

(1996) 09 DEL CK 0028

In the Delhi High Court

Case No : Suit No. 3120A of 1990 and Interim Application No"s. 4121 and 6296 of 1991

Raj Kumar

APPELLANT

Vs

Executive Engineer, CPWD

RESPONDENT

Date of Decision : 02-09-1996

Acts Referred:

Citation : (1996) 64 DLT 150 : (2003) 39 DRJ 15

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : Mukul Rohatagi, Amrita Sanghi and Sandeep Agarwal, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) The award dated 6th September, 1990 in the matter of arbitration between the petitioner and the Union of India was filed in this Court by the Arbitrator Sh. N.H. ChandWani, who was appointed as an Arbitrator, by the Chief Engineer, Cpwd, New Delhi, vide letter dated 12th January, 1989 to decide disputes between the parties.

(2) The first respondent awarded the contract for the construction of hostel for students and nurses at Safdarjung Hospital, New Delhi,, to one P.D. Gupta, contractor. As the said contractor was not able to complete the work, the balance work was awarded to the petitioner by the second respondent (UOI). Disputes, however, arose between the petitioner on the one hand and the said respondents on the other and the former sought reference of the same to an arbitrator. Thereupon the Chief Engineer (NDZ-1) referred the following disputes raised" by the petitioner to the aforesaid arbitrator:

"1.The contractor claims Rs. 8,00,000.00 on account of work done but not paid by the department. 2. The contractor claims Rs. 40,000.00 on account of payment/reimbursement under clause of the agreement due to increase in wages

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(3) On 19th June, 1989 the parties concluded their oral arguments before the Arbitrator. Thereafter on 1st July, 1989, joint measurements by both the parties were completed. On 24th April, 1990, the first respondent pursuant to the taking of the joint measurements, wrote a letter to the Arbitrator regarding quantity of work executed at site and other connected matters. This letter reads thus:-

" SIR, In this connection it is stated that the R-20 has been recasted as decided by you in support of the facts stated in R-21. The provision of R-21 will reveal that the quantity claimed by the contractor and paid by the department has been indicated separately in column 3 & 4 respectively. The variation of quantity executed at site by joint measurement have been shown in column 5. The difference in quantity which is rejected or not paid has been indicated in column 7, which is duly supported with respective exhibits marked in red pen. In short it may be mentioned that the difference between column 5 & 7 is the agreed quantity. The fresh photo copy R-15 and R-16 are re- submitted as desired. R-15 to R-16 and as under in support of R-21 are submitted herewith. The respondents has given his consent for extension of time for publishing the award up to 31.7.90. R-38,R-39,R-40, R-41,R-42,R- 42(a),R.43,R- 46 and R-47 the other connected-have already been submitted vide T.O. No. 55 (170)/CDIX/A-IV/780 dated 5th February, 1990."

(4) As is apparent from the above, the letter was also accompanied by documents and charts containing details of work claimed to have been executed by the petitioner, the work actually executed by it at site as per the joint measurements, details of the amount paid to the petitioner and the quantity of work for which payment was not made to him etc. A copy of the aforesaid letter was also sent to the petitioner.

(5) On 21st May, 1990 the petitioner responded to the aforesaid letter of the respondent. This letter reads as follows:

" SIR, In response to your letter dated 10.4.90, the claimants do hereby give their consent for enlargement of time up to 31.7.90 for making and publishing the award. The claimants further submit their reply in response to respondents letter dt. 24.4.90 and other communications on the subject, as under: 1. The claimants are enclosing details of claim in-respect of unmeasured quantities of work. Reply to the respondents objections/ reasons is also submitted in the remarks column. The claimants also submit A/R in respect of items not covered by the agreement. As per the details attached, a sum of Rs-3,42,547.85 is due and payable to the claimants in respect of the work executed but not paid by the respondent. 2. The claimants are also enclosing Annexure "A" in respect of the wrong full recoveries, withholding and under payment made by the deptt. in respect of 7th R/A bill (R-15). The amount payable to the claimants as per details is Rs. 22,357.57. 3. The claimants are also enclosing Annexure "B" in respect of wrong full recovery/with-holding etc. from the 8th R/A bill (R-16). The total

amount due and payable as per the details enclosed works out to Rs. 59,163.00 . Thus the following sum is due and payable to the claimants against claim No. 1. (i) Rs. 3,42,547.85 (ii) Rs. 22,357.57 (iii) Rs. 59,163.00 4,24,068.00 SayRs. 4,24,068.00 The claimants Therefore request the learned arbitrator for an award of Rs. 4,24,068.00 in favor of the claimants under claim no: 1."

(6) The Arbitrator on 6th September, 1990 i.e. after the joint measurements and receipt of the aforesaid two letters made and published his award and filed the same in this Court. The Union of India not being satisfied with the award, has challenged the same mainly on the ground that the Arbitrator after the oral arguments were concluded on 19th June,1989, permitted the petitioner to submit fresh claims and adjudicated the same even though the same were beyond the terms of reference and without fixing the matter for further hearing. The learned counsel appearing for the aforesaid respondent submitted that the Arbitrator misconducted the proceedings by accepting fresh claims of the petitioner for his consideration and determination without granting an opportunity of hearing. He also submitted that the Arbitrator travelled beyond the reference. On the other hand, learned counsel for the petitioner submitted that in view of the joint measurements and in response to the letter of the respondent dated April 24, 1990 the petitioner merely scaled down claim No.1 from Rs.8 lakhs to Rs.4,24,068.00 which does not and cannot tantamount to raising of the fresh claims. The arbitrator, Therefore, did not traverse beyond the reference, contended the learned counsel. He also vehemently refuted the contention of the learned counsel for the aforesaid respondents that there was any error apparent on the face of the award or the arbitrator misconducted the proceedings in any manner whatsoever.

