

(2000) 11 SC CK 0101
In the Supreme Court Of India
Case No : C.A. No. 1362 of 1993

Punjab State Electricity Board and Another	APPELLANT
Vs	
Punjab Pre-Stressed Concrete Works	RESPONDENT

Date of Decision : 16-11-2000

Acts Referred:

Citation : (2000) 8 SCALE 391 : (2002) 9 SCC 740

Hon'ble Judges : M.B. Shah, J; M. Jagannadha Rao, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M. Jagannadha Rao and M.B. Shah, JJ.—This is an appeal preferred by the Punjab State Electricity Board against the judgment of the Punjab and Haryana High Court dated 3-6-92 in FAO No. 860/91. By the said judgment of the High Court has set aside the decree passed by the Senior Sub-Judge, Patiala, on 6-3-91. The learned Senior Sub-Judge had set aside the Award dated 10-6-88 made by the Chief Engineer, Research and Arbitration, Punjab State Electricity Board, Chandigarh. The result of the judgment of the High Court is that the Award was held valid and was directed to be made a Rule of Court.

2. Aggrieved by the said judgment, the Electricity Board and Chief Engineer have preferred this appeal.

3. There was a purchase order-cum-contract agreement entered into between the appellant Electricity Board and the respondent dated 21-7-84 under which the respondent was to supply 41,500 poles of 8 meter long @ Rs. 353.00 per pole and another set of 3750 poles each 9 meter long @ Rs. 440.00 per pole. The terms and conditions of the contract stipulated that the prices were to be firm and were subject to "no variation whatsoever on any account". The payment, schedule of delivery thereof was also specified. It was, however, stated that the prices would be paid and excise duty was not applicable but if excise duty was levied, the prices would be Rs. 353/- per pole subject to production of

documentary proof alongwith certain certificates, under Clause-9 of the contract 95% of the contract value was to be paid against receipt and balance 5% of the contract value of each consignment should be paid within 30 days of the receipt of material/acceptance by the consignee in good condition. Clause-9 related to the mode of delivery of goods. Delivery was to commence after 45 days after the receipt of the firm order and the whole quantity was to be completed within 12 months thereafter. Clause-13 stated that during the pendency of the contract/purchase order if any performance in whole/ part by either party was delayed for the specified cause mentioned therein, or on account of any other cause beyond their reasonable control, neither of the two parties shall be made liable for losses or damages.

4. The respondent, it is alleged failed to supply and that therefore the appellant deferred supplies up to 22-4-85. On 30-3-86 the respondent requested the appellant to increase the price of the poles as the prices of raw material had also increased and the respondent requested the appellant to enhance the rate of the poles of 8 meter long at Rs. 50 per pole and Rs. 75 per pole of 9 meter long. On 22-4-85 the appellant Board decided to lift the ban imposed on the respondent. On 9-5-85 the appellant wrote to the respondent that prices in the purchase order were firm and subject to "no variation whatsoever on any account" and that request of respondent for enhancement in prices of poles could not be acceded to. On 17-10-85 the respondent claimed payment of excise duty as per the increase made in the budget of that year. On 7-12-87 the respondent issued a notice to the appellant on various disputes.

5. Thereafter, the matter was referred to the arbitration in accordance with the terms of agreement. On 16/18-1-88 the respondent filed its claim statement before the arbitrator seeking a sum of Rs. 18.75 in Claim No. 1 in respect of increase in value of the poles. There were other claims. The total claim was for Rs. 39.50 lakhs. The appellant Board filed its reply refuting the claim of the respondent and also contended that disputes were not arbitrable to there was no liability.

6. The Arbitrator passed an award on 10- 6-88 for a sum of Rs. 17.71 lakhs with interest. Objections were filed by the appellant to the said award. The learned Sub-Judge by his judgment dated 6-3-91 set aside the award. But the High Court allowed the respondent's appeal on 3-6-92 and directed the award to be made a rule of court.

7. It is this judgment against which the Board has preferred this appeal.

8. In this appeal, we have heard learned Counsel for the parties. Learned Counsel for the appellant contended that Claim No. 1 which consisted of two parts in respect of which the respondent made a claim of Rs. 16.50 lacs and Rs. 2.25 lacs, related the increase in the price of the poles and that in view of the definite Clause in the contract the arbitrator had no jurisdiction to go into the question of increase of the price or award for any excess amount. So far as Claim

No. II relating to excise duty is concerned, he contended that the difference in a sum of Rs. 0.95 lacs alone was payable. So far as Claim No. III for Rs. 12.00 lacs and Claim No. IV for Rs. 4.00 lacs are concerned, counsel contended that no case is made out for grant of damages. So far as Claim No. V is concerned, counsel contended that respondent is not entitled to any relief. Claim No. VI is relating to interest.

9. Learned Counsel for the appellant contended that the award was not a reasoned award and that it was not possible to find out if the total amount of Rs. 17.71 lakhs as awarded by the arbitrator related to Claim No. I which according to the appellant was not within the purview of the arbitrator. It is also not known on what basis any of the other claims were awarded and whether any amount was awarded for items for which arbitrator had no jurisdiction. Learned Counsel in that connection relied upon Tamil Nadu Electricity Board Vs. M/s. Bridge Tunnel Constructions and others, and contended that such an award granting a lumpsum amount without reasons where some of the items are not arbitrable, was liable to be set aside.

10. Learned Counsel for the respondent, however, contended that certain calculations were made by the arbitrator. Counsel produced some record of the said computations but we find that it only related to Claim No. I. It was also stated that award could be passed for Claim No. I as the clause not permitting a higher rate would have been applicable only if the original delivery schedule was not postponed by the appellant. The award is not a reasoned one and it could not be interfered with by the Court.

11. After hearing counsel on both sides, we are of the view that the award is liable to be set aside because when it is a non-speaking one, it is not known whether any part of the Award made by the arbitrator related to Claim No. I. In our view, the price of the poles was firm and not liable to be increased. The fact that the delivery schedule was changed cannot be a ground to get over the clause prohibiting increase in the price of the poles. Once Claim No. I is not tenable, the award has to be set aside inasmuch as it is not possible to say that the award did not relate to Claim No. I. This is a sufficient reason for setting aside the award and remitting the matter back to the abitrator.

12. We, therefore, set aside the judgment of the High Court and we also set aside the judgment of the Senior Sub-Judge, we remit the matter to the arbitrator for his decision on the other claims, i.e. other than Claim No. I.

13. We are of the view that the Arbitrator who is now to deal with the matter afresh, must pass a reasoned award after taking into consideration the points raised in the Claim Petition of the respondent (other than Claim No. I) and the objections raised by the appellant in its reply filed before the Arbitrator. The parties are also agreed that a retired judge of the High Court would be now appointed as a Arbitrator.

14. We hereby appoint Justice K.S. Bhalla, retired judge of the High Court of

Punjab and Haryana, Modern Housing Complex, Manimajra, Chandigarh, as Arbitrator to deal with the dispute between the appellant and the respondent as per the reference already made in the case earlier.

15. The Arbitrator is requested to complete the award expeditiously as this is an old dispute between the parties which has been pending for quite long time. We request the arbitrator as far as possible to complete the award within four months from the date of the first hearing. It will be for the arbitrator to stipulate his fee for the conduct of the arbitration proceedings and for passing the award. The award is to confine other than Claim No. I (Part I and II). The arbitrator will pass the reasoned award on the basis of the material already on record.

16. The appeal is allowed accordingly. There shall be no order as to costs.