
(2010) 03 P&H CK 0247

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 2232 of 2009 ;

Chief Engineer, Haryana State Agriculture Marketing Board
(Hsamb), Panchkula

APPELLANT

Vs

Sunil Kumar Goyal

RESPONDENT

Date of Decision : 02-03-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2010) 5 RCR(Civil) 634 : (2010) 5 RCR(Civil) 63402

Hon'ble Judges : Rakesh Kumar Jain, J

Judgement

Rakesh Kumar Jain, J.

1 Challenge in this appeal is to the order passed by District Judge, Sirsa dated 23.1.2009 whereby an objection filed by the appellants, under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "the Act), has been dismissed.

2 On 12.5.2009, notice of motion was issued in this case on the contention raised by counsel for the appellants that "learned counsel for the appellants contends that as per Clause 25A of the Contract Agreement, the Arbitrator has not jurisdiction to award the interest".

3 Pursuant to the notice, respondent has appeared through his counsel and has submitted that the agreement does not debar the Arbitrator from awarding interest. Thus, moot point involved in this appeal is as to whether the Arbitrator could have awarded interest to the respondent/contractor ?

4 Learned counsel for the appellants has argued that in view of Clause 25A of the Agreement, Arbitrator had no jurisdiction to award interest.

5 On the other hand, learned counsel for the respondent has submitted that so far Clause 25A of the Agreement is concerned, that had been amended in the year 1994 and it does not talk of any bar having been created for awarding interest by the Arbitrator. It is submitted that after the amendment of Clause 25A of the Agreement by the Board vide its Resolution No. 27 dated 30.8.1994

conveyed vide the Chief Engineer, HSAMB, Panchkula's vide memo No. CEAV 94/15159 dated 25.10.1994, the earlier Clause 25A, which provides the powers to the Chief Engineer to appoint Superintending Engineer as Arbitrator was erased along with the provision whereby power to award of interest was barred. It is submitted that after the amendment, the power has been vested with the Chief Administrator of the Board to appoint Arbitrator. It is also submitted that in terms of amended Clause 25A of the Agreement, respondentcontractor had filed an application under Section 11 of the Act for the appointment of the Arbitrator which was allowed by the Additional District Judge, Panchkula on 23.8.2008. It is submitted that pursuant to the order passed by the Civil Court, Arbitrator was appointed on 18.1.2006. It is further submitted that in the claim petition submitted by respondent/contractor, he had specifically claimed interest in claim No. 4, which was not denied by the appellants herein that Clause 25A of the Agreement does not empower the Arbitrator to award interest. It is also submitted that no such objection was specifically taken even under Section 34 of the Act. In nutshell, it is submitted that plea of interest was waived off by the appellants in terms of Section 4 of the Act, therefore, it cannot be raised for the first time in this appeal.

6 I have heard learned counsel for the parties. Before advertng to their rival contentions, it is pertinent to refer to unamended Clause 25A and amended Clause 25A of the Agreement, which reads thus :

Clause 25A : If any question, difference or object whatsoever shall arise in any way connected with or arising out of this instrument. of the meaning or operations of any part thereof or the rights, duties or liabilities of either party then save in so far as the decision of any such matter here in before provided for and has been so decided every such matter including whether its decision has been otherwise provided for and/or whether it has been finally decided accordingly are whether the contract should be terminated not has been rightly terminated and as regards the rights and obligations of the parties as the result of such termination shall be referred for arbitration to the Arbitrator not below the Rank of Superintending Engineer to be appointed by the Chief Engineer of the Board within 180 days viz six months from the date of making final payment to the Contractor or when the Contractor is not willing to receive the payment from the date registered notice is sent to him that this final bill is ready for payment and his decision shall be final and binding and where the matter involves. A claim for the payment or recovery or deduction of money, only the amount, if any, awarded in such arbitration shall be recoverable in respect of the matter so referred. If the matter is not referred to arbitration within the specified period, all the rights and claims under the contract shall be deemed to have been forfeited and absolutely barred. "Clause 25A : It shall be a term of the contract agreement that arbitrator shall give a speaking award otherwise the award shall be null and void and will not be binding on the parties, it shall also be a term of this contract that in any dispute/difference referred to the arbitrator the arbitrator shall not award interest to the parties on any of the items of contract

agreement executed in between the parties, if the arbitrator awards interest the same shall not be binding on the parties. Amended Cause 25A : of the agreement approved by the Board vide Resolution No. 27 dated 30.8.1994 and conveyed vide Chief Engineer, HSAM, Board, Panchkula's memo No. CEAV94/15159 dated 25.10.1994. Clause 25A : If any question, difference or object whatsoever shall arise in any way connected with or arising out of this instruments at the meaning or operations of any part thereof or the rights duties liabilities of other party then save in so far as the decision of any such matter here in before provided for and has been so decided every such matter including whatever according or whether its decision has been otherwise provided far and or whether it has been finally divided the contract should be terminated not has been rightly terminated and as regards the rights and obligations of the parties as the result of such termination shall be referred for arbitration to the capable office to appoint by the Chief Administrator Board within 180 days viz six months from the date of making final payment to the Contractor or when the Contractor is not willing to receive the payment from the date of registered notice is sent to him that this final bill is ready for payment and his decision shall be final and binding and where the matter involves a claim for the payment or recovery or deduction of money, only the amount if any awarded in such arbitration shall be recoverable in respect of the matter so referred. If the matter is referred to arbitration within the specified period, all the rights and claim under the contract shall be deemed to have been forfeited and absolutely barred." From the bare perusal of the aforesaid amended Clause 25A of the Agreement, it is apparent that there is no bar in awarding interest. Moreover, the plea of bar in awarding interest was never raised even in the pleadings or during the course of hearing before the Arbitrator. Therefore, in terms of Section 4 of the Act, this plea cannot be taken for the first time before this Court as the same has not even been taken in the objection filed under Section 34 of the Act. The cumulative effect of the aforesaid facts is that the appellants have no case for the purpose of adjudication insofar as the part of the interest is concerned. Hence, the present appeal being devoid of any merit is hereby dismissed. Appeal dismissed.