(1999) 02 DEL CK 0010

In the Delhi High Court

Case No : Suit No. 29-A of 1992 and 704A/92 and 704 of 1992

Kalyan Chandra Goyal APPELLANT

Vs

Delhi Development Authority and Another RESPONDENT

Date of Decision : 24-02-1999

Acts Referred:

Citation : (1999) 6 AD 111

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

Bench : Single Bench

Advocate : Mr. Girish Aggarwal, for the Appellant; Mr. V.K. Sharma, for the Respondent

Judgement

DR. M.K. Sharma, J.—The petitioner was awarded a work contract for providing peripheral water supply line by the respondent. During the execution of the aforesaid contract disputes arose between the parties and accordingly the said disputes were referred to an arbitrator Appointed by the appointing authority.

2. The arbitrator entered upon the reference, accepted evidence adduced by the parties and thereafter by his order dated 7.12.1991 published the award. The said award was filed in this court as against which both the petitioner as also the respondent filed their objections. The objection of the respondent relate to award passed by the arbitrator in respect of claims No.1,4,5,7 & 14 whereas the objections of the petitioner relate to claims No.6,8,12 & 13. The aforesaid objections were placed before me for considerations and disposal, on which I have heard the learned counsel appearing for the petitioner as also the learned counsel appearing for the respondent.

3. Mr. Aggarwal appearing for the petitioner at the very outset fairly submitted that so far as the petitioner is concerned he is not pressing the objections in respect of claims No.6,8 & 12. Thus the objections in respect of the aforesaid claims stand dismissed as not pressed. Under the aforesaid circumstances the objections of the petitioner survive only in respect of claim No.13.

4. I have carefully perused the award passed by the arbitrator Along with the records relating to the arbitration proceedings and on close scrutiny thereof I propose of dispose of the objections as against the aforesaid claims claim wise hereunder:-

CLAIM NO. 1:

5. This is a claim for payment of an amount of Rs.1,30,000/- by the petitioner towards cost of rubber rings as the cost of this item is not covered by any item. My attention was drawn to the contract entered into between the parties and the schedule of the quantity annexed to the said agreement. Special mention may be made to item No.10 thereof which is relevant for the purpose of deciding the present case. The said item is for providing and fixing rubber ring to PSC pipes and specials including of joints which was agreed to be done at Rs.93.25 but the said price was not inclusive of the cost of rubber rings. The said entry specifically says ''but excluding the cost of rubber rings''. The arbitrator has taken note of the said entries indicating that the price quoted and agreed is excluding the cost of rubber rings. It is an admitted position that the rubber rings have been supplied by the respondent for which price has been recovered from the petitioner. According to the arbitrator since the petitioner has paid for the rubber rings to the respondent they are entitled to payment of the cost of rubber rings separately, and based upon the aforesaid conclusions and considering the issue rate of Rs. 85/- per rubber ring the arbitrator came to a further finding that the amount payable for that comes to Rs. 96.66 per rubber ring. The aforesaid rubber rings were supplied by the respondent to the petitioner for which payment was made by the petitioner at Rs. 85/- per rubber ring to the respondent. Therefore, whatever amount, if any, is recoverable by the petitioner from the respondent towards cost of the rubber ring could not have been more than Rs.85/- per rubber ring i.e. at the rate at which the respondent supplied the said ring to the petitioner. In this context I have also looked into the counter statement of claims of the respondents put up before the arbitrator. The stand taken in the said counter statement of facts is that the expression in item No.10 "excluding cost of robber rings" should have been actually ''including the cost of rubber rings'' which according to the respondent is a typographical error. Prior to the aforesaid date and during the period of execution of the contract no amendment to the contract was issued by the espondent and Therefore, the respondent is debarred to take up the plea of a typographical error to state that in place of the word ''excluding'' the word ''including'' should be read. The respondent is not entitled to substitute the terms and conditions of the contract at this distant date particularly after the contract has been executed. In that view of the matter the aforesaid of the arbitrator is upheld with a modification that the petitioner shall be entitled to payment @ Rs. 85/- per rubber ring for total number of 112/ rubber rings for which amounts have been recovered from the petitioner up to 18th running bill and for which payment was directed to be made by the arbitrator. Computing on the basis thereof the net amount payable up to that date comes to Rs. 95,795/- and the award to the extent of said amount

stands upheld as payable to the petitioner as the aforesaid mistake is apparent on the face of the records, and exercise of the power u/s 16 of the Act.

CLAIM NO. 4:

6. This is a claim for an amount of Rs.1,65,000/- on account of doing barricading in respect of which Rs. 25,000/- has been awarded by the Arbitrator. The Arbitrator has given strong and cogent reasons for arriving at the aforesaid conclusion after taking into consideration the entire facts and circumstances of the case. The arbitrator did not accept the rate as claimed by the petitioner and on scrutiny on the analysis the arbitrator held that a rate of Rs. 5/- per meter would be justifiable. In my considered opinion some guess work is always inevitable where definite analysis and/or calculation is not provided by the parties. The aforesaid award passed by the arbitrator is Therefore, upheld.

CLAIM NO. 5

7. This claim relates to payment of Rs. 30,000/- towards refund of rebate which was deducted by the respondent. The aforesaid deduction was made as the petitioner agreed to grant a rebate, if payments, are made to the petitioner as stipulated are regularly every month. The arbitrator, on perusal of the records found that the payments were not made monthly and that there was delay in making monthly payments and on the basis thereof held that the respondent is not entitled to such deduction. I do not find any error apparent on the face of the record in the aforesaid conclusion arrived at by the arbitrator and Therefore, the said award also is upheld.

CLAIM NO. 7:

8. The next claim relates to the claim of the petitioner for payment of Rs. 4,06,890/- on account of extra cost involved in taking the pipes up and lowering down due to unusual opography of site and also due to handing of heavy pipes than stipulated. In respect of the aforesaid claim the amount awarded by the arbitration is Rs.16,562/-. The arbitrator has given cogent reasons and calculations for arriving at the aforesaid amount as against a heavy claim of Rs.4,06,890/-. The arbitrator has exercised his discretion. I find no reason to interfere with the discretion exercised by the arbitrator. The said award is accordingly, upheld.

CLAIM NO.14:

9. The next objection of the respondent is against claim No.14 in respect of which the arbitrator has awarded a sum of Rs. 2,500/- as cost of the proceedings to the claimants. This is a discretionary power vested with the arbitrator which he has exercised. I find no reason to interfere with the discretion exercised by the arbitrator.

CLAIM NO.13:

10. The objection filed by the petitioner survives in respect of claim No.13 which

is a claim for payment of pendentelite interest. The arbitrator rejected the said claim on the ground that in terms of the decision of the Supreme Court the said claim of pendentelite interest is not within the purview of the arbitrator. The law with regard to the grant of pendentelite interest not being within the purview of the arbitrator has undergone change and in this connection reference may be made to the decision of the Supreme Court in State of Orissa Vs. B.N. Agarwalla, etc., wherein it was held that for the period during which the arbitration proceedings were pending, the arbitrator has to power to award interest.

As during the pendency of the present proceedings for consideration of the objection of the petitioner and making the award a Rule of the Court. The Supreme Court has authoritatively laid down in State of Orissa case (supra) upsetting its earlier decision that the arbitrator has no such power on which the arbitrator relied upon for denying relief to the petitioner. I consider this to be a fit case where the findings of the arbitrator in respect of this award are required to be set aside. Accordingly, I set aside the award passed by the arbitration in respect of the aforesaid claim and remit the same to the arbitration for fresh consideration on merits in accordance with law.

11. Accordingly, the objections as against all other claims except for Claim No.14 are rejected and objection against claim No.14 are allowed. The award is made a Rule of the Court except for the award against claim No.14. Decree be drawn up in terms of this order. Claim No.14 is remitted to the arbitrator for consideration afresh in accordance with law. In case the arbitrator in not in service now, it shall be open to the respondent to appoint a new arbitrator to decide the aforesaid issued remitted by this court. The petitioner shall also be entitled for payment of interest at the rate of 15% from the date of the decree till realisation u/s 29 of the Arbitration Act.

