

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

FAO-3573-2023 (O&M)
Date of Decision:-06.09.2023

Punjab State Power Corporation Ltd. ... Appellant

Versus

M/S Genus Power Infrastructure Ltd. and another ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Aman Pal, Advocate, and
Mr. Japsehaj Singh, Advocate for the appellant.

GURVINDER SINGH GILL, J.(Oral)

1. The appellant has preferred the instant appeal, aggrieved by order dated 20.2.2023 vide which learned Additional District Judge, Patiala has dismissed the petition filed by the appellant under Section 34 of the Arbitration and Conciliation Act.
2. The dispute arises out of a contract entered into between the parties pertaining to supply of material for Erection/Conversion, testing, commissioning of 11 KV Phase 3 wire lines & Dismantlement of 4th wire along with its allied material from existing 3 phase 4 wire system to provide urban pattern supply to vilages and to connect rural water works, and in respect of which the appellant had imposed a penalty of Rs.39,41,989/- on account of delay in execution of work. The Arbitrator while accepting the

claim of the respondent awarded the said amount i.e. Rs.39,41,989/- and has also awarded the interest on the aforesaid amount and also interest on delayed payment of Excise Duty etc. under Claim No.6.

3. The learned counsel while assailing the impugned order has drawn the attention of this Court to the award wherein the learned Arbitrator while discussing Claim No.1 pertaining to penalty of Rs.39,41,989/- has observed that time was not the essence of the contract. Learned counsel, in order to assail said observations has drawn the attention of this Court to the agreement entered into between the parties (Annexure A-1) so as to contend that there was a clear stipulation that the work had to be executed within 6 ½ months.
4. I have heard the learned counsel for the appellant.
5. Mr. Maninder Arora, Advocate, on behalf of respondent-M/s Genus Power Infrastructure is present in the Court.
6. A perusal of the Arbitrator's award would indicate that it has been noticed that there were several amendments in scope of work which continued till 19.7.2011 i.e. much beyond the time fixed for execution of the work. Rather, it is also noticed that a witness examined by the appellant during the course of cross-examination categorically stated that even the scope of work had been increased without there being any proportionate increase in time. The relevant extract is reproduced here under:

“.....
In fact, the very fact that Amendments continued to be issued till as late as 19.07.2011 would establish that it was not possible for the claimant to complete the work by 31.12.2009. It is on record that the claimant had applied for extension of time on at least 3 occasions, but no decision was taken thereon. Reference in this connection may be

made to letters dated 13.01.2009 (C-6), 08.06.2010 (C-11) and 15.03.2011 (C-22). The witness of the respondent (RW-1) admitted during the course of his cross-examination that though the claimant had made requests for extension of time, but no action thereon had been taken by the respondent. It was also admitted by RW-1 that the scope of work had been increased, but proportionate increase in time had not been granted to the claimant. The reason for not replying to any of the letter seeking extension of time was that the grounds were general in nature or that the issues raised by the claimant stood resolved.....”

7. The aforesaid observations would clearly indicate that it would not have been possible for the respondent to have executed the work within the stipulated period. The Court of learned Additional District Judge while disposing of the petition under Section 34 of the Act, has taken note of the aforesaid facts. In any case, the Court of learned Additional District Judge was not to sit in appeal and the scope of interference is very limited. This Court does not find any finding, which can be said to be perverse. No justification for any interference is made out.
8. The appeal is sans any merit and the same is hereby dismissed.

06.09.2023
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(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No