

(1999) 05 DEL CK 0094

In the Delhi High Court

Case No : I.A. No. 4865/87 in Suit No. 1573-A of 1986

Joginder Kumar Gandhi

APPELLANT

Vs

D.D.A. and Another

RESPONDENT

Date of Decision : 26-05-1999

Acts Referred:

Arbitration Act, 1940 — Section 30, 33

Citation : (1999) 80 DLT 217 : (1999) 50 DRJ 427

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : B.M. Sehgal, for the Appellant; V.K. Sharma, for the Respondent

Judgement

M.K. Sharma, J.—The petitioner was awarded the work contract by respondent No.1 in respect of which an agreement was executed between the petitioner and the respondent No.1. The tenders for the aforesaid work were invited on 11.7.1986. After filing of the said award in this court, the petitioner filed an objection which is registered as

I.A.No.4865/87.

2. I have heard the learned counsel appearing for the parties on the aforesaid objection filed by the petitioner and I propose to dispose of the objections claim wise and the suit, by this common order.

CLAIM NO. 1

1. This was a claim of the petitioner for payment of a sum of Rs.20 lacs towards the work carried out in saturated soil and also towards pumping out water. The arbitrator considered the evidence on record and on appreciation thereof, held that claim of the petitioner for extra payment for pumping out water and carrying out work under saturated soil conditions in excavation for trenches is not justified and accordingly rejected the said claim. The arbitrator while coming to the aforesaid conclusion discussed the conditions of the tender and found that

estimated quantities, rates and amounts were indicated in the schedule issued by the respondent No.1 and the tenderer was required to quote his overall percentage above the aforesaid rates. The arbitrator held that the petitioner was aware about the conditions of sub-soil water in the area and , Therefore while quoting the percentage of 80.5% above, the petitioner should have and must have taken into account the extent of pumping out water involved in the job and amounts to be paid to him at the estimated rates and , Therefore, he could not have made a further claim for extra payment for pumping out water and carrying out work under saturated conditions in excavation for trenches and on count the claim was rejected.

3. Counsel appearing for the petitioner drew my attention to the objection raised as against the aforesaid award. According to him , important facts relevant for deciding the aforesaid issues were not taken of and considered by the arbitrator. Counsel also submitted that the instant contract was for doing the balance work left out of the original contract in favor of a third party. He submitted that the original contract was executed through M/s. G.D.Tewari & Co. and in respect of the aforesaid contract, respondent No.1 actually made payment to M/s. G.D. Tewari & Co. for pumping out water caused by spring in respect of excavation for sewer lines and, Therefore, similar relief and benefit cannot be denied to the petitioner He also submitted that the arbitrator failed to give a speaking award and no reasons have been given in coming to the aforesaid conclusions.

4. The allegations made by the petitioner in the objection are denied by the respondent No.1 in the reply filed. It is also stated by the counsel appearing for respondent No.1 that the contract of the petitioner was an independent contract and has no relevance to the contract of M/s. G.D.Tewari & Co. Counsel further submitted that the conditions, schedule of rates and drafting of the present contract are different than and independent of what it was in case of M/s. G.D.Tewari & Co. He also submitted that the contract of the petitioner in itself is a complete contract and there is no necessity of paying extra on account of pumping out water in respect of excavation for sewer lines.

5. The arbitrator considered the records and on appreciation thereof has come to the conclusion that the petitioner is not entitled to the aforesaid claim. The arbitrator has given his reasons for arriving at the aforesaid conclusion and sufficiency of such reasons cannot be gone into by the court. Those are conclusions of fact arrived at by the arbitrator and this court cannot sit on appeal and scrutinise and re-appreciate the conclusions of facts arrived at by the arbitrator. Counsel for the petitioner has failed to bring home the allegation that there is error apparent on the face of the record. There is no error committed by the arbitrator on the face of the records and thus, the aforesaid award passed by the arbitrator is upheld.

CLAIM NO.2.

