otherwise and the receipt of such information in the office of Director, Supplies and Disposals, Haryana, risk purchase at the cost of suppliers will be made by the Director, Supplies and Disposals, Haryana within 6 months of the expiry of the stipulated

delivery period by inviting short term quotations from the registered and other known suppliers. The excess cost is thus incurred will be recovered from the suppliers from his pending bills, Earnest Money or Security whichever is available. This procedure will be adopted after serving registered notice to supply stores within 15 days.”

13. Learned State counsel while referring to sub-clause (c), as reproduced above, has vehemently argued that the correct interpretation of the aforesaid clause is that the proceedings in respect of purchase from another supplier are required to be initiated within 6 months from the stipulated delivery period and that the said sub-clause cannot be interpreted to mean that the entire purchase proceedings have to be concluded within 6 months. It has been submitted that the Arbitrator has failed in interpreting the said clause incorrectly.
14. This Court is unable to subscribe to the aforesaid argument inasmuch as it is only in case purchase from another vendor had been made within 6 months from the expiry of the stipulated delivery period that the said clause could have been invoked and the same not having been invoked, the appellants cannot stake claim or invoke the said clause.
15. In any case, it is well settled that in case any clause of the contract is capable of interpreted in two ways and the Arbitrator has interpreted in one of such ways and has given one of such interpretations, the Award cannot be set aside merely on the basis of such interpretation unless there is a finding which is unreasonable or perverse. In the present case, the interpretation of the said clause made by the Arbitrator or by the Court below cannot be said to be perverse in any manner. In order to succeed in a challenge against an arbitral award, it must be shown that the Award of the Arbitrator suffered

from perversity or an error of law or that the Arbitrator has otherwise misconducted himself. Merely showing that there is another reasonable interpretation or possible view on the basis of the material on the record is not sufficient to justify interference by the court. The contention in this regard is found to be sans merit and is hereby rejected.

16. As far as the judgment pressed into service by learned State counsel in Indian Oil Corporation Limited case (supra) is concerned, the relevant extracts from the said judgment are reproduced hereinunder:

“41. As held by this Court in *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49, cited by Mr. Prasenjit Keswani, learned counsel appearing on behalf of the Respondent, Section 34 in conjunction with Section 5 of the 1996 Act makes it clear that an arbitral award that is governed by Part I of the 1996 Act, can only be set aside on grounds mentioned under Sections 34(2) and (3) of the said Act and not otherwise. The Court considering an application for setting aside an award, under Section 34 of the 1996 Act cannot look into the merits of the award except when the award is in conflict with the public policy of India as provided in Section 34(2)(b)(ii) of the 1996 Act.

42. In *Associate Builders* (supra), this Court held that an award could be said to against the public policy of India in, inter alia, the following circumstances:-

42.1. When an award is, on its face, in patent violation of a statutory provision.

42.2. When the Arbitrator/Arbitral Tribunal has failed to adopt a judicial approach in deciding the dispute.

42.3. When an award is in violation of the principles of natural justice.

42.4. When an award is unreasonable or perverse.

42.5. When an award is patently illegal, which would include an award in patent contravention of any substantive law of India or in patent breach of the 1996 Act.

- 42.6. When an award is contrary to the interest of India, or against justice or morality, in the sense that it shocks the conscience of the Court.
43. An Arbitral Tribunal being a creature of contract, is bound to act in terms of the contract under which it is constituted. An award can be said to be patently illegal where the Arbitral Tribunal has failed to act in terms of the contract or has ignored the specific terms of a contract.
44. However, a distinction has to be drawn between failure to act in terms of a contract and an erroneous interpretation of the terms of a contract. An Arbitral Tribunal is entitled to interpret the terms and conditions of a contract, while adjudicating a dispute. An error in interpretation of a contract in a case where there is valid and lawful submission of arbitral disputes to an Arbitral Tribunal is an error within jurisdiction.
45. The Court does not sit in appeal over the award made by an Arbitral Tribunal. The Court does not ordinarily interfere with interpretation made by the Arbitral Tribunal of a contractual provision, unless such interpretation is patently unreasonable or perverse. Where a contractual provision is ambiguous or is capable of being interpreted in more ways than one, the Court cannot interfere with the arbitral award, only because the Court is of the opinion that another possible interpretation would have been a better one.”
17. A perusal of the aforesaid extract indicates that scope of interference under Section 34 of the Act has been defined. There is certainly no dispute as regards the proposition of law spelt forth in the said judgment. However, this Court does not find the present case to be such where it can either be said that the Award is unreasonable or is against the public policy of India or is perverse or that there is an error in interpretation of a contract, which can be said to be patently unreasonable. As such, the appellants cannot derive any benefit from the said judgment, where the broad principles of scope of interference under Section 34 of the Act have been delineated.

18. Though during the course of arguments, learned State counsel has submitted that letter dated 09.02.2000 sent by respondent No.1 to the appellants making an offer to supply the pipes in question at the rate of Rs.75.50 P.M. was virtually an admission that he had earlier offered the same very article at an exorbitant rate, but apart from the fact that the said offer was for a limited time period and had been later on withdrawn by respondent No.1, the said offer made at a different point of time in view of some changed circumstances, cannot be read against any contracting party, as any contracting party/business entrepreneur negotiates terms & conditions, as would be existing when the contract is entered into and the same terms & conditions may not be applicable in case a similar contract has to be entered into on a later stage.
19. The Arbitrator while ordering for the recovery of amount in question has duly ensured that a deduction of penalty at the rate of 2% on account of delay in delivery is duly deducted on the value of consignment. The impugned Award is found to be fairly reasonable and does not suffer from any infirmity.
20. As far as the rate of interest at the rate of 18% p.a. is concerned, the said interest is certainly more than the market rate, but having regard to the delay in payment, it goes without saying that respondent No.1, who is having a business concern of supplies, would have certainly faced difficulties on account of financial crunch due to non payment and would have suffered losses. The Award in question is of the year 2004. As such, this Court does not find any reason to interfere with the Award on the said count.

21. The contention of the appellants that all the issues have not been discussed properly by the Arbitrator cannot be accepted inasmuch as even if any issue has not been dealt with in detail by the Arbitrator, the same having been dealt with by the Additional District Judge while deciding a petition under Section 34 of the Act and not having found substance in the same warranting any contradictory finding, no interference would be justified. Further, the scope of interference under Section 34 of the Act is rather limited and narrow and it is only when the award is in patent disregard of the terms & conditions of the Contract and is against the settled principles as are also enumerated in Indian Oil Corporation's case (supra), referred to above that there could be an interference. Since no such circumstance exists in the present case so as to warrant any interference, the Award as well as the judgment under appeal are hereby upheld. Finding no merit in the present appeal, the same is hereby dismissed.

09.10.2023

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**(GURVINDER SINGH GILL)
JUDGE**

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