

(1995) 07 DEL CK 0022

In the Delhi High Court

Case No : Suit No's. 3342 and 3749 of 1991

Prakash Chand and Sons

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-07-1995

Acts Referred:

Citation : (1995) 59 DLT 669

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

Bench : Single Bench

Advocate : P.N. Kumar, Anurag Kumar and Suman Bagga, for the Appellant;

Judgement

S.K. Mahajan, J.

(1) The Arbitrator Mr. V. Nainani filed in Court this award made and published by him on 26th September, 1991 in the disputes between the parties referred to him under agreement No. 55/EE/PWD-19/DA/ 88-89 relating to the work of construction of 100 bedded hospital in Khichripur, Delhi. Notice of filing of award was given to the parties and objections to the same have been filed by the respondent-Union of India.

(2) In its objections petition under Sections 30 and 33 of the Arbitration Act, it has been alleged that the award passed by the Arbitrator is arbitrary, illegal and against facts and law and was beyond the scope of reference. It is alleged that the Arbitrator misconducted himself by saying that the Union of India had not reserved its right to claim damages for delay in the completion of the work and the work had not been taken up at the risk and cost of the contractor till the date of the award and as such, according to the Arbitrator, the risk action failed. It is also alleged in the objection petition that the Arbitrator has wrongly decided claim No. 2 stating that the respondent impliedly accepted the performance of the claimant beyond the stipulated date of completion and, according to the Objector, arbitrarily awarded 75 per cent of the escalation beyond the stipulated period of contract. This finding of the Arbitrator, according to the Objector, is

beyond the terms of reference and beyond his jurisdiction. The award on future interest and the cost of escalation have also been challenged by the Objector. Reply to the objections had been filed and on the pleadings of the parties, following issues were framed :- 1. Whether the award is liable to be set aside for the reasons stated in the objections filed by the respondent? 2. Relief. I have heard learned Counsel for the parties.

(3) The main objection to the award by the Union of India is that the Arbitrator has acted beyond the scope of reference inasmuch as the question whether the Union of India had or could execute the balance work at the risk and cost of the contractor had not been referred to arbitration and by giving the finding that as on the date of giving the award, Union of India had not taken up the work at the risk and cost of the contractor and had not reserved to itself the right to claim damages for delay in completion of work and as such risk action failed, was beyond the scope of reference of the Arbitrator. The argument is that by giving this finding the Arbitrator has for all intents and purposes barred the Union of India from claiming any amount by way of damages from the contractor for the work which is being executed at the risk and cost of the contractor. It is, Therefore, submitted that the Arbitrator could not have given this finding. On the question of award of a sum of Rs. 92,621 against claim of the contractor on account of increase in rates, the argument is that the Arbitrator could not have awarded this amount because the contractor had already been paid for the escalation of the rates.

(4) After going through the record and after hearing the Counsel for the parties, I find that there is force in the argument of the Counsel for Union of India that there was no occasion for the Arbitrator to give any finding on the question whether risk action had failed or not because that was not a question which had been referred to the Arbitrator. The Arbitrator has given these findings in the preamble of the award discussing claim Nos.1 to 4, this question had not been argued nor there was any occasion for the Arbitrator to discuss this question of risk cost, as it was not referred to him. It appears that the Arbitrator has given his finding out of context. Mr. Kumar appearing for the contractor has not been able to support the finding of the Arbitrator on this point. I, Therefore, set aside this part of the findings of the Arbitrator.

(5) Find that the Arbitrator on considering the material on record has given his award holding that the claimant contractor was entitled to the amount on account of work having continued even after the stipulated date of completion and as no penalty has been imposed upon the contractor for delay in the completion of the work, he assumed, and rightly so, that the extension had been given to the contractor to continue to execute the work even after the stipulated date of completion without any penalty. As there was material before the Arbitrator to come to this finding, I find that it will be very difficult for the Court to set aside the same.

(6) 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.

(7) 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 findings arrived at by him. The Court cannot sit in appeal over the conclusions of the Arbitrator by reexamining 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.

(8) 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.

(9) The Arbitrator had the power to award interest as well as cost and, Therefore, I find no reason to set aside the award on the ground that the interest and cost had been wrongly awarded. As I have held that the Arbitrator has acted beyond the scope of reference in giving his findings "that the work had not been taken up at the risk and cost of the petitioner and risk action fails" and these findings have been set aside, the award requires modification. This part of the award is upon a matter not referred to arbitration and as such this part can be separated from the other part of the award and will not affect the decision on the matters referred to him.

(10) I, Therefore, set aside the findings of the arbitrator mentioned above and separate it from the other part of the award and make the award, as far as claim Nos.1 to 4 are concerned, a rule of Court. The modified award is, accordingly, made a rule of Court and a decree in terms of the modified award is passed. The petitioner will also be entitled to interest at the rate of 9 per cent per annum from the date of decree till the date of payment.

(11) In the circumstances of the case, I leave the parties to bear their own costs.