

(1995) 08 DEL CK 0091

In the Delhi High Court

Case No : Suit No. 1002A of 1993 and Interim Application No's. 2298 and 2506 of 1994

Civil Engineers (India)

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 23-08-1995

Acts Referred:

Arbitration Act, 1940 — Section 30
Contract Act, 1872 — Section 70

Citation : (1995) 60 DLT 26 : (1995) 35 DRJ 71

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : C.R. Soma Sekharan, S.K. Chandwani and Anil Nag, for the Appellant;

Judgement

K. Ramamoorthy, J.

(1) Suit No. 1002A/93 filed by M/s. Civil Engineers (India) u/s 14 of the Arbitration Act. I.A. 2298/94 filed by the contractor/petitioner objecting to the award relating to claims No. 5,6 and 7. No reply has been filed by the DDA. IA.2506/94 filed by the Dda objecting to the award of the arbitrator with reference to claims No. 5 and 6, mentioned in the award. Mr. Nag, learned counsel for the Dda confined his arguments only to claim No. 5.

(2) In claim No.2 the contractor claims Rs. 5 lakhs for extra item executed by it. After referring to the pleadings and also the evidence and the documents on record, the arbitrator allowed the claim of the contractor to the extent of Rs. 1,10,334.00 . In claim No. 5, the claimant made a claim of Rs. 80,000.00 towards damages due to delays in the work on account of the respondent. The arbitrator awarded a sum of Rs. 24,600.00 but interest was not allowed.

(3) Claim No. 6 relates to interest which is claimed by the claimant @ 18% per annum. The arbitrator awarded interest on other items except claim No. 5 on the

ground that claim No. 5 being in the nature of damages no interest could be allowed.

(4) Claim No. 7 relates to the cost of arbitration at Rs. 15,000.00 , claimed by the claimant. This was disallowed by the arbitrator.

(5) The learned counsel for the Dda Mr. Nag, as noted above, focussed his arguments only on claim No. 5. His argument is that under clause 12 of the agreement the contractor can claim extra amount only if there were instructions in writing. Clause 12 of the agreement reads as follows :-

"THE Engineer in charge shall have powers to make any alteration/omission/additions to or substitution for the original specifications drawings, designs and that may appear to him to be necessary during progress of work, and the contractor shall carry out the work in accordance with any instructions which may be given to him in writing signed by the Engineer in charge, and such alterations/omissions/additions or substitution, shall not in-validate the contract and no alteration, addition or substitute work which the Contractor may be directed to do in the manner above specified as part of the work, shall be carried out by the contractor on the same conditions in all respects on which he agreed to do the main work."

There were no instructions in writing in this behalf by the Engineer in charge and, Therefore, the arbitrator had acted contrary to the agreement and a legal misconduct has been committed by the arbitrator and to that extent the award should be set aside. Mr. C.R. Somasekhran, learned senior counsel submitted that this point was not raised before the arbitrator. Therefore, the Dda is precluded from raising this point. Though the Dda did not take this point before the arbitrator, Mr. Nag learned counCel for the Dda submitted that the arbitrator can not travel beyond the terms of the contract and when there is no order or instructions in writing the contractor is not within his rights in asking for the payment for the work done.

(6) The arbitrator being an Engineer visited the work place and had noted on 17th of November 1992 thus :-

"THE whole length of the site was inspected along with the above persons noting the section, standing water etc. The Radio Station compound wall, drain along and inside right up to the end of the work was also seen. The claimant stated that originally only security barbed wire fencing was there very near the drain as indicated by the claimants and the compound wall at some distance from the drain has come up subsequently."

Therefore, it is clear that work had been done by the contractor on the instructions by the Dda and the Dda had the benefit of it. Dda is bound in law to make the payments. The scope of Section 70 of the Contract Act is well settled. Real basis of the liability under that Section is the fact that the person for whom the work has been done has accepted the work and has received the benefit

therein and cannot make unjust enrichment. The following decisions clearly lay down the law on this point:-

1. State of West Bengal Vs. B.K. Mondal and Sons, . 2. Mulamchand Vs. State of Madhya Pradesh, . 3 State of Uttar Pradesh and Another Vs. Murari Lal and Brothers Ltd., . 4. Pannalal Vs. Dy. Commissioner, Bhandara and Another etc., . 5. State of U.P. Vs. Chandra Gupta and Co., . 6. Union of India (UOI) and Another Vs. Sahab Singh, . 7. Nanalal Madhavji Varma Vs. State of Andhra Pradesh, .

(7) The claimants submitted that the arbitrator ought to have awarded interest on the sums awarded at 18% per annum and interest sought to have been awarded on Rs. 24,600.00 under claim No. 5, which was in the nature of damages. The learned senior counsel Mr. Somasekhran submitted that the arbitrator had ignored the provisions of Interest Act, 1978. In Associated Engineering Co. Vs. Government of Andhra Pradesh and another, the Supreme Court had laid down that the Arbitrator has to adjudicate a matter referred to him in accordance with the law of the country and he can't act in disregard of the law. Under the Interest Act, the claimant is entitled to interest on the sum of Rs. 24,600.00 .

(8) Regarding the claim for interest pen date lite, the law laid down by the Supreme Court in the following cases has to be followed :- 1. Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, . 2. Rajasthan State Electricity Board, Jaipur Vs. Narmada Industries, . 3. Union of India and Others Vs . M/s.Jamshedpur Engineering and Machines Manufacturing Co. Ltd. . .

(9) The arbitrator ought to have allowed interest @ 18% per annum on Rs. 24,600.00 is the submission of Mr.Somasekhran, learned senior counsel.

(10) Having regard to the nature of the contract and the prevailing bank rates, the arbitrator ought to have allowed interest @ 18% per annum on all the claims allowed by him. Accordingly, the award of the arbitrator in respect of claim No. 1 of Rs. 3,396.00 , Rs. 1,10,334.00 on claim No. 2, Rs. 1,004.38 on claim No. 4, Rs. 24,600.00 on claim No. 5 is confirmed. On claim No. 6, relating to interest the award is modified and there shall be a decree :-

I)DIRECTING the Dda to pay the petitioner sum of rs. 3,396.00 with interest at 18% per annum from 1st July 1984 up to the date of payment; ii)directing Dda to pay the petitioner a sum of Rs.1,10,334.00 with interest at 18% per annum from 1st July 1984 up to the date of payment; iii)directing Dda to pay the petitioner a sum of Rs. 1,004.38 with interest at 18% per annum from 1st July 1984 up to the date of payment; iv)directing Dda to pay the petitioner a sum of Rs.24,600.00 with interest at 18% per annum from 1st July 1984 up to the date of payment;

(11) Learned senior counsel submitted that cost ought to have been allowed by the arbitrator. I do not think that can be subject matter of debate before this

Court because it is in the discretion of the arbitrator.

(12) I.A. 2298/94 is partly allowed. IA.2506/94 is dismissed.

(13) Ias and the suit are disposed of.