
(2010) 06 P&H CK 0056

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 2251 of 2009 (O and M)

Municipal Council Ambala Sadar, Ambala Cantt.

APPELLANT

Vs

Balwinder Singha Kalra

RESPONDENT

Date of Decision : 28-06-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 16, 16(2), 34, 34(2), 4

Citation : (2010) 159 PLR 674

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—This-appeal is directed against the order dated 17.12.2008 passed by Additional District Judge, Ambala, by which objection filed by the appellant u/s 34 of the Arbitration and Conciliation Act, 1996 (for short "the Act") against the arbitral award dated 2(7.2008 is dismissed.

2. The relevant facts of the case are that the appellant and respondent entered into an agreement dated 07.09.2005 for maintenance and repair of street lights etc. for the period w.e.f. 1.7.2005 to 30.6.2006. A dispute arose between the parties when the appellant initiated proceedings for recovery of Rs. 71,362/- from the respondent vide its letter No. 5705 dated 21.10.2005. In terms of the agreement, the respondent raised the dispute before sole arbitrator, which was dismissed by Sh. R.P. Bhardwaj, IAS, the then Deputy Commissioner, Ambala vide his order dated 31.7.2007. The relevant part of the said order reads as under:

I have carefully gone through the record of the case and heard both the parties at length. The respondent, Municipal Council through its officers served the petitioner vide letter No. 4815/steno, dated 3.8.2005. The many lights are not in working order set them right at the earliest. Nothing was done as a result of which a letter bearing No. LT/5072 dated 8.9.2005 was again written to the

petitioner for not carrying out the repairs for sufficient long period failing which his contract will be cancelled; Again a similar notice was served on the petitioner vide No. LT/3368, dated 29.9.2005 but to no effect. Ultimately the Municipal Council finding no alternative cancelled the contract as per clause No. 20 of the agreement vide letter No. LT/5613, dated 18.10.2005 and further imposed a recovery of Rs. 71,362/- vide letter No. LT/5705, dated 21.10.2005 as per clause 19 of the agreement: This all shows that the petitioner himself did not adhere to the terms and conditions of the agreement and failed to maintain and repair the street lights despite repeated asking to him in writing. I, therefore, find no force in this reference and the same stands dismissed. I however, direct the respondent to call tenders by giving wide publicity through news paper and at the time of opening of the tenders and acceptance the representative of the Deputy Commissioner should be associated.

3. However, the aforesaid order was set aside by the Court of Sh. Jasbir Singh Kundu, Additional District Judge (Ad hoc), Fast Track Court, Ambala vide his order dated 26.11.2007. The relevant part of his order reads as under:

A perusal of the file prepared by the learned Arbitrator goes to show that a very casual approach was given by the learned Arbitrator to the present proceedings. It was registered in his office as a "Tax Appeal" whereas it is an arbitration matter. Nowhere learned Arbitrator has shown himself to be working as an Arbitrator as in his entire file he has used the seal of District Collector, Ambala so much so that the impugned award also does not show his nomenclature of Arbitrator and he has affixed his signatures over it as a Deputy Commissioner, Ambala. The header of the impugned award reads as "In the Court of Sh. R.P. Bhardwaj, IAS, Deputy Commissioner, Ambala", whereas it should have been under the Head of his status of Arbitrator and not from the Court of a Deputy Commissioner.

A further perusal of the file reveals that applicant Balwinder Singh has moved an application dated 14.3.2007 before the Arbitrator on 14.03.2007 itself for seeking permission to place on record bills for the month of August, September & October, 2005 for proper adjudication of the reference. As per the contents of said application bills for the month of August & September for Rs. 46,799/- each were duly sanctioned by the respondents in due course of their business whereas the bill for the month of October amounting for a sum of Rs. 28,078/- was not submitted due to dispute raised by the respondents on 18.10.2005 whereby petitioner was stopped to continue his job. The application further states that respondents have not released the amount shown in said bills till date and it is necessary that this amount be also settled alongwith the main reference for proper and final adjudication of the matter between the parties. The application was duly supported with Photostat copies of said three bills, which are presently lying at page No. 49, 51 & 53 of the record file of learned Arbitrator. The copy of the application was supplied to the opposite party by the learned Arbitrator on 14.03.2007 and case was adjourned for 28.03.2007 for obtaining reply and for

