
(1995) 07 DEL CK 0013

In the Delhi High Court

Case No : Interim Application No's. 13637 of 1992 and 60 of 1993 and Suit No. 2273-A of 1992

Architects Bureau

APPELLANT

Vs

Delhi Agricultural Marketing Board and Others

RESPONDENT

Date of Decision : 31-07-1995

Acts Referred:

Citation : (1995) 34 DRJ 412

Hon'ble Judges : N.G. Nandi, J

Bench : Single Bench

Advocate : S. Pappu, S.K. Chandwani, S.K. Chandwani, Pramod Sharma and M.L. Bhargav, for the Appellant;

Judgement

N.G. Nandi, J.

(1) One of the parties to the Award dated 8.5.1992, rendered by the Sole Arbitrator, V.S. Murti (Respondent No.3), approached the court u/s 14 of the Arbitration Act by way of this suit (S.No. 2273-A/92) requiring respondent No.3, the sole arbitrator, to file the aforesaid award in together with the proceedings and record of the arbitration case. After the filing of this suit, notice was issued to respondent No.3. Respondent No.3 filed the award as suggested by order dated 12.10.1992 and thereafter, notices were issued to the petitioner as well as to respondents 1 & 2 u/s 14(1) of the Act. In response to the notices, the respondents filed objections under Sections 30-33 of the Arbitration Act to the award dated 8.5.1992 vide I.A. No. 60/93 whereas the petitioner filed objections to the said award vide I.A. 13637/92.

(2) In I.A. 13637/92, the objection raised by the petitioner, to the award, is in respect of Claim no.5 and 6, raised by the petitioner before the arbitrator. Claim No.5, it appears, pertains to the claim with regard to the interest @ 18% p.a. whereas claim No.6 pertains to an amount of Rs.10,000.00 as costs of the proceedings. It is also suggested from paragraph 7 of this is that learned arbitrator observed while rejecting the claim with regard to the interest that

there is no term in the agreement to pay interest

(3) Vide I.A. 60/93, respondents 1 & 2 filed objections to the award dated 8.5.1992 under Sections 30-33 of the Arbitration Act and contended that the Chairman of the respondent board appointed respondent No.3 as the sole arbitrator vide letter dated 29.8.1991 to decide and make his award regarding the claims, dispute of the parties and their counter-claim, if any, subject to their admissibility under the relevant clauses 414 of the agreement. It is, further contended that since the claims in dispute were above Rs.75,000.00 the competent authority had put a condition that the arbitrator shall give reasons for the award; that the learned arbitrator has, however, not given any reasons for making the award and has exceeded his jurisdiction; that the award is outside the scope of the reference and thus, liable to be set aside on this ground; that the disputes were referred to the arbitrator subject to their admissibility under the relevant Clauses of the agreement and as mentioned in the award, the work allotted to the claimant for execution was for a consideration of a lump-sum amount of Rs.4.00 lakhs. The arbitrator was, Therefore, required to consider the claim only in the light of various clauses of the agreement; the arbitrator had no jurisdiction to decide the claims, which were outside the scope of the agreement; that there was neither any agreement nor any term and conditions for execution of any additional work, which was not contemplated in the agreement and letter of intent; that no additional work was allotted by the respondents to the petitioner claimant and that the claim of the petitioner should have been rejected outright and that Rs.3,60,000.00 have been illegally awarded by the arbitrator under Claim No.1; that Claim no.2 for the sum of Rs.70,80,000.00 was not tenable as the petitioner had agreed to do the entire work for lump-sum amount of Rs.4.00 lakhs; that Claim No.3 for Rs.15,000.00 is without jurisdiction and the claimant not entitled to the said claim; that Claim No.4 could not have been allowed and granted by the arbitrator, awarding Rs.22,000.00 there under to the petitioner; that the arbitrator has exceeded the jurisdiction to award the amount in respect of various claims; that the learned arbitrator had no jurisdiction to award interest @ 15% but the arbitrator has miscondacted himself by rendering a non-speaking award and by exceeding his jurisdiction and the award is beyond the scope of reference and the same is liable to be set aside.

