

(1999) 04 DEL CK 0020
In the Delhi High Court
Case No : Suit No.1405-A of 1986

R.K. Goel Abhay Kumar Jain and another	APPELLANT
Vs	
Union of India	RESPONDENT

Date of Decision : 21-04-1999

Acts Referred:

Arbitration Act, 1940 — Section 30, 33

Citation : (1999) 3 AD 712 : (1999) 79 DLT 277 : (1999) 50 DRJ 637

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

Bench : Single Bench

Advocate : Mr. Tarun Sharma, for the Appellant; Mr. Dalip Singh, for the Respondent

Judgement

Dr. M.K. Sharma, J.—Disputes and differences having arisen between the parties relating to construction of Central School building at Janak Puri, New Delhi including internal water supply and sanitary installation, pursuant to Agreement No.70/EE/ DAO/ 78-79, the same were referred to the sole arbitration of Shri J.P.Singhal, Ministry of Urban Development, New Delhi, who was appointed as the Sole Arbitrator by the Chief Engineer (NZ), CPWD, New Delhi.

2. The arbitrator after having entered upon the reference and receiving evidence gave his award on 30.4.1986 awarding in favor of the petitioner a sum of Rs.1,07,628.70 plus 10% simple interest per annum thereon from 1.2.1983 till the date of payment of decree of the Court whichever is earlier.

3. A petition was filed in this Court under Sections 14 and 17 of the Arbitration Act which was registered as Suit No.1125-A/1986 seeking direction of this Court to respondent No. 2, namely, the arbitrator to file the original award given by him in this Court and seeking for making the award a Rule of the Court. The arbitrator filed his award along with the records of the arbitration proceedings in this Court and the same was registered as Suit No.1405-A/1986.

4. Notice of filing of the award was served on the parties. The petitioner did not

file any objection to the award whereas, the respondent/Union of India filed objections. Since none appeared on behalf of the objector to press the objections, the said objections were dismissed in default and after hearing the learned counsel appearing for the petitioner, this Court by order dated 17.1.1994 made the award a Rule of the Court, directing that the award shall form part of the decree.

5. Subsequently, however, an application was filed by the respondent seeking for setting aside the ex parte judgment and decree passed as aforesaid. The application filed by the respondent under Order 9 Rule 13 CPC and the application filed by the respondent u/s 5 of the Limitation Act were taken up for consideration and after hearing the parties, this Court by order dated 18.11.1996 set aside the judgment and decree dated 17.1.1994 and both the aforesaid suits were restored back to file with its original number. Accordingly, the aforesaid objections were placed for arguments on which I have heard the learned counsel appearing for the petitioner as also the counsel appearing for the respondent.

6. Counsel for the parties have taken me through the award passed by the arbitrator along with the relevant records. In the light of the rival submissions of the counsel appearing for the parties read along with the contents of the award and the records, I propose to dispose of the objection claim-wise.

CLAIM NO.1, COUNTER CLAIMS NO.1 & 2:

7. The arbitrator took up all the aforesaid claims together and disposed of the same holding that no penal action against the petitioner under Clause 3 of the agreement could be taken up by the respondent and the said action was held to be unjustified thus rejecting the counter claims No.1 and 2. The Claim No.1 of the petitioner was allowed holding that the petitioner is entitled to refund of his security deposit, that is, realisation of the bank guarantee amounting to Rs.80,000/- and refund of Rs.20,000/- paid in cash.

8. Objections have been filed by the respondent as against the aforesaid award on the ground that no specific findings were recorded by the arbitrator, but, rejected the counter claim No. 2 for levy of compensation of Rs.1,75,051/-. According to the counsel appearing for the respondent the aforesaid levy of compensation of Rs.1,75,051/- by the competent authority under the agreement was final. According to the learned counsel appearing for the respondent the relevant clause in the arbitration agreement deals with the question of compensation and provides that the concerned Engineer would decide the aforesaid question and the decision is final. Counsel submitted that the aforesaid decision of the competent authority being final, the said claim was an excepted matter and not arbitrable and the arbitrator could not have gone into the merits of levy of compensation by the Engineer. In support of his contention, the learned counsel relied upon the ratio of the decision in Vishwanath Sood Vs. Union of India (UOI) and Another, as also the decision of this Court in Delhi Development Authority Vs. M/s. Sudhir Brothers, .

