

(2005) 12 DEL CK 0147

In the Delhi High Court

Case No : CS (OS) No. 159A of 1995 and is No. 3240 of 1995

Ahluwalia Contracts (India) Ltd.

APPELLANT

Vs

The School of Planning and Architecture

RESPONDENT

Date of Decision : 19-12-2005

Acts Referred:

Arbitration Act, 1940 — Section 30, 33

Citation : (2005) 12 DEL CK 0147

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : S. Sirish Kumar, for the Appellant; R.K. Singh, for the Respondent

Judgement

Sanjay Kishan Kaul, J.

IA No. 3240/1995 (Under Section 30 and 33 of the Arbitration Act, 1940)

1. The parties entered into a contract on 28.02.1989 whereby the petitioner contractor was required to complete the work of construction of staff housing and students hostel at Maharani Bagh. Disputes arose between the parties and the Director of the respondent appointed Mr. T.S. Ratnam as the Sole Arbitrator to determine the disputes between the parties. Mr. Ratnam is a retired Additional Director General of CPWD and was apparently chosen on account of the fact that a technical person was required to adjudicate upon the matter. The learned Arbitrator made and published his Award on 30.08.1994. The respondent aggrieved by the same has filed the present objections.

2. The synopsis has also been filed by the parties and learned counsel for the respondent attempted to take me through each of the claims and examined the same on merits. In my considered view, this is not the scope of scrutiny of objections under Sections 30 and 33 of the Arbitration Act, 1940 (for short, "the said Act"). It is not the function of this Court to re-appreciate the evidence or to interfere with the Award merely on the ground that the Court would come to a different conclusion on the basis of the material available before the Arbitrator. It

is only in the eventuality of an Award being perverse that an interference would be called for as held by the Division Bench of this Court in DDA v. Bhagat Construction Co. Pvt. Ltd. 2004 (3) Arb.LR 481.

3. In a recent judgment in State of U.P. Vs. Allied Constructions, , the Apex Court while affirming to the restricted scope of scrutiny strictly within the parameters of Section 30 of the said Act observed that an Arbitrator is a Judge chosen by the parties and his decision is final. The Court is precluded from reappraising the evidence and an error apparent on the face of the record would not imply closer scrutiny on merits of the documents and material on record. Thus, so long as the view the Arbitrator has taken is a plausible view, the Court should refrain from interfering. It is not the scope of scrutiny by this Court to proceed claim-wise sitting as a court of appeal.

4. Learned counsel for the respondent urged that the award under claim No. 2B on account of deduction for excess consumption of cement has been wrongly awarded contrary to the provisions of clause 11 read with clause 43(b) of the Agreement. A perusal of the clauses shows that the clauses refer to the right of the respondent to recover for cement not properly accounted for. This is so since cement is being supplied by the respondent. The Arbitrator found on material available on the record that there was no unauthorised diversion or pilferage whereby the liability could be fastened on the petitioner and recoveries made. In my considered view, this cannot be said to be an error apparent on the face of the record or any perverse conclusion arrived at on the basis of interpretation of the clauses of the Agreement and, thus, I find no merit in respect of this submission.

5. Learned counsel for the respondent next urged that in respect of claim No. 4 dealing with damages and escalation, the element of escalation has been granted even beyond the extended period of the contract. The date of completion of the work was 14.10.1990, which was extended up to 25.08.1991. The work was actually completed on 15.02.1992. Escalation was paid up to 25.08.1991 under clause 42B. A perusal of the Award shows that the claimant, i.e., the petitioner herein, had claimed an amount of Rs. 17,78,271/- including damages due to delay on the part of the respondent amounting to Rs. 14,10,695/-. This was apart from the claim of escalation. The Arbitrator agreed partly with the respondent and, in fact, rejected the claim for damages in toto made by the petitioner. The only amount awarded is for the claim of escalation even for the extended period beyond the contract as admittedly the work was performed by the petitioner during this period of time, though there may not be any formal extension of the contract. There were factors attributable to the petitioner for the delays and, thus, while rejecting the damages claimed, escalation has been awarded. This amount can hardly be said to be a perverse conclusion arrived at which would call for any interference.

6. Learned counsel for the respondent next referred to the award made under claim No. 6 and contended that this claim is beyond the terms of reference. The

Arbitrator found that certain drawings and designs were issued after 25.08.1991 and, thus, the completion of work within 20 months was subject to supply of structural and architectural drawings within 15 days of the start. This condition was not fulfilled. The Arbitrator has rightly come to the conclusion that it was not a question of the quantification of amount, but of the incidence of damages which was in question and found that since the respondent itself had failed to meet with certain obligations, the levy of liquidated damages was not justified. Thus, the question of determination of quantum would not arise or whether the same was rightly arrived at. The amount deducted towards this liquidated damages has, thus, been directed to be refunded with which no fault can be found.

7. The further plea in respect of claim No. 4 and certain deduction items is based totally on a plea of re-appreciation of the material on record, which cannot be permitted u/s 30 of the said Act.

8. The last issue pressed by learned counsel for the respondent is on account of interest, which has been awarded @ 15% p.a. from 01.11.1994 till the date of payment or the date of decree, whichever is earlier. The amount has not been paid. Learned counsel for the petitioner himself confines the claim to simple interest @ 12% p.a., which, in my considered view, is a reasonable rate of interest at the relevant period of time.

9. In the end, it must be kept in mind that a technical person has been appointed to arbitrate in the matter. The object was to see that a person conversant with the trade goes into the disputes of the parties. A retired Additional Director General of CPWD was, thus, found fit for the said purpose and it is the Director of the respondent who appointed the Arbitrator. In DDA v. Bhagat Construction Co. (P) Ltd. and Anr. 2004 (3) Arb. LR 548, the Division Bench of this Court had observed that where such a technical person is appointed as the Arbitrator, he would be conversant with the kind of disputes on which he is adjudicating. The Court will not substitute its own view with that of the Arbitrator and the Award of the Arbitrator is not to be read like a judgment of the Court.

10. In view of the aforesaid, the objections are rejected except to the extent that the rate of interest shall stand reduced from 15% p.a. to 12% p.a. simple interest till the date of decree.

CS (OS) No. 159A/1995

1) The Award dated 30.08.1994 of the Sole Arbitrator, Shri T.S. Ratnam, Retired Additional Director General of CPWD is made Rule of the Court with the modification that the rate of interest from 01.11.1994 till the date of decree shall be @ 12% p.a. simple interest instead of 15% p.a. as awarded under the Award. The petitioner shall also be entitled to future interest from the date of decree till the date of realisation @ 9% p.a. The petitioner shall be entitled to costs.

2) In case the amount is paid within 60 days from the date of decree, the

respondent shall be exempted from payment of future interest. 3)Decree-sheet be drawn up accordingly.