

(2010) 03 DEL CK 0358
In the Delhi High Court
Case No : C.S. (OS) 2326 of 1992

Satish Kumar Marwah

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-03-2010

Acts Referred:

Arbitration Act, 1940 — Section 30, 33, 35

Citation : (2010) 03 DEL CK 0358

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Maninder Acharya, for the Appellant; Anuj Aggarwal and Gaurav Khanna for R-1 and 2 and K.M. Vyas, EE for CPWD, for the Respondent

Judgement

Manmohan, J.—By way of the present application, objections have been filed by respondents under Sections 30 and 33 of Arbitration Act, 1940 (hereinafter referred to as "Act, 1940") challenging the arbitral Award dated 12th May, 1992 passed by the Sole Arbitrator, Mr. S.S. Juneja.

2. The facts of the present case are that petitioner-claimant was awarded the work of construction of Transit Hostel for Scientist Department in Sector-X, R.K. Puram, New Delhi.

3. On 14th January, 1985, work under the Agreement commenced. Though 13th July, 1986 was the stipulated date of completion, work was actually completed on 18th July, 1988 with repeated extensions, which were found justified by the respondents-objectors.

4. Mr. Anuj Aggarwal, learned Counsel for respondents-objectors submits that the impugned Award is based on incorrect finding of facts and on misinterpretation of the provisions of the Agreement executed between the parties.

5. Mr. Aggarwal further submits that the Arbitrator has allowed Claims No. 3, 6 and 7 in violation of specific provisions of the Agreement.

6. Mr. Aggarwal points out that Glass Mosaic Veneering is within the purview of Item No. 9.14 of the original Agreement executed between the parties. He states that though the quantity of 660 sq. mtr. has been stipulated in the Agreement, petitioner-claimant has only executed 124.39 sq. mtr., that means, less than 20% of the agreed quantity. Mr. Aggarwal states that petitioner-claimant had no intention to carry out this particular work right from the inception of the Agreement, as it is an abnormally low rated item. In this context, he refers to petitioner-claimant's letter dated 26th December, 1984 wherein petitioner-claimant had voluntarily offered rebate of 1.30% on the tendered rates, in exchange for not executing said item.

7. Mr. Aggarwal states that the Arbitrator could not have allowed the difference in cost of white and ordinary/grey cement as Schedule of Supplies to the Agreement only specified the word cement. He submits that the term "cement" did not include white cement.

8. Mr. Aggarwal further submits that the Arbitrator has wrongly awarded Rs. 50,000/- under Claim No. 7 on the ground that the Agreement did not specifically stipulate that mild steel shall be supplied only for execution of Agreement Item No. 3.11.1. The relevant portion of the Agreement reads as under:

Schedule showing approximate quantity of materials to be supplied by the CPWD under Clause 10 of the conditions of the contract for work contracted to be executed and rates at which they are to be charged for:

Particulars	Qty.	Unit	Rate	Place of delivery	
					Cement
1775 M.T.	926/-	M.T.	Central Store	I Mild steel	16.8 M.T. 5200/- & II, C.P.W.D.
M.T. Netaji Nagar,			New Delhi	Cold twisted	542 M.T. 5800/- bars. M.T.

xxxx xxxx xxxx xxxx

3.11.1 Mild steel 16786 6.10 Kgm. 102395/- and medium Kg. (Rs. Six tensible & Paisa steel bars. Ten only)

3.11.2 Cold twisted 542736 6.70 Kgm. 3636331/- bars. Kg. (Rs. Six & Paisa seventy only)

9. On the other hand, Ms. Manindra Acharya, learned Counsel for petitioner-claimant submits that the impugned Award is not liable to be interfered with in Sections 30 and 33 proceedings. She states that petitioner-claimant was not bound to execute the balance quantity of Glass Mosaic Veneering as the same was based on revised drawing issued after the stipulated date of completion. In this connection, she places reliance upon the reasoning given in the impugned Award, which reads as under:

On consideration of documents filed and arguments advanced by parties, I find

that Claimants' main contention is that they executed the work of Agmt. item No. 9.14 as per drawing supplied during stipulated period and as such, rebate of 1.3% cannot be recovered (Condition No. 6 at page 217 of Agmt.) and they were not responsible for doing any extra quantity beyond stipulated date at agreement rates. On perusal of Exhibit R-221, R-222 and R-234 (sheets 2, 30 and 41), I find what Respondents have recovered is the risk and cost amount for extra quantity executed.

As is clear from above, the work got prolonged during stipulated period due to various hindrances by Respondents and claimants claimed extra rates for execution of different items beyond stipulated period of completion. On facts and circumstances, it is held that Respondents are not entitled to execute the work at risk and cost of claimants after stipulated date of completion especially when claimants were claiming market rates for execution of this item after the stipulated period. The counter claim of the Respondents is, therefore, not justified. Since the amount has already been recovered from final bill (Exh. R-234) and the recovery is held to be not justified, amount of Rs. 2,03,063/- stands refundable to claimants, and the same is awarded in their favour for claim No. 3 of claimants and Counter Claim No. 3 of Respondents.

10. Ms. Acharya further submits that the term "cement" in the Agreement includes all types of cement including white and grey cement as no such distinction has been made in the Agreement. She states that the Arbitrator has rightly interpreted the Agreement and held that the Agreement provided for issue of cement without any specific reference to ordinary or grey cement. Therefore, according to her, respondents-objectors were also under an obligation to supply white cement.

11. Ms. Acharya similarly states that the term "steel" used in the Agreement includes both mild and hard steel. She states that the Arbitrator has correctly held that it is nowhere mentioned in the Agreement that mild steel would be supplied only against Item No. 3.11.1. She states that respondents-objectors were under an obligation to supply mild steel for Agreement Items No. 5.10, 10.1 and 10.2 and also for extra and substituted items.