consideration over said application. It was thereafter on 18.04.2007 that it stands recorded in the order passed by learned Arbitrator on that day that learned Counsel representing respondents had made a statement that they do not want to file any reply to said application. The matter was then adjourned for 20.4.2007 for further consideration. The submissions/arguments of the counsel for the parties were then entertained by learned Arbitrator on 27.07.2007 and vide impugned order dated 31.07.2007 learned Arbitrator dismissed the reference of the applicant by making an observation that there is no force in it. However, learned Arbitrator has failed to comment about the fate of above referred application dated 14.03.2007 of the applicant Balwinder Singh in its entire records. As such said application dated 14.03.2007 of the applicant is still lying un-disposed on the records of learned Arbitrator.

It is a principle of fair trial universally applicable upon all the courts as well as upon the semi-judicial bodies that all the applications moved before the " Authority/Presiding Officer during the pendency of the proceedings must be heard and disposed prior to disposing the matter on merits. Application under reference dated 14.03.2007 has a great bearing over the merits of the case and must have also been disposed by learned Arbitrator prior to announcing his final verdict. By keeping the same on record unheard, the proceedings before learned Arbitrator has resulted into violation of principle of natural justice, equity & good conscience which prescribes that due opportunities must be provided to the parties. There is no reference of the bills of the applicant or his application dated 14.03.2007 in the impugned order/award dated 31.07.2007 or otherwise and it is fatal for the impugned order under challenge.

For the reasons discussed above, present petition is allowed and impugned award dated 31.07.2007 is set-aside and case is remanded to learned Arbitrator back to decide afresh by firstly disposing application dated 14.03.2007 of the applicant. Present petition is disposed in the above terms, with no order as to costs. Parties through their counsel are directed to appear before learned Arbitrator on 04.01.2008 for attending further proceedings. Memo of costs be prepared. The record of learned Arbitrator alongwith a copy of the order be sent back forthwith and file be consigned after due compliance.

4. After remand, the matter was placed before Sh. M. Shayin, IAS, Arbitrator-cum-Deputy Commissioner, Ambala who vide his order dated 02.07.2008 decided the reference in favour of respondent and directed the Municipal Council to make the payment of the bills. The relevant part of his order dated 2.7.2008 reads as under:

I have gone through the evidence submitted by both the parties in support of their respective contentions and also considered carefully their submission and also considered carefully their submission made in this behalf. The contract for the repair and maintenance was signed by both the parties on 07.09.2005 and surprising enough the petitioner on the next date vide notice No. LT/5072 dated 08.09.2005 to repair the street lights in the city within three days failing which

his contract will be cancelled not only this again vide letter No. LT/5768 of 29.09.2005. The petitioner was told that complaints are being received for the street lights not in working order in the city and he was asked to set them in working order failing which his contract will be cancelled. This shows that from the next day of signing the contract. The respondent started threatening the petitioner for the cancellation of the contract on the basis of the alleged complaints but no such complaint or complaints has been produced by the respondents. There is also no complaint of the street light incharge regarding the working of the petitioner for the repair and maintenance of the street lights. This obviously goes to prove that the respondent intended to cancel the contract of the petitioner on self made and flimsy grounds which also give credence to the version of the petitioner that the respondents wanted to entrust the contract to its loyalist. The respondent ultimately cancelled the contract vide its letter No. LT/5613 dated 18.10.2005 and entrusted the same on the same day to Shri Anand Kumar S/o Richhpal Singh of Sonapat vide Letter No. LY/5617 dated 18.10.2005 and that too at a very exorbitant rates as compared to the petitioner. The payment of bills for the months of August and September, 2005 was not made to the petitioner despite the fact that the bills were stood sanctioned by the respondent as per its admission in their reply dated 11.04.2007 Not only the respondent after adjusting payment of the bills towards the penalty etc. sued notice to the petitioner for recovery of Rs. 71362/-. This action of the respondent was arbitrary and not notices doing so was ever served on the petitioner. There is also nothing on the file to show that as alleged by the respondents for whom the street lights were got repaired by the respondents for which the penalty has been imposed and recovery orders have been issued to the petitioner. I find all the actions of the respondents illegal without any merits and set aside the same accordingly. I, therefore, order their payment of the bills of the petitioner be made to him within a month and the order of recovery made against the petitioner is also set aside.

