

(1995) 07 DEL CK 0057

In the Delhi High Court

Case No : Suits No. 657 and 1389/94

M/s. Polo Singh and Co.

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 24-07-1995

Acts Referred:

Citation : (1995) 3 AD 561 : (1995) 2 ARBLR 303 : (1995) 59 DLT 463 : (1995) 34 DRJ 373

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : Mr. Shallen Kumar, for the Appellant; Mr. Ekta Vazirani, for the Respondent

Judgement

S.K. Mahajan, J.—Certain disputes had arisen between the parties under Agreement No. 38/EE/PWD-28/DA/88-89 in the execution of the work of construction of Police Line and residential quarters for police department at Pitampura, Shakurpur, Delhi and the same were referred for adjudication to Sh. V. Nainani, Arbitrator, in the Ministry of Urban Development-Respondent No. 2 herein. After hearing the parties and perusal of record, the arbitrator made and published his award on 2nd March, 1994. The said award was filed in court and notice at filing the same was given to the parties. The respondent has filed objections to the award.

2. The arbitrator has awarded a sum of Rs. 15,000/- to the petitioner under claim No. 1; Rs. 10,000/- under claim No. 2; Rs. 2,09,494.91 paise under claim No. 4; Rs. 3,134.55 paise under claim No. 5; Rs. 36,000/- under claims No. 7, 8 and 11; Rs. 5,732/- under claim No. 10. All other claims of the petitioner were rejected. The arbitrator has also awarded simple interest at the rate of 12 per cent per annum from 6th February, 1993 till the date of the award on the amount awarded against claims No. 1, 3, 4 and 10 only. The arbitrator had also awarded interest at the rate of 12 per cent per annum on the awarded amount from the date of the award till the payment of the decree.

3. The only objection raised by the respondent is in respect of amount of Rs. 2,09,494.91 paise awarded against claim No. 4. Learned counsel for the respondent has drawn my attention to the letter dated 21st October, 1988 which forms part of the contract. In terms of the said letter, the petitioner was to give a rebate of 2.25% for regular monthly payments before 30th of each month to be availed by the department on gross amount of all the running bills including the final bill. Two per cent rebate was given if the final bill in respect of undisputed sum was paid within six months of the completion of the work. Learned counsel for the respondent has also drawn my attention to the footnote of the said letter wherein it is stated that this rebate shall not be vitiated by any unavoidable or accidental delay in the monthly payment. The argument, Therefore, is that even in case there was a delay in the payment of either the running bills or the final bill, the petitioner was liable to give rebate at the rates mentioned in the said letter. It is, Therefore, contended that the arbitrator has miscondacted himself and the proceedings by giving back this rebate to the petitioner under claim No. 4. The arbitrator while discussing this claim has held as under :

Considering the chronology of payment of various RA bills evidence by the respondent at R/4, I am of the view that the respondent had faltered in payment of monthly RA bills on number of occasions. I assess that the claimant are entitled to refund of about 20% of the rebate availed for the same by the respondent. Thus a sum of Rs. 38,478.66 is payable for this part of the claim.

As regards the final bill, although the work had been completed on 28.2.1992 but the final bill for the same was paid by the respondent belatedly only on 12.5.1993. The claimant during the protracted period of non-payment of final bill had repeatedly entreated for its early payment and had also clearly asserted that the rebate for the same was not deductible owing to non-compliance of condition for availing the same (C/84 dated 28.9.1992 C/88 dated 7.12.1992). In fact, a result SD amounting to Rs. 1.00 lac deducted from the RA bills for satisfactory performance of contract was also not released by the respondent. Under the circumstances reliance placed by the respondent on exhibit C/110 dated 10.8.1993 from the claimant that they would not prefer any claim on account of delayed payment of final bill and that condition of rebate relating to payment of final bill was not effective, is of no consequence as the same had been written nearly 3 months after the payment of final bill. Moreover language of the letter is vague and does not even lead to an interpretation that claim for rebate has been given up by the claimant. I Therefore hold that claimant is entitled to rebate availed by the respondent for payment of final bill amounting to Rs. 1,71,016.25.

4. It is correct that in terms of the letter dated 21st October, 1988 which forms part of the contract, the contractor had agreed to give a rebate of 2.5 per cent for regular monthly payments made before the 30th of each month and 2 per cent rebate of the final bill in respect of the disputed sum was paid within six months of the completion of the work. The case of the plaintiff before the

arbitrator was that the department had not been making payments either of the running bills or of the final bill during the period mentioned in the said letter. They were not entitled to the rebates which were agreed to be given by the contractor and, Therefore, the rebates which had been deducted by the department from the bills of the contractor were liable to be refunded back to the contractor. The arbitrator has considered this aspect of the matter and after going through the record he has held that the department had faltered in payment of the monthly running bills on number of occasions and as such he has assessed that the petitioner was entitled to the refund of 20 per cent of the rebate availed by the Government and has awarded a sum of Rs. 38,478.66 paise in respect of the running bills. In respect of the final bill, the arbitrator has held that inspite of repeated demands of the contractor, the Government made payment of the final bill only on 12th May, 1993 whereas the work had been completed on 28th June, 1992.

5. For the Government to be entitled of the rebate, the payment ought to have been made within six months from the date of the completion of the work. Ms. Vazirani appearing for the respondent-Union of India has sought to justify the delayed payment on the ground that such delay was unavoidable. I am afraid that this cannot be a ground for availing rebate under the agreement.

6. Be that as it may the question arises whether the court can go into this question of disallowing the rebate by the arbitrator. The arbitrator is made the final arbiter of the disputes between the parties and the award is not open to challenge on the ground that arbitrator has reached a wrong conclusion or has failed to appreciate the facts. Finality attaches to the decision of the arbitrator who is a Judge of both questions of fact and law referred to him. On the basis of the evidence which was before him, the arbitrator has come to the finding that there was a delay in the payment of the running bills as well as final bill and as such the rebate which had been deducted from the bills was entitled to be paid back to the contractor. It is not open to the court at this stage to re-assess the claims and to find out if the arbitrator has committed any error in coming to the finding arrived by him. The court cannot sit in appeal over the conclusions of the arbitrator by re examining and re-appraising the evidence considered by him. It is not open to the court to attempt to probe the mental process by which the arbitrator has reached his conclusions.

7. In the present case, the award is a reasoned award. The reasonableness of the reasons given by the arbitrator in making his award cannot be challenged. The arbitrator being the sole Judge of the quality as well as quantity of evidence, it will not be for the courts to take upon itself the task of being a Judge of the evidence before the arbitrator. It may be possible that on the same evidence the court might have arrived at different conclusions than the one arrived at by the arbitrator but that by itself is no ground for setting aside the award of the arbitrator. It was within the authority of the arbitrator to decide whether the Union of India had rightly claimed rebate and once he had come to the

conclusion that on account of delayed payment the Government was not entitled to rebate, in my opinion, there is no error in the award and no case has been made out for setting aside the same. No other point has been urged by the objector.

8. In view of the discussions made above, the objections of the Government to the award are dismissed. The award dated 2nd March, 1994 is made a rule of the court and a decree in terms of the award is passed in favor of the petitioner.

The petitioner shall also be entitled to interest at the rate of 9 per cent per annum from the date of decree till the date of realisation.

9. Parties are left to bear their own costs.