9. There is force in the arguments of the learned counsel appearing for the respondent. However, when the respondent considered the aforesaid claim as not arbitrable in view of the words, "unless otherwise provided in the arbitration clause", the same should not have been referred to the arbitrator at all by the respondent.

10. Be that as it may, I am of the considered opinion, that the aforesaid dispute should not have been referred to the arbitrator by the respondent and the said dispute could not have been decided by the arbitrator going into the merits of the levy of compensation by the Engineer as the same was an excepted matter under the contract. To that extent, the award passed by the arbitrator as against counter claim No.2 stands set aside.

So far the award given by the arbitrator as against claim No.1 and counter claim No.1 are concerned, the same relate to forfeiture of the security deposit by the respondent invoking its powers under Clause 3 of the agreement as against the claim of the petitioner for refund of the said security deposit. The arbitrator found that the time stipulated for completion of the work could not be held to be the essence of the contract and that the work continued even after the stipulated time of completion with mutual conduct of the parties and, Therefore, the show cause notice dated 30.6.1982 issued by the respondent stood superseded and rescission of work for insignificantly small quantum of work without a proper opportunity by way of a fresh show cause notice was not proper. Thus, the arbitrator held that no penal action under Clause 3 of the agreement could be held to be justified.

11. Counsel for the respondent during the course of the submission vehemently submitted that the findings of the arbitrator that time was not the essence of the contract was fallacious and while dealing with the said claims, the arbitrator left out from his consideration vital documents having relevant bearing with the claims. It was submitted by him that there is a clear mistake apparent on the face of the record in holding that the show cause notice dated 30.6.1982 was superseded by subsequent letter dated 17.7.1982 for according to him the subsequent letter dated 17.7.1982 was another show cause notice requiring the petitioner to complete the work by 22.7.1982.

12. I have given my thoughtful consideration to the submissions of the learned counsel appearing for the parties in respect of the aforesaid issue. The arbitrator while coming to the aforesaid conclusion in respect of the aforesaid award has considered relevant documents and on consideration thereof came to the conclusion that as per the final bill prepared by the respondent the petitioner executed work amounting to Rs.17,32,257/- and the balance work estimated to cost of Rs.17,197/- only remained to be completed which would be about 1% of the total work. The arbitrator also found on record that most of the work, that is, about 99% of the entire work was completed by the petitioner and, Therefore, the action taken by the respondent for rescission of the work for insignificantly small quantum of work without a proper opportunity by way of a fresh show

cause notice was not proper. This conclusion is arrived at on appreciation of evidence on record and this Court, in my considered opinion, cannot sit on appeal on the aforesaid findings of fact and conclusions of fact arrived at by the arbitrator on appreciation of the evidence on record. It is also the finding of fact recorded by the arbitrator that the balance work estimated to be completed was of the value of Rs.17,197/-. The arbitrator held that forfeiture of security deposit for such small quantum of work was not justified. I am not inclined to interfere with the aforesaid findings and conclusions of fact arrived at by the arbitrator and accordingly, I uphold the award passed by the arbitrator.

13. An objection was also filed by the respondent as against rejection of counter claims No.3 and 4.

14. I have considered the award passed by the arbitrator in respect of the said counter claims and I do not find any error apparent on the face of the records in respect of the said award passed by the arbitrator. The objections against counter claim No.2 filed by the respondent stand allowed. Consequently, the objections, except for counter claim No.2, filed by the respondent in my considered opinion, have no merit and accordingly stand rejected. The award passed by the arbitrator except for counter claim No.2 is made a Rule of the Court. Let a decree be drawn up in terms of the award. In addition, the petitioner shall also be entitled to simple interest at the rate of 12% per annum on the principal amount awarded by the arbitrator from the date of decree till realisation.