
(1994) 08 DEL CK 0068

In the Delhi High Court

Case No : Suit No. 966A of 1990 and is No. 8739 of 1993

Devinder Kumar Chadha

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-08-1994

Acts Referred:

Arbitration Act, 1940 — Section 30

Citation : (1995) 58 DLT 400

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Dharmesh Mishra, for the Appellant; Avnish Ahlawat, for the Respondent

Final Decision : Partly Allowed

Judgement

Ms. Usha Mehra, J.—Shri Devinder Kumar Chadha entered into an agreement with the Executive Engineer, PWD Division, Delhi for construction of labour welfare centres at Okhla, New Delhi. The said contract entered into between the parties contained an arbitration clause. When the disputes arose between the parties regarding the execution of the said contract pertaining to the final Bill, the matter was referred to the arbitration under Clause 25 of the contract. Shri G.D. Chopra was appointed as the Sole Arbitrator. However, on his resigning after vacating the office, Shri N.H. Chandwani, respondent No. 3 herein was appointed as the Sole Arbitrator to adjudicate upon the disputes referred to him by the Chief Engineer, PWD. As per the terms of the agreement, the Arbitrator was to give reasoned award. The Sole Arbitrator, respondent No. 3 after considering the relevant contentions of the parties, made and published his award on 16th March, 1990 thereby awarding an amount of Rs. 30,700/- besides interest at the rate of 14% per annum from the date of the award till the date of decree, in favor of the petitioner/claimant. The award was filed in the Court. Notice of the filing of the award was issued to the parties. The respondent/ U.O.I. has filed objections to the said award which are within time listed as LA. No. 8739 / 93.

These objections raised by respondent have been refuted and controverted by the petitioner.

2. On the pleadings of the parties, the following issues were framed:

1. Whether the award made and published by the Arbitrator dated 16th March, 1990 is liable to be set aside on the grounds mentioned in the objection petition?

2. Whether the award is bad on the face of it? If so, its effect?

3. Parties made statements that they were not to adduce oral evidence. They would file their evidence by way of affidavit and that the proceedings held before the Arbitrator would be read as evidence.

4. The respondent/objector has challenged the award mainly against Claims Nos. 2, 3, 5 and 6 besides raising objection that claims were barred by time and the decision of the Arbitrator in this regard is against law.

5. While challenging the award against Claim No. 2, the respondent/ objector contended that under Clause 10(c) of the Agreement, the petitioner had to prove that he had in fact paid enhanced labour wages. But the petitioner failed to lead any evidence in this regard hence the award of Rs. 9,500/- on account of escalation in the labour rates was not justified. On the other hand, Counsel for the petitioner contended that the Arbitrator awarded this amount after going through the record and the evidence produced before him. The perusal of the award shows that the Arbitrator took into consideration the Notification issued by the Labour Department of Delhi Administration dated 31st December, 1979 whereby the minimum rates of wages were increased. These increased wages were required to be paid by the Contractor to the labourers in the presence of authorised representative of the Engineer In-charge. It was not the case of the respondent before the Arbitrator that these revised wages were not paid or that there was any complaint from any labourer in this regard received by the Engineer In-charge. On the contrary, evidence, led before the Arbitrator Exhibit "R-1", a certificate regarding no labour complaint issued by the respondent till the payment of the final bill dated 31st August, 1981 shows that the petitioner paid the enhanced wages as per the revised rates. It cannot be said that there was no material before the Arbitrator when he awarded this amount. It is not the case of the objector that this claim is not covered under the terms of the agreement. Intact Clause 10(c) provides that respondent would reimburse the petitioner in case there is statutory increase in the minimum rates of wages. The rates were in fact enhanced as per the Notification issued by the Delhi Administration dated 31st December, 1979. It was in fact proved before the Arbitrator that the petitioner did pay the enhanced wages as per the Government Notification. It was on the basis of the documentary evidence produced by the petitioner that the Arbitrator concluded that the petitioner was entitled to reimbursement under Clause 10(c) of the agreement. While awarding the amount, the Arbitrator took into account and calculated for each item using the labour co-efficient. Since the reasoning given by the Arbitrator being based on

the documentary evidence produced before him, Therefore, the award in this regard can neither be called arbitrary nor preponderous. I find no error apparent on the face of the award. Hence the award against Claim No. 2 cannot be set aside nor can be called bad in law. Objection against Claim No. 2 is without merits.

6. Now, coming to the objection against Claim No. 3, the Arbitrator has awarded a sum of Rs. 5,200/- on account of double stage shuttering instead of normal shuttering of single stage. It is an admitted case on record, that the petitioner did shuttering of all height i.e. double stage shuttering. Petitioner's case before the Arbitrator was that Along with the agreement he was not provided with the drawings. He was under the impression that he was required to do shuttering up to the height of 3.5 metres in one floor as per CPWD specifications. The Executive Engineer had no right to get the work executed at all heights and depth basis. Since, the normal practice is to do the shuttering on single stage, Therefore, he ought to have been paid extra for double stage shuttering. On the other hand, the respondent relied heavily on condition No. 3 of the Agreement coupled with the undertaking given by the petitioner to the Executive Engineer dated 17th January, 1980 Ex. "R-25". On the basis of this undertaking the Executive Engineer allowed the petitioner to execute the work. Hence the petitioner was not entitled to any amount.

7. In order to understand the arguments the undertaking given by the petitioner vide letter dated 17th January, 1980 Exhibit "R-25" is reproduced as under:

"In reference with discussions held with you on 14th January, 1980 regarding scoring out of contention 8 and 29 under additional conditions of the agreement regarding heights. I undertake as under:

That the rate for different items of work shall be for all heights and nothing extra on account of any special type of heights, scaffolding etc. as required shall be payable. I further state that I will have no claim whatsoever on this Account."

8. The Arbitrator while awarding this amount took into consideration the fact regarding non supply that in the absence of the drawing forming part of the agreement, and Therefore, held that the respondent could not ask the contractor to execute the work of any item for all heights and depths and that the undertaking given by the claimant, Ex. "R-25" was not under his free Will. Mrs. Ahlawat rightly contended that the Arbitrator while arriving at this conclusion that the undertaking given was not under free Will had no material. The parties are bound by their contract, before him. Once there is a condition in the contract debarring the petitioner to claim extra amount coupled with the undertaking given by the petitioner forming part of the agreement between the parties, the Arbitrator had no authority to reject the terms of the agreement including the undertaking and to substitute his own discretion in place of written contract between the parties. It appears that the Arbitrator has not exercised his jurisdiction properly. He has in fact travelled beyond the contract. This, to my

mind, is an error apparent on the face of the award. No evidence was produced by the petitioner nor even referred by the Arbitrator to point out that the undertaking dated 17th January, 1980, Ex. R-25 was obtained under duress. The presumption drawn by the arbitrator that this undertaking was not given of free will is nothing but surmises and conjectures. In fact the petitioner was to do the work as per the terms of the contract, design and drawings shown to him. It was petitioner's own case before the Arbitrator that when he received the drawings he found that the ceiling plaster in the hall portion exceeded 5 metres in height and that double stage for centre and shuttering would be needed as height of the ceiling was far in excess of 3.5 metres height. He also admitted having given an undertaking on 14th January, 1980 that he would not claim for all heights. In view of this undertaking given way back in 1980, the Arbitrator could not award extra payment on this account. To my mind, Arbitrator acted contrary to the bargain arrived at between the parties. The undertaking given by the contractor was most unambiguous and did not warrant any interference nor any interpretation by the Arbitrator. That under-taking given by the contractor formed part of the agreement. The award having been given contrary to the terms of the agreement is liable to be set aside. This amounts to an error apparent on the face of the award. The Arbitrator in this regard has misconducted himself and the proceedings. The observation of the Supreme Court in the case of Continental Construction Co. Ltd. Vs. State of Madhya Pradesh, apply to the facts of this case. In that case Supreme Court observed that the Arbitrator is not a conciliator and cannot ignore the law or mis apply it in order to do what he thinks just and reasonable. The Arbitrator is a Tribunal selected by the parties to decide their disputes according to law and is bound to follow and apply the law and if he does not, he can be set right provided the error appears on the face of the award. In this case, the parties agreed that the petitioner would do the shuttering up to all heights and he undertook that he would not claim extra for that and this undertaking having formed part of the agreement, the Arbitrator could not have arbitrarily awarded this claim. Once the agreement prohibits extra payment of a particular item, the Arbitrator cannot award that amount despite the ban. Since the Arbitrator ignored the restriction imposed by the parties and awarded the amount, to my mind, it is an error apparent on the face of the award and, Therefore, award against Claim No. 3 is liable to be set aside.

9. So far as the objection against Claim Nos. 5 and 6 are concerned on account of escalation in material, I find no merits in the objections. While giving reasons, the Arbitrator has dealt at length various documentary evidence produced before him to substantiate this claim. I see no error on the face of the award either against Claim No. 5 or 6. The objections against these claims are accordingly rejected.

10. Mrs. Ahlawat, appearing for the respondent took legal objection that the claims referred to the Arbitrator were barred by time. According to her, Clause 25 of the Agreement provided that the claims could be preferred within 90 days

from the date of the final Bill. Admittedly, the final Bill was settled on 31st August, 1981 whereas the claims were submitted on 2nd March, 1983. Therefore, these were barred and the finding of the Arbitrator in this regard is bad in law. I find no merits in the submissions. As per respondent's own showing the final Bill was settled on 31st August, 1981 and as per Arbitrator's record the claims were preferred by the petitioner for the first time on 28th November, 1981 vide Exhibit "R-2". This was followed by letter dated 14th January, 1982 Exhibit "R-3". As per Clause 25 of the Agreement, the only duty cast on the petitioner was to prefer his claim before the Chief Engineer within 90 days from the settlement of the final bill. The petitioner in this case did prefer his claims when he wrote letter dated 28th November, 1981 Exhibit "R-2" thereby preferring his claim within 90 days. Now, if the Chief Engineer did not refer the disputes to the arbitration for a considerable long time and the petitioner sent the reminder subsequently in 1983 that will not amount that the claims were preferred only on 2nd March, 1983. The Arbitrator after considering the documentary evidence placed before him i.e. Exhibits "R-2" and "R-3" rightly concluded that the claims were preferred within time. I find no error in this decision of the Arbitrator. Accordingly, the objection of the respondent on this account is rejected.

In view of my above discussion, the objections are partly allowed. The award of the Arbitrator is modified to the extent that the award against Claim No. 3 is not justified. The award against this claim is separable from other claims and having no bearing on the rest of the award, Therefore, the rest of the award is made rule of the Court. Accordingly, the petitioner will be entitled to a sum of Rs. 25,500/- with costs and special Counsel fee assessed at Rs. 1,000/- besides interest at the rate of 14% per annum from the date of award till realisation.