
(2019) 11 SHI CK 0037
In the High Court Of Himachal Pradesh
Case No : Arbitration Case No. 103 Of 2015

State Of Himachal Pradesh & Anr

APPELLANT

Vs

Tarun Mahindru

RESPONDENT

Date of Decision : 11-11-2019

Acts Referred:

Citation : (2019) 11 SHI CK 0037

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Hemant Vaid, Arvind Sharma, Vikrant Chandel, Suneet Goel

Final Decision : Disposed Of

Judgement

Sureshwar Thakur, J

1. The respondent was awarded work, of, "construction of Degree College Darang at Narala, Tehsil Padhar, District Mandi". However, a dispute arose inter se the respondent, and, the petitioner, and, with the emerging dispute, inter se, the, contesting litigants, being arbitrable, thereupon, Shri Jatinder S Bhogal, Senior Advocate, was appointed, as, the sole Arbitrator, for, his making an award, vis-a-vis, the respective claims, of, the respondent, and, of, the petitioners herein. The award rendered by the learned Sole Arbitrator, becomes hence challenged, before this Court, at the instance, of, the State of Himachal Pradesh.

2. Before proceeding to validate or invalidate the challenged award hence before this Court, and, as made by the learned Sole Arbitrator, it is incumbent, upon, this Court to bear in mind, the limits within whose domain(s), hence, valid interference(s) can be made, vis-a-vis, the award rendered, by, the learned Sole Arbitrator. The limits, of, challenge, vis-a-vis, a arbitration award, are, encapsulated, in, a judgement rendered by the Hon'ble Apex Court, in, a case titled, as, Associate Builders vs. Delhi Development Authority, reported, (2015)3 SCC 49, limits whereof stands extracted hereinafter:-

"I. Fundamental Policy of Indian Law: (i) Compliance with statutes and judicial precedents;

(ii) Need for judicial approach; (iii) Natural justice compliance; (iv) Wednesbury reasonableness;

II. Interest of India;

III. Justice or Morality; and

IV. Patent Illegality: (i) Contravention of substantive law of India; (ii) Contravention of A & C Act, 1996; (iii) Contravention of the terms of the contract.

3. Apparently, the award impugned, before this Court, neither shocks the conscience of this Court nor is against public morality, thereupon, the relief granted by the Sole Arbitrator, vis-a-vis, the respondent herein, and, under the head "Office/Site overheads, and, sparked, from, the, pleaded, and, evident apposite prolongation(s), and, comprised in a sum of Rs.3,90,725/-, is, sustained, (a) as, the learned Sole Arbitrator, has assigned valid reason(s), vis-a-vis, the respondent becoming precluded to initiate, and, to completely execute the awarded works, (b) given the drawings remaining unsupplied to him, for an inordinately prolonged duration of time, rather by the petitioner herein, upon, whom it was incumbent, to, purvey the drawings, for, the relevant purposes, hence, to the respondent herein. Consequently, the amount, under the afore head, as, awarded, vis-a-vis, the respondent herein, rather by the learned Sole Arbitrator, does not warrant, any interference, from, this Court. Likewise, under an head alike therewith, and, besides, a, para meteria thereto, hence, head, and, appertaining, to, price escalation, the awarding(s), of, money(s) qua therewith, vis-a-vis, the respondent, is, also valid.

4. The agitation, as, made before this Court, by the learned Additional Advocate General, appearing, for, the petitioners, vis-a-vis, the relief granted, under, the head appertaining to "Watch and Ward charges", is, also untenable, and, hence, is, rejected, (i) as, there occur explicit recitals, in, the claim qua therewith, as, projected before the learned Arbitrator concerned, qua the awarded work, becoming completed on 31.7.2011, and, yet the awarding agency extending, the, date of completion, of, the awarded work upto 31.7.2012, (a) thereupon, obviously till the completest, handing over, of, the, executed sites, to, the petitioners, by, the respondent herein, hence occurred, (b) there arose, an, imperative necessity, of, vigilance thereof, through watch, and, ward staff, becoming maintained, by the respondent, becoming rather ensured. Consequently, the, amount of Rs.27,000/- awarded, under, the afore head "Watch and Ward charges", by the learned Sole Arbitrator, vis-a-vis, the respondent herein, does not, warrant hence any interference, from, this Court.

5. However, the award, of, the learned Sole Arbitrator, invalidating hence the withholding, and, deduction(s) of labour cesses, by the petitioner, and, comprised, in, a sum of Rs.2,54,460/- does, warrant interference, as the

justifiability thereof, has, emerged, from, the Cess Act, and, with the latter Act, becoming operative, from, January, 2009, inasmuch, as after, the, apposite work(s) hence becoming tendered, and, also, with, the afore statute remaining, in, subsistence, in, contemporaneity, vis-a-vis, the awarding of works, to, the respondent therein, (a) thereupon, when concurrent therewith apt deductions, and, appertaining, to, the statutory labour cess, were, enjoined to be withheld, by, the petitioner herein, from, the bills of the respondent herein, (b) thereupon, the decision contrary therewith, hence, directing, the, release, of, the afore amount(s), vis-a-vis, the respondents, does, warrant interference, from this Court. Consequently, the amount of Rs.2,54,460/- awarded under the head "Labour cess withheld", vis-a-vis, the respondent herein, by, the Sole Arbitrator, is, set aside.

6. The petitioners have placed, on record Annexure R-2, hence echoing the amount appertaining, to, the head "Outstanding amount of final bill, of, Rs.1,00,000/-, becoming remitted, through, RTGS to the accounts, of, the respondent. The afore annexure R-2, stands, appended with the rejoinder instituted by the petitioner, to the reply filed to the instant petition, by the respondent, and, though, the afore annexure R-2, remained unadduced, before the learned Sole Arbitrator, (a) yet when a sum of Rs.96,993/- stands uncontestedly, hence, validly transferred, through, RTGS by the petitioners herein, to, the account of the respondent herein, (b) thereupon, the amount of Rs.1,00,000/-, as, awarded by the learned Sole Arbitrator, under, the afore head, does warrant interference, from, this Court.

7. Moreover, the interest awarded by the learned Sole Arbitrator, at, the, rate of 12%, upon, the awarded amount, does not, suffer from any infirmity.

8. For the foregoing reasons, the instant award is modified in the afore terms. In sequel, the award of the the learned Sole Arbitrator under the heads " Office/Site Over heads on account of prolongation", "Payment of price escalation", "Watch and Ward charges", "interest", "costs", is, upheld, whereas, the award rendered under the head " Outstanding amount of final bill", and, "labour Cess withheld", is set aside, and, the respondent is held, to be not, entitled, for, any money under both the afore heads. All pending applications also stand disposed of.