(2012) 12 P&H CK 0092

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 5065 of 2011

Chief Administrator, HSAMB and Another — APPELLANT

Vs

Maa Shakti Co-op. L/C Society Ltd. and Another — RESPONDENT

Date of Decision : 06-12-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 14, 34, 34(2)(b)(ii)

Citation : (2013) 1 RCR(Civil) 547

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : Amit Jaiswal, for the Appellant; P.S. Rana, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—In this first appeal, order dated 28.02.2011 passed by learned Additional District Judge, Panipat is under challenge. By the said order, learned Additional District Judge has allowed application filed by respondent No. 1-contractor u/s 34 of the Arbitration and Conciliation Act, 1996 (in short, the ''Act'') and has thereby set aside award dated 22.11.2007 passed by respondent No. 2 Arbitrator. Dispute between appellants (Marketing Board) and respondent No. 1 contractor was referred to respondent No. 2 as Arbitrator by Chief Administrator of the Marketing Board pursuant to direction of the Court u/s 11 of the Act vide order dated 23.05.2005. By the said order, Chief Administrator of the Marketing Board was directed to appoint Arbitrator within two months and the Arbitrator was directed to give speaking award within six months after entering upon the reference or within such time as extended with consent of the parties. Parties by mutual consent extended the time for making award till 15.11.2006 by making statements before the Arbitrator. Thereafter there is no consent regarding extension of time nor regarding denial of consent by either party. The arbitrator gave the award on 22.11.2007 i.e. after the expiry of the extended period.

2. Respondent No. 1-contractor challenged the said award by filing petition u/s 34 of the Act inter alia on the ground that mandate of the Arbitrator terminated on expiry of the extended period for making the award and therefore, the award made thereafter is invalid.

3. Appellants herein repudiated the aforesaid claim of the contractor.

Learned trial Court has allowed the petition filed by the contractor on the aforesaid ground. Feeling aggrieved, instant appeal has been preferred.

I have heard learned counsel for the parties and perused the case file.

4. Counsel for the appellants pointed out that the contractor itself did not appear before the Arbitrator on 05.10.2006, 31.10.2006, 14.11.2006 and 14.12.2006 and the Arbitrator was then compelled to serve the contractor by publication of notice in two newspapers and thereupon the contractor appeared before the Arbitrator on 17.01.2007. The contractor stated before the Arbitrator on 17.01.2007 that it had requested the Chief Administrator of the Marketing Board for changing the Arbitrator. The contractor also stated that it had nothing more to say in addition to the previous statements/documents. Photostat copies of some documents relating to request for change of Arbitrator made to Chief Administrator of the Board were also handed over to the Arbitrator.

5. Counsel for the appellants submitted that the aforesaid ground, on which the award has been set aside, does not fall within the parameters of Section 34 of the Act and therefore, the award could not be set aside on this ground. It was submitted that on this ground, the contractor could have approached the Court u/s 14 of the Act seeking termination of the mandate of the Arbitrator. It was submitted that the contractor itself could not have assumed that mandate of the Arbitrator had terminated. Reliance in support of this contention has been placed on judgment of Division Bench of Delhi High Court in the case of Surinder Pal Singh Vs. HPCL and Another, Arbitration Law Reporter 109 (Delhi).

6. On the other hand, counsel for respondent No. 1 contractor contended that on expiry of extended period for making the award, mandate of the Arbitrator stood terminated automatically and even the Court had no power to grant extension of time to give award by the Arbitrator and therefore, the award passed after the expiry of the period for making the award is vitiated and has been rightly set aside by the lower Court. Reference has been made to judgment of Hon''ble Supreme Court in the case of N.B.C.C. Ltd. Vs. J.G. Engineering Pvt. Ltd., Recent Apex Judgments (R.A.J.) 288. It was also contended that matter regarding appointment of another Arbitrator pursuant to setting aside of the award made by respondent No. 2-Arbitratory by the Trial Court, is pending for 07.12.2012 (tomorrow) in this Court u/s 11 of the Act.

7. I have carefully considered the rival contentions. The contractor should have raised this plea before the Arbitrator when the contractor appeared there on 17.01.2007. However, the contractor did not raise any such plea before the

Arbitrator that his mandate had already terminated on account of expiry of the period for making the award. The appellant did not raise this plea at all before the Arbitrator. If contractor had raised this plea before the Arbitrator, then it would have been for the Arbitrator to have adjudicated upon the said plea and if either party had been aggrieved by order of the Arbitrator in this regard, the aggrieved party could have approached the Court against order of the Arbitrator. As an alternative, the contractor could also approach the Court u/s 14 of the Act for termination of mandate of the Arbitrator. However, the contractor did not follow either of the two options. The contractor neither raised any such plea before the Arbitrator nor approached the Court u/s 14 of the Act seeking termination of mandate of the Arbitrator. Consequently the Contractor could not assail the award on this ground after the Arbitrator had made the award even though after expiry of the extended period for making the award. Section 34 of the Act does not provide for any such ground to set aside the award of the Arbitrator. Section 34(2)(b)(ii) providing that the award may be set aside if the award is in conflict with the public policy of India, relied on by counsel for respondent No. 1 contractor, does not come to the rescue of respondent No. 1 because the award cannot be said to be against public policy of India merely because it was passed after expiry of period for making the award. There is no violation of public policy of India in this regard. On the other hand, in view of judgment in the case of Surinder Pal Singh (supra), it is manifest that the contractor should have approached the Court u/s 14 of the Act if the contractor thought that mandate of the Arbitrator had been terminated on expiry of the period for making award. Judgment in the case of N.B.C.C. Ltd. (supra) does not help respondent No. 1 because in that case, aggrieved party had approached the High Court u/s 14 of the Act seeking termination of mandate of the Arbitrator. In these circumstances, it was held by Hon''ble Supreme Court that mandate of Arbitrator had terminated as the Arbitrator had not made award within the prescribed period which could not be extended even by the Court although it could be extended by mutual consent by the parties. Therefore, in the instant case, if the contractor had approached the Court u/s 14 of the Act, judgment in the case of N.B.C.C. Ltd. (supra) would have been helpful to the contractor. However, the ratio of law laid down in this judgment cannot be availed of by the contractor for setting aside of the Arbitrator''s award u/s 34 of the Act. For the reasons aforesaid, I find that there was no valid ground within the parameters of Section 34 of the Act for setting aside award of respondent No. 2-Arbitrator. Impugned order of the lower Court is illegal and suffers from jurisdictional error. The instant first appeal is, therefore, allowed. Impugned order passed by the lower Court is set aside. Petition u/s 34 of the Act filed by respondent No. 1-contractor is dismissed.

