
(1996) 12 DEL CK 0070

In the Delhi High Court

Case No : Suit No. 1815A of 1995 and Interim Application No. 126047 of 1995

Akash Builders

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-12-1996

Acts Referred:

Arbitration Act, 1940 — Section 29

Citation : (1997) 1 AD 126 : (1997) 65 DLT 739 : (1997) 40 DRJ 129

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : J.D. Jain, M.A. Khan and S.S. Sabharwal, for the Appellant;

Judgement

M.K. Sharma, J.

(1) A Contract Agreement came to be executed between the petitioner and the respondent on 17th February, 1981. The aforesaid contract, however, came to be cancelled by the respondent on the allegation that the petitioner could not complete the entire work. Accordingly disputes and differences having arisen between the parties, Lt. Col. Y.P.Adlakha, was appointed as the sole arbitrator by the Chief Engineer (W.A.C.) Af, Jalandhar Cantt on 24th June, 1994 to adjudicate upon the dispute between the parties. The arbitrator entered upon the reference on 25th July, 1994 and after examining the claims of the parties and the documentary and oral evidence produced before him made and published his award on 24.3.1995. The aforesaid award is admittedly a non-speaking award. The petitioner through the present petition has sought for making the award a Rule of the Court whereas the respondent has filed the objection. Accordingly, the matter was taken up for consideration and final disposal.

(2) The law in respect of a non-speaking award is by now settled by the decision of the Supreme Court. It is held in State of Orissa & others Vs. M/s. Lall Brothers. reported in 1988 Sc 2018 that the fact that there is an unreasoned award is no ground to set aside the award and that a lump sum award is not bad

per se. In AIR 1990 1426 (SC) , the Supreme Court has held that the non-requirement of reasons being given in support of the award passed by the arbitrator cannot be said to be vocative of the principles of natural justice or otherwise illegal. Where parties do not stipulate requirement of reasons in support of an award, the same is not invalid on that count and the arbitrator need not give any reason in support of his award.

(3) In M/s. Lal Brothers case(supra), the Supreme Court has also held that it is not open to the Court to speculate where, no reasons are given by the arbitrator, as to what impelled him to arrive at his conclusions.

(4) Counsel for the objector drew my attention to certain clauses in the agreement between the parties, particularly, Clause Nos. 11 and 54 of the agreement to show that the award is not in accordance with those provisions of the contract. However, it is well settled that in a non-speaking award where the arbitrator neither has made any particular reference to any clause of the contract, nor has incorporated the contract in the award in the sense that he has invited those reading the award to read the contract, the court is not entitled to look at the contract to verify and to see whether there is an error of law (see M/s. Des Raj and Sons, Chandigarh Vs. Union of India and another reported in Air 1984 Delhi 365 and Government of Kerala and Another Vs. V.P. Jolly, .

(5) Like in the present case, in V.P.Jolly's case (supra), the award was challenged on the ground of arbitrator's alleged violation of the terms of the contract, or his alleged action in excess of his authority. In that context, the Full Bench of the Kerala High Court held that such an attack cannot obviously be proved unless one is permitted to resort to the terms of the main contract, relating to the award of extra compensation or extra rate. The Full Bench further held that in the case of a non-speaking award, one has to be confined to the award itself or to any document incorporated therein and if the contract is not incorporated in the award, it is not permissible for the Court to look outside the award and refer to the terms of the contract.

(6) Since in the present case, the arbitrator has not incorporated the contract in the award, nor has made any particular reference to any of the clauses in the award, this court is not entitled to look at the contract in order to examine whether there is an error of law or that the award is in violation of those provisions of the contract.

(7) Since the award in the present case is a non-speaking award, the Court is not empowered to probe into the thought process of the arbitrator, nor it is possible to do so. The arbitrator has specifically mentioned in the award that he has examined and considered the pleadings submitted by and on behalf of the parties and the documentary and oral evidence produced before him by the parties and also the oral submissions and arguments advanced before him. On the basis and consideration thereof, the award ex-facie is not illegal and void and could not be set aside.

(8) In that view of the matter, there is no merit in the objections taken by the respondent. The same are accordingly dismissed. The award passed by the arbitrator is made a Rule of the Court. A decree is passed in terms of the award and the award will form part of the decree. The petitioner shall also be entitled to interest at the rate of 15 per cent per annum from the date of decree till realisation in terms of Section 29 of the Arbitration Act.