

(2002) 10 P&H CK 0104

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From the Order No. 649 of 1986

Indian Hardware and Forgings

APPELLANT

Vs

Haryana State Electricity Board

RESPONDENT

Date of Decision : 24-10-2002

Acts Referred:

Arbitration Act, 1940 — Section 30
Contract Act, 1872 — Section 4

Citation : (2004) 3 ARBLR 476 : (2003) 2 CivCC 609 : (2003) 134 PLR 731 :
(2003) 2 RCR(Civil) 689

Hon'ble Judges : J.S. Narang, J

Bench : Single Bench

Advocate : D.C. Saxena, for the Appellant; H.S. Hooda, Senior Advocate and
R.S. Hooda, for the Respondent

Final Decision : Dismissed

Judgement

J.S. Narang, J.—Haryana State Electricity Board (hereinafter referred to as "the Board") floated a Tender Enquiry No. CH-1094, and in response thereto the appellant submitted his tender alongwith the supporting documents on January 3, 1978. The offer was accepted by the Board and the confirmation was accepted by the Board and the confirmation was duly made on March 29, 1978. The acceptance was communicated telegraphically. It is on 19/20.4.1978, the first purchase order was placed on the appellant for the supply of the articles in pursuant to the tender. The appellant did not make nay compliance in respect of the purchase order, resultantly the board referred the matter for arbitration. A claim petition for recovery of Rs. 1,41,833.78 was filed before the arbitrator, being the difference in the cost of goods purchased from another dealer on account of non-compliance of the order by the appellant.

2. It is alleged that the appellant refuted the claim of the board inter alia on the ground that no valid agreement came into existence between the parties as the contract was not complete. Thus, the appellant was not bound to make

compliance of purchase order placed upon the appellant. The jurisdiction of the arbitrator is also stated to have been questioned. However, the arbitrator proceeded with the matter by entering upon the reference and ultimately made an award against the appellant in the sum of Rs. 1,33,363.78 together with costs and interest at the rate of 11% per annum.

3. The appellant filed objections u/s 30 read with Section 33 of the Arbitration Act, 1940. The gist of the objections reads as under:-

(i) The arbitrator had no jurisdiction to try and proceed with the dispute between the parties;

(ii) The purchase order dated 19/20.4.1978 reached the hands of the appellant 4/5 days thereafter. After the expiry of the 90 days of the validity period of the tender the appellant was under no obligation to supply the goods.

(iii) The arbitrator being an employee of the board is an interested person and thus the allegation of misconduct cannot be ruled out.

(iv) The risk purchase made by the Board is on account of its own lapse and that the liability cannot be fastened upon the appellant.

(v) The findings given by the arbitrator are based on no evidence, resultantly the award is not sustainable.

4. The board contested the objections and submitted a detailed reply to the averments. Upon the pleadings of the parties, the following issues had been framed:-

(1) Whether the arbitrator had jurisdiction to proceed with the arbitration proceedings? OPR

(2) Whether the award is liable to be set aside for reasons given in the objection petition? OPO

(3) Whether the objection petition is barred by time? OPR

(4) Whether the objection petition has not been verified by a duly authorised person? OPR

(5) Relief.

5. The thrust of the argument of learned counsel for the appellant is that the offer of the appellant had not been accepted by the due date i.e. 3.4.1978, resultantly, no contract ensued between the parties, as such, no obligations came into existence on the part of the appellant to make compliance of the order allegedly placed upon the appellant. It is contended that the acceptance of tender by way of telegram dated March 29, 1978, was not proved as the telegram had not been exhibited but had been marked as Mark "C". It has been categorically stated by the witnesses of the appellant that the said telegram was never received by them and that the address shown on Mark "C" does not show

their correct address.

6. It may be noticed here that the witness RW1 Surinder Singh Bedi, who appeared on behalf of the board, has categorically stated in the cross examination that the telegram was sent on 29.3.1978 for the acceptance of the tender. He has corroborated that the telegram was given on the address given in the tender. However, no suggestion has been put to the witness in the cross-examination that the receipt of telegram by the appellant could not be proved by him. In the absence of such suggestion and that the unrebutted statement that the telegram was sent at the address given by the tenderer established beyond any doubt that the acceptance of tender stood conveyed to the appellant. Since the tender stood accepted the appellant was under obligation to supply the material at the rates offered by the appellant in response to the tender floated by the board.

7. However, learned counsel for the appellant has argued that the order could be placed within 90 days as specified in the tender. I am afraid this argument is not at all sustainable. The tender was required to be accepted which stood duly accepted much before April 3, 1978. The order could be placed by the Board for seeking supply of the goods from the appellant. Non-supply of the goods in pursuance to the communication dated 20.4.1978, has been admitted. The risk purchase made by the board also stands established. The dispute was referred to the arbitrator, the appellant did appear before the arbitrator but has not been able to contest the claim of the board despite ample opportunities having been granted by the arbitrator. Since the difference as enumerated in the claim petition on account of risk purchase remained unrebutted, the arbitrator has, therefore, correctly granted the relief to the Board.

8. So far as the plea of limitation taken by the Board is concerned, admittedly, the objector was served on October 3, 1984 and that the objections have been filed on November 10, 1984. It is far too obvious that the objections have been filed beyond the prescribed period of limitation. Resultantly, the trial Court has correctly given a finding in this regard.

9. Thus, I do not find any infirmity in the judgment dated December 13, 1985, passed by the trial Court while making award dated 12.12.1983, as rule of the Court and consequently granting the decree in favour of the respondent-board.

For the reasons recorded above, I find no merit in this appeal and the same is dismissed.