(4) One of the arguments advanced by Mr. Bhargava, counsel for respondents 1 & 2 is that the award rendered by respondent No.3 is a non-speaking award i.e. without giving reasons whereas the reference letter dated 29.8.1991 required giving of reasons by the arbitrator as the amount claimed exceeds Rs.75,000.00 and that the same is liable to be set aside; that the letter dated 29.8.91 should be read as a whole; that neither the petitioner nor the respondent objected to the condition of giving reasons in the letter dated 29.8.91 and that in the claim statement paragraph 2, the petitioner has referred to the condition requiring the giving of reasons by the arbitrator and that now, it does not lie in the mouth of the petitioner to contend that the reasons are not required to be given in the award. In this regard, a reference has been made to the decision rendered by

the learned Single Judge of this court in Suit No. 2280/92.

(5) On this score, the submission of Ms. Pappu, counsel for the petitioner, is that no reasons are required to be given by the arbitrator in the award; that in para 2 of claim statement, all what has been stated by the petitioner, is that the Chairman appointed respondent No.3 as sole arbitrator vide letter dated 29.8.91 and that in the said letter, Chairman, Danv has recorded that since the claims and disputes raised by Arb exceed Rs.75,000.00 , Therefore, the arbitrator shall give the reasons for the award; and that this is nothing else but reproducing the contents of the said letter which can not be construed to mean acceptance of or agreement with the requirement of giving of reasons by the arbitrator, as the claim exceeds Rs.75,000.00 and that the petitioner has not agreed to the said requirement.

(6) In the instant case, the arbitration clausd admittedly does not require the giving of reasons in the award for the adjudication of the disputes between the parties. There is no law as such, which requires the giving of reasons by the arbitrator in the award. It is only the letter dated 29.8.91 by the Chairman of respondent No. 1) appointing respondent No.3 as the sole arbitrator, recorded that since the claims and disputes raised by the petitioner exceed Rs.75,000.00 , Therefore, the arbitrator shall give the reasons for the award.

(7) In the case before the learned Single Judge of this court, the letter of reference has been reproduced in para 12 thereof and the same also recorded that as the claims and disputes raised by the claimant exceed Rs.75000.00 , Therefore, the arbitrator shall give reasons for the award. In para 14, it is observed that "arbitrator is bound to give reasons in the award in three situations - (1) if required by any law, (2) if it is so postulated by agreement between the parties, and (3) if the arbitrator is required to give reasons by the terms of the reference." In the instant case, as pointed out above, the arbitration agreement does not stipulate giving of the reasons by the arbitrator whereas the letter of reference dated 29.8.91 has recorded the giving of reasons by the arbitrator as the claim raised by the claimants exceeds Rs.75000.00 .

(8) As far as the letter dated 29.8.91 is concerned, the same is written by the Chairman of respondent No.1. Perusal of page 1 (letter dated 29.8.1991) of Volume 1 of the award on the letter head of respondent No.1 suggests that it is the letter by the Chairman of respondent No.1 and the copy thereof is addressed to respondent No.3-the arbitrator, petitioner the party to the proceedings; S.E. and Legal Consultants both of respondent No.1. It is true that in para 2 of the claim statement at page 10 of Volume 1 the petitioner has referred to the said letter by the Chairman of respondent No.1 and has also referred to what has been stated in the said letter including the chairman having recorded that arbitrator shall give reasons for the award as the claim and dispute raised by the petitioner exceeds Rs.75000.00 . The petitioner has not stated in para 2 of claim statement that it agrees/accepts the recording of the reasons by the arbitrator in the award, as the claim exceeds Rs.75,000.00 . It may be appreciated that letter

dated 29.8.91 is written by the Chairman of respondent No.1 to which the petitioner is no party. Petitioner has only been addressed copy of the said letter, as aforesaid. As pointed out above, the arbitration clause does not require giving of reasons in support of the decision that may be reached by the arbitrator. There is no letter addressed by the petitioner to the arbitrator, nor the petitioner in a deed of submission agreed that reasons should be given or by a letter addressed by the petitioner and respondents to the arbitrator for agreement to the giving of reasons in support of the decision that may be reached. Taking the letter dated 29.8.91, all that could be said is that it was Chairman of respondent No.1 alone, who required respondent No.3 to give reasons in support of the award and not the petitioner. The petitioner being no party to the requirement of giving of reasons by the arbitrator in the award, such requirement by the arbitrator can be said to be unilateral at the instance of respondents 1 & 2 through the Chairman of respondent No.1 only. Now, simply because the petitioner has filed its claim statement and took part in the proceedings before the 416 arbitrator, it can not be said that the petitioner agreed to giving of reasons by the arbitrator in support of the award. It has been held in the case of Food Corporation of India Vs. Jagdish Chandra Saha, , that "arbitrator or umpire is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or in the deed of submissions, is required to give reasons.What this court had in contemplation in the above passage was that reasons are obligatory on the arbitrator only whereas the arbitration clause contains such a requirement or where both parties agree that the reasons should be given in a deed of submission or by a letter addressed by both parties to the arbitrator. We do not see how one of the parties can restrict the scope of the arbitrator's powers as envisaged in the arbitration agreement by mentioning certain terms in a unilateral order of the appointment of the arbitrator.We do not think that the learned counsel is right in submitting that the terms of the appointment of the "arbitrator can impose restrictions on the arbitrator which are not envisaged by the arbitration clause."

(9) In the instant case, as pointed out above, the arbitration agreement does not cast any obligation on the arbitrator to give reasons in support of the decision reached by him nor the deed of submission requires giving of reasons by the arbitrator. It is not the say of the respondents that both the parties agreed that the reasons should be given in deed of submission or by a letter addressed by the petitioner and the respondents to the arbitrator, or there was agreement with regard to the giving of reasons by the arbitrator in support of his decision. Now, when the parties to the arbitration agreement do not agree or consent the giving of reasons by the arbitrator, the terms of appointment of the arbitrator (vide letter dated 29.8.91) can not impose restrictions on the arbitrator not envisaged by the arbitration clause or consented to by the parties to the agreement at any subsequent stage. In my opinion, the Supreme Court decision would clinch the issue as regards the giving of reasons by the arbitrator and following the

principle laid down, I am of the view that the award dated 8.5.1992 does not require giving of any reasons by the arbitrator and the said award cannot beset aside for not assigning any reasons in support thereof. In view of the principle laid down by the Supreme Court in the aforesaid decision, the judgment rendered by the learned Single Judge of this "court referred to above, cannot come to the rescue of the respondents on this score.

(10) It need hardly be said that if there is no reason to remit or set aside the award, then u/s 17 of the Arbitration Act, the Court has to make the award rule of the court. It also can not, at the same time, be disputed that the court has to decide whether the award should be made rule of the court or not only taking into consideration the objections raised by the parties to the award.

(11) One of the objections raised by the petitioner is that the petitioner has not been awarded, interest @ 18% and that the interest has been awarded only @ 15% p.a. from the date of the award up to the date of the payment or the date of the decree, whichever is earlier.

(12) The petitioner has placed reliance on the decision rendered in the case of Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, wherein, the Supreme Court has laid down the principle for the grant of pendente lite interest by the arbitrator as follows :

"(I)a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference. This is the principle of S.34 CPC and there is no reason or principle to hold otherwise in the case of arbitrator;

(II)an arbitrator is an alternative form for resolution of disputes arising between the parties. If so, he must have the power to decide all the disputes or differences arising between the parties. If the arbitrator has no power to award interest pendente lite, the party claiming it would have to approach the court for that purpose, even though he may have obtained satisfaction in respect of other claims from the arbitrator. This would lead to multiplicity of proceedings;

(III)An arbitrator is the creature of an agreement. It is open to the parties to confer upon him such powers and prescribe such procedure for him to follow as they think fit, so long as they are not opposed to law. (The proviso to S.41 and S.3 of Arbitration Act illustrate this point). All the same, the agreement must be in conformity with law. The arbitrator must also act and make his award in accordance with the general law of the land and the agreement.

(iv).....

(V)..... This does not mean that in every case the arbitrator should necessarily award interest pendente lite. It is a matter within his discretion to be exercised in the light of all the facts and circumstances of the case, keeping the

ends of justice in view....."