Claim No.2 is a claim of the petitioner for payment of an amount of Rs.83,482/- ,

which is a claim for reimbursement under Clause 10 (c) for enhancement in labour rates from Rs.5.15 to Rs..6.75 w.e.f. 1..4.1976. The aforesaid claim was also rejected by the arbitrator. It was found by the arbitrator that the contract was awarded on 3.1.5.1976 and the notification for enhancement of wages of labour was issued by the Delhi Administration on 1.4.1976 i.e. before the contract was awarded. The arbitrator found that the petitioner raised his claim for the first time vide his letter dated 6.12.1.980 (Ex.C-12) i.e. after more than four and a half years after the contract was awarded and , Therefore, the said claim is time barred and cannot be entertained.

6. Counsel appearing for the petitioner submitted that there is an error apparent on the face of the record in holding the claim to be time-barred as the said ground was neither raised by the respondent nor was discussed. It was also submitted that the arbitrator while deciding the aforesaid issue failed to consider as to whether the petitioner had actually paid the wages in accordance with Clause 10 (c) of the claim. In support of his contention and entitlement of the aforesaid dues , counsel for the petitioner relied upon the decision in *Pride Construction Co. vs. D.D.A.* reported in AIR 1990 16 and also an unreported decision in *Pishori Lal Mago, vs. D.D.A. & Another* in S.No.2424-AI 1987 disposed of on 28.1.1994. In the case of *M/s. Pride Construction (Supra)* , this court found that since the arbitrator held that the petitioner could not come to know about the increase in labour wages up to the time of submitting of its tender, the contractor becomes entitled for the extra amount only under Clause 10-C if he properly pays the increased wages under the notification. It was further held that since there was no dispute that the contractor did pay the wages as increased by the notification dated 23.2.1982 and the petitioner was claiming only that amount, which was upheld by the arbitrator , Therefore, the court found that there was no reasonable ground and reason to differ with the view taken by the arbitrator which was found to be reasonable.

In *M/s. Pishori Lal Mago (Supra)*, this court found that a contractor would be entitled to an amount on account of increase in labour wages if the increase in the rate of labour wages was at the time of the receipt of the tender for the work.

7. In my considered opinion, the facts of the aforesaid cases are distinguishable from the facts of the present case . In the aforesaid two cases, the arbitrator on appreciation of the records found that the petitioner/contractor is entitled to the increase in the labour wages, whereas in the present case on appreciation of records, the arbitrator found that the petitioner/contractor is not entitled to the increase. Besides, in the case of *M/s. Pishori Lal Mago(Supra)*, the court held that the contractor is entitled to an amount on account of increase in the labour wages as increase in the labour wages was at the time of receipt of the tender for the work. In that case, the labour wages were made applicable w.e.f. 23.2.1982. In other words, in that case the labour rates were increased after receipt of the tender i.e. 4.12.1981 and that the tender was accepted on 15.3.1982. In the present ease, however, the rates were increased after

negotiations had taken place and the contract was awarded to the petitioner. The arbitrator on consideration of the entire evidence on record and the relevant date of submission of tender and effective date of the notification, found that the petitioner is not entitled to benefit of the aforesaid notification. That again, in my considered opinion, is the conclusion arrived at by the arbitrator on appreciation of record and this court cannot re-appreciate the findings and conclusions arrived at by the arbitrator. The aforesaid conclusion of the arbitrator and the award passed by him also stand upheld.

8. So far award passed by the arbitrator against Claim Nos. 3 & 4 is concerned, objections have been filed by the petitioner. I have carefully perused the contents of the aforesaid award passed by the arbitrator and find that the arbitrator has given sufficient reasons for his award. Thus, I do not find any merit in the said objections filed against the award passed by the arbitrator in respect of claim Nos. 3 & 4 and the same stand rejected. The said award also stands upheld.

9. In the result, the objection filed by the petitioner stands rejected and the award passed by the arbitrator is made a rule of the court. Let the decree be drawn up in terms of the award.