

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

FAO No. 3975 of 2016 (O&M)

Date of decision: 17th January, 2023

Punjab Mandi Board

Appellant

Versus

M/s Jaswant Rai Verma and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. A. K. Goel, Advocate for the appellant.
Mr. Mukand Gupta, Advocate for respondent No. 1.

AVNEESH JHINGAN, J (Oral):

Aggrieved of award dated 2.2.2012 passed by Superintending Engineer-cum-Arbitrator and of dismissal of objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') on 9.3.2016, the appellant is before this court under Section 37 of the Act.

Respondent No. 1 was allotted work by the Executive Engineer, Punjab Mandi Board, Nawanshehar for construction of New Link Road from Tibba Nangal to Kular Rattawal in District Ropar. Clause 8 of the contract provided for dispute resolution through arbitration.

Dispute arose between the parties and the appellant appointed Superintending Engineer as the Arbitrator. Respondent No. 1 submitted claim for payment of Rs.25,45,384/-. The dispute mainly was with regard to measurement of the earth work executed for levelling and for refund of security.

The bone of contention was that respondent No. 1 had entered the levels in the measurement book by calculating the work done with use of software. On the other hand, the department quantified the work done based upon the actual work done and calculating it by using average

method. The award was passed in favour of respondent No. 1. He was found entitled to quantified amount.

Learned counsel for the appellant submits that the Superintending Engineer of the Mandi Board should not have been appointed as an arbitrator. It is argued that the software used by respondent No. 1 for maintaining the measurement book was not reliable and not proved before the arbitrator.

Learned counsel for respondent No. 1 opposes the contentions and submits that no such objections were raised before the arbitrator. It is argued that the department had filed a counter claim before the arbitrator and not challenged his appointment.

Heard learned counsel for the parties and perused the pleadings.

N Haryana Tourism Limited v. M/s Kandhari Beverages Limited, 2022(3) SCC 237, the Supreme Court held as under:

“ 8. As per settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to, (a) fundamental policy of Indian Law; or (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal. None of the aforesaid exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order passed by the High Court is hence not sustainable.”

It is not disputed that the appellant had appointed the arbitrator, he was their official and they had chosen to file a counter claim before him. Be that as it may, no such objection was raised during the

arbitration proceedings, the appellant participated in proceedings and award was passed. At this belated stage, objection is being raised with regard to the appointment of the arbitrator. The second contention that the software used by the respondent was unreliable and not proved, is noted to be rejected. The arbitrator concluded method adopted by Mandi Board cannot be applied in hilly areas. Moreover that calculation of respondent was prepared by neutral third party by using a software. There cannot be re-appreciation of evidence at this stage. It would not be out of place to mention that no such objection was pressed in the arbitration proceedings. The issue whether the measurement of the department or of the contractor is more reliable does not fall within the ambit of interference under Section 37 of the Act.

The appeal is dismissed.

Since the main appeal has been dismissed, pending applications, if any, stand infructuous.

[AVNEESH JHINGAN]
JUDGE

17th January, 2023
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |