
(1999) 07 DEL CK 0059

In the Delhi High Court

Case No : S. No. 3133 of 1992 and Suit No. 4625 of 1992 and I.A. No. 4731 of 1994 in Suit No. 3133 of 1992

G.S. Kalra

APPELLANT

Vs

New Delhi Municipal Committee and Another

RESPONDENT

Date of Decision : 01-07-1999

Acts Referred:

Arbitration Act, 1940 — Section 13

Citation : AIR 1999 Delhi 355 : (1999) 80 DLT 551 : (1999) 4 RCR(Civil) 124

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : S.S. Gautam, for the Respondent

Final Decision : Partly Allowed

Judgement

M.S. Siddiaui, J.—For the construction of the Maternity Centre at 40, Babar Road, New Delhi, petitioner's tender dated 8-8-1979 was accepted by the respondent. An agreement No. 7/ME(C-11)/79-80 to that effect was executed between the parties. In terms of the agreement the work was to start on 15-9-1979 and was to be completed on 14-7-1980, But the work was completed on 17-9-1981. By way of security deposit a sum of Rs. 24,567 remained deposited with the department. However, differences and disputes between the parties in respect of the said agreement were referred to the arbitrator, who gave his award on 20-7-92. The arbitrator has awarded a sum of Rs. 1,06,148.92 inclusive of pendente lite interest to the claimant/contractor. In addition, the arbitrator has also awarded interest @ Rs. 15% on the said amount. On 17-12-1992 arbitrator filed his award. Notice of filing of award was given to the parties. While the petitioner filed an application under Sections 14/17 of the Arbitration Act for making the award a rule of the Court, the respondent NDMC filed objections under Sections 30/33 of the Arbitration Act against the award, which have been opposed by the petitioner.

2. The respondent is mainly aggrieved by the award under the claims Nos. 7, 10,

11 and 13. Claim No. 7:-- The claimant/contractor preferred a claim of Rs. 15,000/- on account of non reimbursement of expenditure incurred on foundation stone ceremony. According to the arbitrator, the respondent had not denied the said claim. However, the arbitrator has reduced the claim to Rs. 2000/- on the ground of non-furnishing of details by the claimant/contractor. I do not find any illegality in the award under the said claim.

3. Claim No. 10:-- The claimant/contractor claimed a sum of Rs. 3,092.29 on account of unwarranted reduction in agreement rates. Learned counsel for the respondent contended that the rates had been worked out and paid to the contract as per relevant clause of the agreement. On a consideration of the material on record, the arbitrator came to the conclusion that the payment was made at the reduced rates as per details in Annexure J which was wholly unjustified. The arbitrator, Therefore, allowed the said claim of the contractor. The arbitrator has assigned valid reasons for accepting the said claim of the contractor. In my opinion, the award under this head does not suffer from any illegality.

4. Claim. No. 11:-- The contractor claimed a sum of Rs. 1,15,725/- on account of escalation in cost of material and labour for work done during extended period of the contract. The arbitrator has reduced the claim to Rs. 21, 714/- on the following grounds :

(i) The claimant has not furnished the details of the price escalation of various items of material and labour.

(ii) A compensation for delay in completion of work has been levied @ 2%. However, this is not the full quantum as per agreement. This shows that causes for delay are attributable to both claimant and respondent. Under the circumstances an escalation @ 6% of Rs. 3,61,904/- which comes to Rs. 21,714/- is considered just and reasonable.

5. It is undisputed that as per agreement, the work was to start on 15-9-1979 and was to be completed on 14-7-1980. However, the work was completed on 17-9-1981. There was, thus, overrunning of the contract for a period of nearly 14 months. Learned counsel for the contractor contended that completion of the work was delayed due to certain breaches committed by the respondent. On the contrary, learned counsel for the respondent submitted that the contractor was solely responsible for delayed performance of the contract. In this context, I may usefully refer to the respondent's letter No, ME(C-11)/1002-5/ D, dated 26-7-1980 (Annexure A(4) which shows that the following architectural and structural drawings were supplied to the contractor on the dates indicated against them :--

(i) architectural drawings 6 Nos. 23-10-1979

(ii) Structural drawing 2 Nos. 20-10-1979

(iii) Structural drawing of col. 1 No. 7-1-1980

(iv) Structural drawings of slab and beams

at I and IIInd floor and structural design of left pit

11-2-1980.

6. The letter further shows that drawing No. CA 2232 for steel windows etc. was sent on 26-7-1980 with an assurance to send other relevant drawings in due course. The contents of the said letter to a great extent probabilities the case of the contractor that the work was delayed due to non-furnishing of the complete drawings of the work by the respondent within a reasonable time. However, the arbitrator has held that only 30% of the work was done within the stipulated period and both the parties were responsible for delayed performance of the contract. Taking into consideration the said fact, the arbitrator has awarded a sum of Rs. 21,714/- to the contractor. Having regard to the facts and circumstances of the case, no fault can be found with the said award of the arbitrator.

7. Claim Nos. 13 and 14 :-- The arbitrator has awarded a sum of Rs. 26,337.63 to the contractor on the ground that some of the payments had been wrongfully withheld by the respondent. The arbitrator has also awarded future interest @ 15% per annum on the sum of the award. It is now well settled that the arbitrator has the power to award interest. Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, ; Sudhir Brothers Vs. Delhi Development Authority and Another, ; The Board of Trustees for the Port of Calcutta Vs. Engineers-De-Space-Age, ; State of Orissa Vs. B.N. Agarwalla, etc., . In Ram Nath International Construction Pvt. Ltd. Vs. State of U.P., , it was held that the power to award interest is a discretionary power of arbitrator which can be exercised in absence of any stipulation to the contrary in the agreement between the parties,

8. The arbitrator has awarded a sum of Rs. 79, 811/- to the claimant. In addition, the arbitrator has also awarded interest pendente lite @ 33% per annum amounting to Rs. 26,337.26 and future interest @ 18% per annum. In my opinion, the award of interest pendente @ 33% appears to be excessive. The reasonable rate of interest pendente lite should be 18% per annum. Consequently, the award of interest pendente lite is reduced to 10% per annum.

9. For the foregoing reasons, the objection of the respondent against the award of pendente lite interest is partly allowed and the award is modified to the extent indicated above. Remaining objections against the award are disallowed. With the aforesaid modification in the award, it is made a rule of the Court. In addition, the claim-ant/contractor shall also be entitled to recover interest @ 12% per annum on the sum of the award from the date of decree till realisation. Parties shall bear their own costs. A decree be drawn up accordingly.