
(1993) 10 DEL CK 0025

In the Delhi High Court

Case No : Interim Application No. 9456 of 1989 and Suit No. 1357 of 1989

Charanjit Kochhar

APPELLANT

Vs

Delhi Electric Supply Undertaking and Others

RESPONDENT

Date of Decision : 27-10-1993

Acts Referred:

Citation : (1993) 4 AD 441 : (1994) 1 ARBLR 100 : (1993) 52 DLT 327

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : D.P. Sharma and A.K. Pathak, for the Appellant;

Judgement

Sat Pal, J.

(1) This petition has been filed on behalf of M/s.Charanjit Kochhar (hereinafter referred to as the Contractor) u/s 14 of the Arbitration Act, 1940 (hereinafter referred to as the Act) and it has been prayed in this petition that the respondents 2 and 3 who were the co-arbitrators in this case be directed to file original award Along with arbitration proceedings in this Court and thereafter the matter may be proceeded within accordance with law. After the award and proceedings were filed, notice of filing of the award was issued to the parties. Thereafter objections were filed by the Delhi Electric Supply Undertaking (hereinafter referred to as DESU) vide 1. A. 2456/89. The objections have been controverted by the Contractor in their reply to the said I.A. The following issues were framed :

(I)Whether the award is liable to be set-aside on the objections raised in the objection petition?

(II)Relief.

(2) As directed by the Court, both the parties have filed an affidavit in support and in opposition to the objections against the award.

(3) Mr. Pathak, learned Counsel appearing on behalf of the DESU submitted that

the learned Arbitrators had misconducted themselves inasmuch as they had not given a speaking award though they were required to do so in terms of Nit General Conditions of the Contract. He further submitted that the award did not show that the counter claim was considered by the arbitrators. He further submitted that though in terms of the award, the arbitrators had inspected the site but the proceedings of the inspection were not available in the arbitration proceedings. He also submitted that during the pendency of the arbitration proceedings one of the partners of the Contractor firm, namely, Shri Charanjit Kochhar expired on 7/02/1989 and the arbitrators exceeded their jurisdiction by permitting the LRs of the deceased to be brought on record to pursue the case. Lastly he submitted that the arbitration proceedings showed that the same were not conducted by both the arbitrators on certain dates. In view of these facts the learned Counsel contended that the arbitrators had misconducted themselves and as such the award was liable to be set aside. In support of his contention, learned Counsel placed reliance on a judgment of the Supreme Court reported in the case of Continental Construction Co. Ltd. Vs. State of Madhya Pradesh, .

(4) Mr. Sharma, learned Counsel appearing on behalf of the contractors, however, submitted that in terms of the Nit General Conditions of Contract ,the arbitrators were not required to give a speaking award. Since there was no requirement of the contract to give a speaking award, the award cannot be set aside on the ground that it was not a speaking award .In support of his contention he placed reliance on a judgment of the Constitution Bench of the Supreme Court reported in the case of AIR 1990 1426 (SC) . Learned Counsel further submitted that the award itself showed that the claims and counter claims of both the parties were considered. Regarding site inspection by the arbitrators, the learned Counsel drew my attention to the proceedings dated 8/01/1986 and 22/02/1986. Regarding the objections in respect of the death of one of the partners during the pendency of the proceedings, the learned counsel drew my attention to Section 42 of the Partnership Act which reads as follows :

42.Dissolution on the happening of certain contingencies : Subject to contract between the partners a firm is dissolved-(a) if constituted for a fixed term, by the expiry of the term;(b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;(c) by the death of a partner; and(d) by the adjudication of a partner as an insolvent."

(5) Learned Counsel contended that it is subject to the contract between the partners, a firm is dissolved by the death of a partner and in the present case in the partnership deed it has clearly been stated that if during the continuance of the partnership any partner dies, the surviving partner or partners shall take over the business and shall succeed to the share of the deceased partners. He, Therefore, contended that keeping in view the contract between the partners, the arbitrators decided that Shri B. Kochhar could represent the contractors-firm as partner in the arbitration matter before them. He further submitted that the proceedings clearly showed that the same were conducted before both the

arbitrators. Lastly, he contended that since the award was a non-speaking one, the respondent-DESU could not be permitted to analyze reasons of the arbitrators for making the award. In support of his contention, the learned Counsel placed reliance on judgment of the Supreme Court reported in the case of M/s. Hind Builders Vs. Union of India, . He also contended that it was not misconduct on the part of the arbitrators to come to an erroneous decision whether their error was one of fact or law. In support of this contention he placed reliance on a judgment of the Supreme Court reported in the case of Food Corporation of India Vs. Joginderpal Mohinderpal, .

(6) I have given my anxious consideration to the submissions made by the learned Counsel for the parties and have perused the records. From the Nit General Conditions of Contract, I do not find any clause which requires that the award should be a speaking one. The contract of agreement between the parties also does not contain any such clause. As held by the Supreme Court in the case of Raipur Development Authority (supra) an award is not liable to be remitted or set-aside merely on the ground that no reasons have been given in its support except where the arbitration agreement or the deed of submissions or an order made by the Court requires that the Arbitrator should give reasons for the award. Since there was no such requirement in the present case, I do not find any merit in the submission of the learned Counsel for the Desu that the arbitrators were required to give the reasons.

(7) Further from the award itself I find that the amount awarded by the Arbitrator is in full and final settlement of claims and counter-claims of both the parties. In view of this there is no merit in the submission made by the learned Counsel for the objector that the counter claims have not been considered.

(8) As regards the objections that the proceedings have not been recorded in respect of the site inspection, I have perused the proceedings dated 8/01/1986 and 22/02/1986 of the arbitrators and From these proceedings I find that on 8/01/1986 in the presence of both the parties it was decided to have the site inspection and the proceedings dated 22/02/1986 show that the work site was inspected on 11.1.86 by the arbitrators in the presence of both the parties. From the proceedings, I do not find that the site was inspected to examine a particular aspect of the dispute for which proceedings were required to be recorded. Even other wise I cannot analyze the reasons of the arbitrators for making the award when no such reasons have been stated in this award. The objection is, Therefore, without any merit.

(9) As regards the objections of the respondent-DESU that the arbitrators have exceeded their jurisdiction in permitting the surviving partners of the contractors-firm to represent the case, I do not find any force even in this objection. In the proceedings dated 24/02/1989, Clause 18 of the partnership deed has been reproduced. From this clause it is clear that in the case of death of one of the partners, the surviving partner was to take the business and he was entitled to succeed to share of the deceased partner in the capital and assets of partnership

and the death of a partner shall not dissolve the partnership as to the others. In view of Clause 18 of the partnership deed and Section 42 of the Partnership Act, the arbitrators were justified to allow the surviving partner to represent the contractors-firm in the proceedings. Again I do not find any merit in the objection of there respondent No. 1 that the proceedings. Again I do not find any merit in the objection of the respondent No. 1 that the proceedings were not conducted before both the arbitrators on many dates of hearing. In fact the learned Counsel for the objector could not point out any proceedings which were not conducted before both the arbitrator.

(10) In view of the above discussion, the objections contained in is 9456/89 are dismissed. Objections against the award having been dismissed ,the award dated 14/04/1989 is made rule of the Court. Let a decree be drawn in terms of the award. The award will form a part of the decree. I further direct that in case the decretal amount is not paid to the Contractor within two months from the date of the decree, the contractor will be entitled to interest @ 12% p.a. from the date of decree till realisation. The parties are, however, left to bear their own costs .Petition dismissed.