5. Aggrieved against the aforesaid order, the Municipal Council filed objections u/s 34 of the Act, which has been dismissed by Ms. Aradhna Sawhney, Additional District Judge, Ambala vide her order dated 17.12.2008 observing as under:

In the case in hand, it is not the case of the appellant that he was under some incapacity or the arbitration agreement is not valid or that he was not given proper notice of the appointment of the arbitrator or the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration or that composition of the arbitral tribunal was not in accordance with the procedure agreed to between the parties or that the dispute is not capable of settlement by arbitration or that the arbitral award is in conflict with the public policy of India. Simply stated the case of the applicant is that award is arbitrary and his evidence adduced on the file by the appellant was not taken of by the arbitrator. However, while addressing arguments appellant was at total loss of words to explain as to which vital evidence adduced on the case file was ignored by the arbitrator and as to under which grounds mentioned in Section 34(2), his

case falls.

6. Still aggrieved, the Municipal Council has come up in appeal before this Court in which only argument raised by learned Counsel for the appellant is that the Deputy Commissioner had no jurisdiction to act as an Arbitrator as he was termed as a Conciliation Officer in the agreement. In support of his argument, learned Counsel for the appellant has drawn the attention of this Court to the language used in Clause 30 of the agreement in which Deputy Commissioner has been designated as a Conciliation Officer. In reply, learned Counsel for the respondent has submitted that this argument is not available to the appellant as they cannot be allowed to blow hot and cold in the same breath. It is submitted that objection raised before this Court was never raised in the proceedings which have been carried out twice before the Arbitrator as well as the learned Civil Court where the objections filed by the appellant as well as the respondent have been decided. It is further submitted that when Sh. R.P. Bhardwaj, IAS, the then Deputy Commissioner, Ambala dismissed the case of the respondent, no objection was raised by appellant that he did not have the jurisdiction to decide as an Arbitrator nor any objection was raised by the appellant when objection filed by the respondent u/s 34 of the Act was allowed by Sh. Jasbir Singh Kundu, ADJ, Ambala vide his order dated 26.11.2007. Moreover, it is submitted that when the matter was remanded and placed before Sh. M. Shayin, IAS, Arbitrator-cum-Deputy Commissioner, Ambala, even at that stage no objection with regard to his competence as an Arbitrator was raised nor when the objection was dismissed by Ms. Aradhna Sawhney, Additional District Judge, Ambala." Therefore, it is submitted that the aforesaid objection cannot be allowed to be raised for the first time in the appeal in view of Section 16 read with Section 4 of the Act.

7. I have heard both learned Counsel for the parties and have perused the record with their assistance.

8. Undisputedly, the objections raised before this Court was never raised before the Arbitrator or the Court below and the order/award passed by Sh. R.P. Bhardwaj, IAS, the then Deputy Commissioner, Ambala by which he had dismissed the claim of the respondent vide his order dated 31.7.2007 was accepted by the appellant. Section 16(2) of the Act provides that a plea that arbitral tribunal does not have a jurisdiction shall be raised not later than the submission of the statement of defence even if the said party had participated in the appointment of Arbitrator. Section 4 of the Act provides for waiver of the right to object, according to which if the objection is not raised then it is deemed to have been waived. In the present case, the parties had two rounds of litigation before the Courts below but nowhere the objections was raised by the appellant rather the order passed in their favour dated 31.7.2007 by the same authority was accepted. Thus, I do not find any illegality in the impugned order and as such the present appeal is hereby dismissed though, without any order as to costs.