12. Having heard the parties, I am of the view that before I deal with the rival contentions, it would be appropriate to first outline the scope of interference by this Court with an arbitral award rendered under the Act, 1940.

13. Section 30 of Act, 1940 stipulates that an arbitral award shall not be set aside except for the grounds as mentioned therein, namely, (i) that an arbitrator or umpire has misconducted himself or the proceedings; (b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid u/s 35; and (c) that an award has been improperly procured or is other-wise invalid.

14. It is now well settled that an arbitrator is the sole judge of quality as well as quantity of the evidence and a Court cannot sit in appeal over the arbitrator's

views by examining and reassessing the materials. In fact, the Supreme Court in M/s. Arosan Enterprises Ltd. Vs. Union of India and Another, has observed as under:

36. Be it noted that by reason of a long catena of cases, it is now a well-settled principle of law that reappraisal of evidence by the court is not permissible and as a matter of fact exercise of power by the court to reappraise the evidence is unknown to proceedings u/s 30 of the Arbitration Act. In the event of there being no reasons in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the court unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law. In the event however two views are possible on a question of law as well, the court would not be justified in interfering with the award.

37. The common phraseology "error apparent on the face of the record" does not itself, however, mean and imply closer scrutiny of the merits of documents and materials on record. The court as a matter of fact, cannot substitute its evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. If the view of the arbitrator is a possible view the award or the reasoning contained therein cannot be examined.

(emphasis supplied)

15. The Supreme Court in State of U.P. Vs. Allied Constructions, has held that "interpretation of a contract, it is trite, is a matter for the arbitrator to determine." In fact, it is settled law that if on a view taken of a contract, the decision of the arbitrator on certain amount awarded, is a possible view though perhaps not the only correct view, the award cannot be examined by the Court.

16. Keeping in view the aforesaid parameters, I am of the view that the impugned Award insofar as it awards Claims No. 1, 5, 10, 11, 13, 15, 18, 19, 20 and 21 requires no interference.

17. As far as Claim No. 3 with regard to Glass Mosaic Veneering is concerned, I am of the view that the Arbitrator, contrary to the provision of Agreement and in particular Agreement Item No. 9.14, has held that the said work was an extra work/quantity. In my opinion, once the petitioner-claimant has accepted extension of time, it cannot say that it will not execute a particular item while executing the other items.

18. However, as delay in execution of work is entirely attributable to respondents-objectors, they could not have issued a risk purchase contract at the cost of petitioner-claimant. Consequently, in my view, the ends of justice would be met if petitioner-claimant is directed to offer a rebate of 1.30% on the tendered rates. Accordingly, I direct Claim No. 3 to be reduced by an amount of Rs. 1,16,480/-. Consequently, award under Claim No. 3 stand reduced to Rs. 86,583/- (being Rs. 2,03,063/- minus Rs. 1,16,480/-).

19. As far as Claim No. 6 is concerned, I am of the opinion that the expression "cement" used in the Agreement would include both white and ordinary/grey cement. In fact, this issue is no longer *res integra* in view of a judgment of this Court in the case of *Villayati Ram Mittal v. The Union of India and Ors.* reported in 1986 (1) Arb. L.R. 328 wherein it has been held as under:

5. In the contract documents it is mentioned that white glazed tiles are to be affixed with white cement slurry. Under the contract cement is one of the items to be supplied by the Union of India. Though it is mentioned that 1800 cement bags would be supplied and even the rate of Rs. 400/- per M.T. is mentioned, it can not be denied that white cement was, in fact, used. Mr. Bagai, learned Counsel for Union of India submitted that the cement in the contract referred to only grey cement. But then Arbitrator has returned a finding that white cement was, in fact, used and that was at the instance of the Union of India and that no distinction was made between the white cement and ordinary cement in the contract. The Arbitrator was, therefore, of the view that non-supply of white cement by the respondent Union of India was a failure at their hand. There is, thus, no error apparent in the reasoning of the Arbitrator and the objection of the Union of India to the claim No. 5 is also rejected.

20. As far as the issue of Claim No. 7 is concerned, I agree with learned Counsel for respondents-objectors that the impugned Award is contrary to the provision of the Agreement inasmuch as mild steel is mentioned only against Agreement Item No. 3.11.1 both in the Schedule of Supplies and in the quantities mentioned in the Agreement. Consequently, award of Claim No. 7 being contrary to the provisions of the Agreement is disallowed.

21. As far as the award of interest is concerned, I deem it appropriate to reduce the rate of interest to 9% per annum simple interest, provided the respondents-objectors pay the awarded sum within a period of three months from today. In this connection, I may refer to observations of the Supreme Court in *Krishna Bhagya Jala Nigam Ltd. Vs. G. Harischandra Reddy and Another*, wherein the Supreme Court has held as under:

11. ... here also we may add that we do not wish to interfere with the award except to say that after economic reforms in our country the interest regime has changed and the rates have substantially reduced and, therefore, we are of the view that the interest awarded by the arbitrator at 18% for the pre-arbitration period, for the *pendente lite* period and future interest be reduced to 9%.

22. Consequently, keeping in view the aforesaid judgment and the current rate of interest, interest on the awarded sum is reduced to 9% per annum simple interest from the date of award till its realisation. However, it is made clear that in case the awarded sum is not paid within the period of three months from today, respondents-objectors will be liable to pay simple interest at the rate of 12% per annum from the date of Award till its realisation.

23. With the aforesaid modifications in the rate of interest as well as Items 3 and

7, the impugned Award dated 12th May, 1992 is made rule of the Court and Registry is directed to prepare a decree in terms thereof. Petition and application stand disposed of accordingly.