

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 935 of 2017 (O&M)

Date of decision: 7th February, 2023

Haryana State Agricultural Marketing Board

Appellant

Versus

Dheeraj Singh and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vishal Garg, Advocate for the appellant.
Mr. Mohit Aneja, Advocate for respondent No. 1.

AVNEESH JHINGAN, J (Oral):

1. Aggrieved of the dismissal of objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act'), Haryana State Agricultural Marketing Board (for short, 'the Board') is in appeal under Section 37 of the Act.

2. The facts in brief are that the Board invited tender for construction of providing water supply and sewerage scheme in NGM at Punhana (Mewat). Respondent No. 1 (hereinafter referred to as 'the respondent') was allotted the tender. General terms and conditions of the tender provided for dispute resolution mechanism through arbitration. The arbitration was invoked by the Board. In nut shell, the claim raised was that construction work was not completed within the time stipulated and the Board got the work completed at the risk and cost of the respondent. A counter claim was filed by the respondent claiming refund of security and claiming litigation expenses. The claim of the Board relying upon Clause-II of the terms and conditions i.e. for compensation for delay (hereinafter referred to as 'claim under Clause-II) and Clause-III to get the un-executed work completed through another contractor at the risk and cost of the respondent (hereinafter referred to as 'claim under Clause-III) were rejected.

The counter claim of the respondent for refund of security was allowed and found entitled to litigation expenses of Rs.30,000/-.

3. Learned counsel for the appellant submits that the claim for compensation for delay in completing the work and for getting the work completed through another contractor was wrongly denied. It is further submitted that the litigation expenses were awarded without there being any evidence on record.

4. Learned counsel for the respondent submits that the respondent was duly represented by a lawyer in the arbitration proceedings, hence the litigation expenses were rightly awarded. He contends that scope of interference under Section 37 of the Act is limited.

5. Heard learned counsel for the parties and perused the record.

6. It would be relevant to reproduce the findings recorded by the arbitrator:

“Department has claimed for Rs. 3,45,442/- on account of compensation under clause-2, whereas the respondent has denied the same on the ground site was not provided to him for laying of water supply line and installation of Tube-well.

Since the site was not provided time and even after lapse of more than one year after the expiry of time limit and violation of agreement was on the part of department as has been explained in the previous paragraphs. It is concluded that compensation under clause 2 was imposed in violation of agreement as has been agreed by the concerned Superintending Engineer also during the hearing of clause-2 of the agreement. Under the circumstances, I did not find any merit in the claim of the department and clause 2 levied by the department is declared null and void. Hence I award Rs. NIL on account of this claim in favour of the Department.”

7. In view of the findings reproduced above, it is evident that the appellant agreed that it was not entitled to any claim under Clause-II. The claim made under Clause-III was dependent on the out-come of the claim under Clause-II. The appellant having failed under Clause-II, the out-come of claim under Clause-III was inevitable and was to be rejected.

8. The challenge to the award of litigation expenses to the respondent is an attempt before this court for re-appreciation of the evidence and to substitute opinion with that of the arbitrator which is not the scope for interference under Section 37 of the Act.

9. The appeal is dismissed.

10. Since the main appeal has been dismissed, pending application, if any, is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

7th February, 2023

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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No