
(2015) 11 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 7046 of 2015 (OandM)

Union of India

APPELLANT

Vs

Bhatia Builders & Contractor and Others

RESPONDENT

Date of Decision : 03-11-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 31(3), 34, 37

Citation : (2015) 11 P&H CK 0023

Hon'ble Judges : Amit Rawal, J.

Bench : Single Bench

Advocate : Ranjana Shahi, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Amit Rawal, J.

C.M. No. 22166-CII-2015

1. For the reasons stated in the application, duly supported by an affidavit, delay of 47 days in re-filing the appeal, is condoned. 2. C.M. stands disposed of.

C.M. No. 22167-CII-2015

3. The application is allowed, subject to all just exceptions. Delay of 70 days in making up the deficiency of Court fee good, is condoned.

4. C.M. stands disposed of.

FAO No. 7046 of 2015 (O&M)

5. The appellant - Union of India is in appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "1996 Act"), against the order dated 13.02.2015, whereby, the objections under Section 34 of 1996 Act, for setting aside the Award dated 29.07.2010, have been dismissed.

6. Ms. Ranjana Shahi, learned counsel appearing on behalf of the appellant

submits that condition No. 4 of the Contract vide amendment No. 3, envisages that Contractor shall give the list of the personnel working with him as work was assigned in the restricted area. In essence, entry of the general public was strictly prohibited. In support of her contention, she relied upon the aforementioned clause, which reads thus:--

"The work lies in unrestricted area. However, the contractor, his agents, servants, workmen and vehicles may be allowed to enter the area through specified points/routine, pass through unilines and may be asked to disclose their identity and bonafides by the authority controlling the area as per their rules and regulations. Engineer-in-Charge shall at his discretion have the right to issue passes, control their admission to the site of work on any part thereof after thorough verification of antecedent by contractor. The contractor shall on demand by the Engineer-in-Charge submit a list of personnel etc. concerned any other information called by the Engineer-in-Charge and shall satisfy the Engineer-in-Charge as to the bonafides of such people. Passes shall be returned at any time on demand by the Engineer-in-Charge and in any case on completion of work."

7. She further submits that Arbitrator without going into the number of personnel deployed, which contractor allegedly paid more salary than agreed, granted additional claim of Rs. 7,76,160.73 (Rupees seven lakhs seventy six thousand one hundred sixty and seventy three paise only), thus, Arbitrator exceeded its jurisdiction in awarding such claim.

8. I have heard learned counsel for the appellant and appraised the paper book.

9. It would be apt to reproduce the finding rendered by the Arbitrator with regard to claim, which reads thus:--

"14.5 I have carefully perused the submissions of both the parties and considered oral arguments made on the issue. It is admitted fact that even though as per contract agreement the area of work was stated to be unrestricted with stipulation for "likely" issue of passes by Engineer-in-Charge but subsequently there were more restrictions imposed due to different security situation of the Cantonment caused by militancy in the region. The respondents had even requested the claimants to bear with the situation in the interest of national security but the contractor being a private party and having quoted the tender for a particular situation could not have been expected to incur more expenditure for the same work as contracted without getting reimbursed for extra cost incurred. The contractor has raised the issue of more restrictions and involvement of extra cost of 5% in the work in his letter dated 29 July 2002 just at the commencement of work and then increased to 10% of 26 July 2003 probably after ascertaining the actual effect of restrictions on the costs of execution. UOI though had denied the claim for extra cost due to restrictions imposed but the fact about existence of stringent security situation due to increased militancy in that region, not contemplated at tender stage, was admitted in their reply of 02 Sep 2003 (Exhibit GP-05). The claim is therefore,

considered genuine. However, the extra cost in a restricted area is generally considered 5% of value of work and not 8% as claimed in this claim. In this case, however, I shall further reduce it to half, i.e. 2.5% towards extra cost because part restrictions, i.e., likely issue of passes by Engineer-in-Charge and checking at entry etc. were catered in the contract agreement and also the labour huts were located in the Cantonment though 4 Kms away from site, and the extra cost is for change of working conditions to more stringent restrictions than contemplated in CA and hence half of the normal factor of 5% for restricted area would be a reasonable compensation. Also the value of work as executed as per audited final bill and the amount of claim No. 1 and 2 to the extent sustained shall only be considered for award and I have worked out the amount awarded accordingly.

14.6 I, therefore, conclude that claim No. 1 is partly sustained and hence I AWARD Rs. 7,76,160.73 (Rupees seven lakhs seventy six thousand one hundred sixty and seventy three paise only) to be paid to the claimants contractors by respondents UOI for this claim."

10. From the perusal of the observations, noticed above, *ibid*, there was correspondence exchanged between the Contractor and appellant-Union of India with regard to more restriction caused owing to the increased militancy which resulted into incurring of huge expenses *vis-à-vis* payment and material, though the Contractor claimed much more but the Arbitrator awarded 2.5% towards extra costs. The plea of Ms. Shahi that Objecting Court did not ponder upon the objections, but rejected the same, by holding that scope of interference under Section 34 of 1996 Act, is limited is not tenable.

11. It is now a settled law that as to under what circumstances the award has to be interfered with. The question which has now been raised in the aforementioned appeal has already been answered by the Hon'ble Supreme Court in catena of judgments wherein it has been laid down that until and unless the award suffers from illegality as statutorily prescribed under Section 31(3) of the Act, the same cannot be interfered with. In this context I intend to refer the judgments of Hon'ble Supreme Court in *Associate Builders Vs. Delhi Development Authority*, and *Navodaya Mass Entertainment Ltd. Vs. J.M. Combines*, . In the aforementioned judgment the Hon'ble Supreme Court had culled out the ratio decidendi by holding that until and unless there is error apparent on the face of record or the arbitrator has not followed statutory legal position, it is only in these circumstances it would be justified interfering with the award. The High Court should not act as a Court of appeal and reappraise the material/evidence and embarked on a path by substitution in its own view. It is not the case of the appellant that the award is against the public policy or has violated the principles of judicial approach, much less against the statute and other provisions of Section 34 of the Act. The Arbitrator has dealt with the dispute which was contemplated and was within the scope of it. It is now a settled law that the Arbitrator is the sole judge of quality and quantity of the

evidence before him and decide on the basis of the available evidence.

12. In my view, no error of law arise from the award. The award is perfect and justified and all the objections filed against the same were wholly misconceived.

13. There is no merit in the aforementioned appeal.

14. The appeal is accordingly dismissed.