
(2010) 09 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 183 of 2010

Amarpal Singh

APPELLANT

Vs

The Executive Engineer, Public Health (RWS) Division Muktsar

RESPONDENT

Date of Decision : 20-09-2010

Acts Referred:

Arbitration Act, 1940 — Section 30
Limitation Act, 1963 — Article 26, 3, 4

Citation : (2011) 161 PLR 311

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Alok Singh, J.—Present petition is filed challenging the judgment dated 20.08.2007 passed by learned Civil Judge (Senior Division), Muktsar, as well as, judgment dated 22.09.2009 passed by learned Addl. District Judge, Muktsar, thereby making award dated 10.06.1993 for recovery of Rs. 66,668/-, Rule of the Court and dismissing the objections filed by the present petition against the award u/s 30 of the Arbitration Act, 1940.

2. I have heard learned Counsel for the parties and perused the record.

3. Undisputedly the work of construction of 15000 gallons capacity O.H.S.R. at Augmentation Water Supply Scheme Check Chibranwali was allotted to the present Petitioner and a contract agreement No. 144/MKS/34/1981-82 was executed between the parties. Undisputedly, Petitioner has submitted bills of work done by him on 12.07.1982, 30.11.1982 and on 30.2.1982 (Ex.P1 to Ex.P3) according to the M.B. Book (Ex.P4 to P6). Undisputedly, department has made payment to the Petitioner on 13.07.1982, 01.12.1982 and on 12.01.1983. Undisputedly, after 12.01.1983, the date of last payment to the contractor - Petitioner, no objection was raised by the department till 31.07.1987 and for the first time Ex.P5 letter dated 31.07.1987 was issued by the department and thereafter matter was referred to the arbitrator on 05.05.1992 and arbitrator has

passed the award on 10.06.1993.

4. Now, very important question arises before this Court as to whether after the last payment made on 12.01.1983, reference to the arbitrator on 05.05.1992 is barred by time.

5. Learned Additional Advocate General, Punjab, argued that although no payment was made to the Petitioner - contractor after 12.01.1983, however, since dispute was raised vide letter dated 31.07.1987, hence, reference to the arbitrator on 05.05.1992 is well in time. It has further been argued by the learned Additional Advocate General that point of limitation has not been raised specifically by the contractor - Petitioner, hence, neither reference nor award can be held to be time barred. He further contends that since contractor has participated in the arbitration proceedings, he is estopped to challenge the award on the ground of limitation. He has placed reliance on the judgment of the Delhi High Court in the matter of Vaish Brothers & Co. v. Union of India and Anr., reported in AIR 1999 Delhi, 105, as well as, on the judgment of the Apex Court in the matter of Inder Sain Mittal Vs. Housing Board, Haryana and Others, .

6. Undisputedly, after 12.01.1983, the last date of payment to the contractor - Petitioner, no objection was ever raised by the department within three years and for the first time, letter was issued on 31.07.1987. As per Article 26 of the Limitation Act, 1963, for money payable to the Plaintiff for money found to be due from the Defendant to the Plaintiff on accounts stated between them, limitation is three years. Section 3 of the Limitation Act, 1963 reads as under:

3. Bar of limitation - (1) Subject to the provisions contained in Sections 4 - 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(2) xxxx xxx xxxx

7. From the perusal of Section 3 of the Limitation Act, I have no hesitation to hold that even if defence of limitation is not taken, the claim forwarded by the Plaintiff shall be dismissed if it is found to be barred by limitation.

8. Now, question arises as to whether any reference made to the Arbitrator would also be hit by Section 3 of the Limitation Act. Obviously, answer would be in affirmative. reason being if a person is precluded to bring his claim because of limitation, then, of course, he cannot claim that money either by way of arbitration reference or by way of suit.

9. Before both the Courts below, point of limitation was raised by the Petitioner, however, that was over-ruled on the ground that letter was sent by the department on 31.07.1987 and reference was made on 05.05.1992. Both the Courts below have failed to consider that last payment was made to the contractor - Petitioner on 12.01.1983, no claim was ever raised till 31.07.1987 and arbitration reference was made on 05.05.1992 after three years from the

letter of 31.07.1987 and after more than nine years from the date of last payment.

10. In view of the above, I find that claim by the department was hopelessly time barred. Arbitrator has misconducted while passing the award pertaining to the time barred claim.

11. Learned Single Judge of Delhi High Court in the matter of M/s Vaish Brothers & Co. (supra) in paragraph No. 3 has observed as under:

...It is not disputed and it is clear from the proceedings before the arbitrator that the Respondent did not raise any objection before the arbitrator about the proceedings without jurisdiction or the arbitrator having no authority to take upon the disputes which had been referred to him. The Respondent participated in the proceedings without any protest and, in my view, therefore, by participation and acquiescence in the proceedings before the arbitrator the Respondent is estopped from challenging the jurisdiction of the arbitrator on the ground that the matter could not be referred to the arbitrator and the award of the arbitrator, therefore, cannot be allowed to be challenged on this ground.

12. The Apex Court in the matter of Inder Sain Mittal (supra) has held as under:

Where even though Arbitrator appointed by Court was transferred but he continued with arbitration proceedings in spite of his transfer, and passed award after giving opportunity of hearing to the parties, who participated in proceedings, objections u/s 30 of the Act on ground inter alia that awards in question were without authority and jurisdiction and upon transfer of Arbitrator he had no jurisdiction to further continue arbitration proceedings, cannot be allowed. It cannot be said that continuance of the proceedings and rendering of awards therein by the Arbitrator after his transfer was in disregard of any provision of law much-less mandatory one but, at the highest, in breach of agreement. Therefore, by their conduct by participating in the arbitration proceedings without any protest the parties would be deemed to have waived their right to challenge validity of the proceedings and the awards consequently, the objections taken to this effect do not merit any consideration and award cannot be set aside.

None of the ratio relied upon by the learned Additional Advocate General, Punjab, are applicable in the present case. There is no doubt about the ratio of the judgment of the Apex Court, as well as, High Court. In the opinion of this Court learned Arbitrator was bound to see as to whether claim of the claimant was barred by time or not. There cannot be any estoppel, waiver or acquiescence against the Statute. Not only this, in the present case, Petitioner has repeatedly raised point of limitation before both the Courts below which was turned down by both the Courts below without appreciating the law in right perspective.

13. Present petition is allowed. Impugned judgments dated 20.08.2009 passed by learned Civil Judge (Senior Division) Muktsar and dated 22.09.2009 passed by

learned Addl. District Judge, Muktsar, as well as, award dated 10.06.1993 are set aside.