(13) It may be seen from the above that arbitrator has the power to grant interest pendente lite which is also the principle of Section 34 Civil Procedure Code, which would apply to the arbitrator as well. But at the same time, the grant of pendente lite interest is a matter within the discretion of the arbitrator to be exercised in the light of all the facts and circumstances of the case keeping the ends of justice in view. In the instant case, the learned arbitrator has granted the interest from the date of the award till the date of payment or the date of decree whichever is earlier @ 15%. The discretion to be exercised by the arbitrator following the principle laid down in the aforesaid judgment has to be on sound judicial principle. In my opinion, not to exercise discretion by granting pendente lite interest would not be a proper exercise of discretion by the learned arbitrator and following the principle of law enunciated by the Supreme Court in the aforesaid judgment, the objection of the petitioner on this score needs to be accepted and the petitioner would also be entitled to interest pendente lite at the rate awarded in the award.

(14) One of the objections on behalf of the respondents is that the petitioner would not be entitled to anything beyond Rs.4.00 lakhs as the petitioner accepted and agreed to do the work for the lump-sum amount of Rs.4.00 lakhs and that the claim No. 1 by the petitioner on this score has been granted by the arbitrator, beyond the agreement, without jurisdiction. It is suggested from the record that the scope of work comprising platform area had increased from 16000 sq. mtrs. to 49450 sq.mtrs. and that the claim pro rata increased. Learned arbitrator by allowing claim No. 1 has observed that the claimant produced necessary approvals based on plans prepared by him and initially cleared by respondent No.1. It is clearly suggested that the work executed by the petitioner exceeded the area initially shown and that the respondent stated that they accepted the approval of lay-out given by Delhi Development Authority and are going ahead with the work accordingly. Had the scope of work on platform remained 16000 sq.mtrs. and not increased to 49000 Sq.mtrs. then the petitioner would not be entitled to anything more than Rs.4.00 lakhs, the lump-sum amount, agreed. In view of this, it appears that the work executed by the petitioner exceeded the work initially assigned while the same was in progress. The agreement for a lump-sum performance would be with regard to the work initially undertaken but the final payment would only depend on the final/ultimate quantum of work executed by the petitioner at the site especially when the respondent accepted the approval to the lay out given by DDA. I do not see any illegality committed by the arbitrator on this score and I do not find any substance in the objection raised by the respondent in awarding additionally Rs.3,60,000.00 to the petitioner under Claim No.1.

(15) As far as objection to Claim No.2 raised by the respondents is concerned, it may be seen that over and above, the work awarded to the petitioner under the agreement initially, the respondents also took additional work from the petitioner

under the agreement itself and the .petitioner provided details, arts and structural drawings for which number of buildings costing Rs.15.00 crores. When the respondents take extra/additional work from the petitioner, the award on this score being Claim No.2 can not be said to be, in any way, illegal or without jurisdiction since the arbitrator had to adjudicate the disputes arising by and between the parties under and in connection with the agreement and the objection in respect of claim No.2 deserves to be rejected.

(16) The objections raised by the respondents as regards Claims 3 & 4 also do not sound justifiable. It can not be said, looking to the agreement, award and the other proceedings before the arbitrator, that the learned arbitrator has, in any way, exceeded the jurisdiction and has committed any misconduct as far as objections raised by respondents 1 & 2 are concerned.

(17) Under the circumstances, the objections filed by respondents 1 & 2 vide is 60/93 deserve to be dismissed whereas the objections filed by the petitioner vide is No. 13637/92 as regards the grant of interest pendente lite deserves to be partly accepted since that is the only objection, for which submissions have been made by the petitioner.

(18) In the result, the award dated 8.5.1992 in respect of the work of Planning and Designing of Fruit and Vegetable Market, Azadpur Extension, Delhi is made rule of the court with a modification that the petitioner would also be entitled to the pendente lite interest @ 15% and decree is passed in favor of the petitioner with the above modification with regard to the interest pendente lite @ 15% i.e. also from the date of reference. The petitioner shall also be entitled to the interest from the date of the decree till realisation of the amount @ 15%. The award with the above modification with regard to pendente lite interest, shall form part of the decree.

(19) In the ultimate result, the award dated 8.5.1992 rendered by respondent No.3 is made rule of the court with modification, as above. I.A. No. 13637/92 is partly allowed with regard to Claim No.5 i.e. interest pendente lite whereas I.A. 60/93 stands dismissed.