(7) I have considered the submissions of the learned counsel for the parties. As already noticed, oral arguments were concluded before the Arbitrator on June 19, 1989 and subsequent thereto joint measurements were taken by the parties on July 1, 1989. Thereafter, the respondent No.2 vide its letter dated 24th April,1990 filed before the Arbitrator its analysis based on joint measurements. It was then that the petitioner by his letter dated 21st May,1990 responded to the letter of the respondent No.2 dated 24th April,1990. It is in the background of these facts and those mentioned above that it is to be seen whether the petitioner by means of letter dated May 21, 1990 merely scaled down claim No.1 to Rs.4,24,069.00 or in the garb of reducing the amount raised fresh and new claims. This would require a closer look at the letter of the petitioner dated May 21, 1990. Para No.1 of the letter pertains to work executed by the petitioner but not paid by the respondent. Para 2 of the letter relates to the claim of Rs.22,357.57. This -amount pertains to the alleged "wrongful recoveries and withholding of monies and under payment by the department in respect of 7th R/ A bill. Similarly para 3 pertains to claim of Rs.59,163.00 . This amount relates to the alleged wrongful recoveries and withholding of monies in respect of the 8th R/ A bill (R-16). Annexures A and B mentioned in paras 2 and 3 of the said letter give details of the amount claimed by the petitioner on account of the aforesaid

counts. The subject matter of Annexures A and B is "Income Tax, damage of meter, damage of cable lines, damage to compound wall, employment of engineer, cost of material, amount withheld for non-sanction of items, risk and cost work, penal rate of recovery and recovery on account of defective work, etc." Now turning to the statement of claims dated February 23, 1989, it is apparent that the petitioner under the original claim No.1 had demanded a sum of Rs.8 lakhs on account of work done but not paid by the department. The arbitrator while making the award has dealt with claim No.1 and claim No.3 together. As per claim No.3 contained in letter of the petitioner dated February 23, 1989, it is clear that the petitioner was demanding a sum of Rs..40,000.00 on account of unjustified recoveries and amounts withheld by the department while making payment of the 6th R/A bill. It would thus be seen that actually claim No.3 and claims made in paras 2 and 3 of the letter dated May 21, 1990 are for recovery and are not in respect of claim No.1 for work done but not paid by the respondent or on account of unmeasured quantity of work. It appears to me that though the petitioner has placed claims for Rs.22,357.57 and Rs.59,163.00 under claim No.1 vide letter dated May 21, 1990, the same, however, do not fall under claim No.1 at all. The claims covered by paras 2 and 3 of letter dated May 21, 1990 are somewhat similar to the claim raised by the petitioner under its original claim No.3 and could be covered under it. It is, however, significant to note that the original claim No.3 pertains to the alleged unjustified recoveries in relation to 6th R/A bill, while in the letter of the petitioner dated May 21, 1990, which was written after holding of the joint measurements and hearing of the matter by the arbitrator, he inter alias claims payments on account of wrongful recoveries and withholding of monies by the respondent in respect of 7th and 8th R/A bills. These are new matters and have been raised only after the fresh joint measurements were taken and arguments heard in the matter by the arbitrator. Since these matters were raised for the first time in the letters of the parties after the hearing of the case, arbitrator ought to have granted opportunity to both the parties to address arguments on these aspects. Therefore, it appears to me that the arbitrator did not act in accordance with the principles of natural justice in so far as determination of items covered by paras 2 and 3 of the letter dated May 21, 1990 and as detailed in Annexures A and B thereto are concerned. Even though arbitrator can devise his own procedure for conduct of the proceedings before him, nevertheless the procedure must be just, fair and reasonable and must comply with the principles of natural justice. In Food Corporation of India Vs. Joginderpal Mohinderpal, it was held that the proceedings of arbitration must adhere to the principles of natural justice. In this regard, it was observed as follows:-

"BUT in proceedings of arbitration there must be adherence to justice, equity, law and fair play in actions. However, the proceedings of arbitration must adhere to the principles of natural justice and must be in consonance with such practice and procedure which will lead to a proper resolution of the dispute and create confidence of the people of whose benefit these processes are resorted to. It is,

Therefore, the function of courts of law to oversee that the arbitrators act within the norms of justice. Once they do so and the award is clear, just and fair, the courts should, as far as possible, give effect to the award of the parties and make the parties compel to adhere to and obey the decision of their chosen adjudicator. It is in this perspective that one should view the scope and" limit of correction by the court of an award made by the arbitrator. We should make the law of arbitration simple, less technical and more responsible to the actual realities of the situation, but must be responsive to the can one of justice and fair play and make the arbitrator adhere to such process and norms which will create confidence, not only by doing justice between the parties."

(8) Having regard to the aforesaid discussion, the award of the arbitrator relating to part Ii (1) to (7) and part Iii (1) to (5) under the head "claim No.1 and claim No.3" and matters covered under the said parts are remitted to the arbitrator for fresh adjudication in accordance with law. However, to put the matter beyond controversy the aforesaid items are hereby specifically referred to the Arbitrator for adjudication. The rest of the award is made a rule of the Court and a decree in terms thereof is hereby passed. The petitioner will be entitled to interest @ 12% on the amount payable to him as per award from the date of the decree till realisation.