

(2008) 07 DEL CK 0074

In the Delhi High Court

Case No : CS (OS) No. 689A of 1996 and I.A No. 7378 of 1998

Sh. Kamal Prabhakar

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Arbitration Act, 1940 — Section 30, 33

Citation : (2008) 3 ARBLR 405 : (2009) 161 DLT 99

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Sandeep Sharma, for the Appellant; Sanjay Poddar and Ramesh Ray, for the Respondent

Judgement

Hima Kohli, J.—This judgment shall dispose of the objections filed by the Objector/Union of India/ against the award dated 1.2.1996 passed by the Sole Arbitrator Shri Gian Chand, Superintendent Engineer (SG) appointed by the objector/Union of India in terms of Clause 7 of the General Conditions of Contracts governing the parties. The facts of the case are encapsulated as below.

2. The petitioner/contractor was awarded a contract for periodical services to certain buildings in the Delhi Cantonment Area for Rs. 1,26,780/- The said contract dated 28.7.1989 was to commence on 10.8.1989 and was to be completed within a period of six months, by 9.2.1990. Counsel for the objector/Union of India states that notices were issued by the objector/Union of India to the petitioner/contractor for completion of work and improving the progress of the work from time to time. However, as the petitioner/contractor was not keeping progress in the work, his contract was cancelled vide letter dated 6.11.1989. The petitioner/contractor thereafter made representations to the objector/Union of India for reconsideration of the cancellation of contract. Accordingly, the cancellation was revoked on 19.1.1990 and extension of time was granted to the petitioner/contractor till 13.4.1990 for completing the contract. As the petitioner/contractor again failed to complete the work within

the given time, the objector/Union of India cancelled the contract and got the balance work executed at the risk and costs of the petitioner/contractor in terms of the contract. The cancellation of the contract was done by the objector/Union of India, vide order dated 19.9.1990. Subsequently, disputes and differences arose between the parties which were referred by the objector/Union of India to the learned Arbitrator for adjudication in terms of the arbitration clause governing the parties.

3. In terms of the award dated 1.2.1996, against eight claims raised by the petitioner/contractor, the learned Arbitrator awarded a sum of Rs. 31,878/- against claim No.1 which was towards residual amount of the final bill. A sum of Rs.8,094/- was awarded on account of interest on the aforesaid amount from 9.4.1994, the date of the appointment of the Arbitrator, to the date of passing of the award. Lastly, a sum of Rs. 13,000/- was awarded towards the cost of reference to arbitration. Thus, a sum of Rs. 39,972/- was awarded to the contractor against claims No.1 and 7 along with Rs. 13,000/- on account of learned Arbitrator's fee. In respect of the counter claims raised by the objector/Union of India, a nil award was passed by the learned Arbitrator on the ground that the counter claims were not sustained.

4. Counsel for the objector/Union of India has assailed the award on the ground that the amount awarded to the petitioner/contractor is liable to be set aside as the same is not supported by any material on the record and that the learned Arbitrator has failed to furnish any reasons or calculations as to how he arrived at the figure of Rs. 31,878/- under claim No.1. The interest amount awarded by the learned Arbitrator has also been disputed by the objector/Union of India on the ground that even this amount was not payable to the petitioner/contractor as the objector/Union of India had raised counter claims against the petitioner/contractor for a larger amount, which were wrongly rejected by the learned Arbitrator. It is thus contended that the learned Arbitrator rendered the award without any basis.

5. It is further stated by the counsel for the objector/Union of India that the Union of India had raised a counter claim for a sum of Rs. 1,68,555.12 paise against the petitioner/contractor on account of extra expenditure incurred on getting the balance work completed, which was wrongly rejected by the learned Arbitrator, whose findings in this behalf are based on presumptions and surmises. It is stated that change in the design of the building does not result in any additional cost and, therefore, the learned Arbitrator ought to have awarded the claim of the objector/Union of India against the petitioner/contractor. In support of his submissions, counsel for the objector/Union of India has relied upon the following judgments:

1. D.K. Jain Vs. Delhi Development Authority and Another, and
2. Hindustan Fertilizer Corporation Ltd. v. J.M. Baxi and Co. and Anr. OMP No. 481/2004

6. On the other hand, learned Counsel for the petitioner/contractor submits that the award is a well-reasoned award. It satisfies the requirement of Clause 70 which is the arbitration clause contained in the General Conditions of the Contract which stipulate that the arbitrator shall indicate his findings along with the sums awarded, separately on each individual item of dispute. The relevant extract of the aforesaid Clause 70 is reproduced herein below:

70. Arbitration-

XXXXXX The Arbitrator shall give his award within a period of six months from the date of his entering on the reference or within the extended time as the case may be on all matters referred to him and shall indicate his findings, along with sums awarded, separately on each individual item of dispute.

7. Learned Counsel for the petitioner/contractor further submits that a perusal of the award makes it manifest that the learned Arbitrator has given his findings as required in Clause 70 and has thereafter dealt with each individual claim of the claimant and the objector while rendering his award. He, thus, states that the award does not deserve to be interfered with.

8. Insofar as the objections raised by the objector/Union of India against the claim No.1 awarded to the extent of Rs. 31,878/- in favour of the petitioner/contractor is concerned, learned Counsel for the petitioner/contractor submits that the claimant was only paid a sum of Rs. 17,985/- and that the learned Arbitrator, while relying on Annexure-A annexed to the statement of claims and the detailed calculation, awarded a sum of Rs. 31,878/- to the petitioner/contractor while specifically taking note of the fact that the objector/Union of India did not measure the actual work done at the site. In support of his submissions that in a reasoned award, it is sufficient for the arbitration to indicate the trend of his thought process and not his mental meanderings, counsel for the petitioner/contractor relied on the following judgements:

(1) Anil Garg v. DDA Suit No. 21-A/1996, and

(2) D.C. Kapoor v. DDA CS(OS) 995A/1995

9. A perusal of the findings rendered by the learned Arbitrator in the impugned award is necessary so as to deal with the objections raised by the objector/Union of India. In para 3 of the award, the learned Arbitrator has observed that after cancellation of the contract on 19.9.1990, a Board of Officers was convened by the Garrison Engineer on 7.12.1990, which was held on 24.12.1990 and on subsequent days for preparation of inventory of complete/incomplete items of work. It was noticed that the contractor was not associated with the said measurements and the preparation of the inventory, nor was a copy of the board proceedings forwarded to him. It was also observed by the learned Arbitrator that a perusal of the copy of the board proceedings indicated that the board did not measure the actual work done at site and merely followed the details of the work catered for in the second running bill which was not paid to the contractor.

Thus, the counsel for the claimant is justified in submitting that the learned Arbitrator had furnished sufficient reasons for awarding a sum of Rs. 31,878/- to the claimant under Claim No.1.

10. While deciding objections under the provisions of Sections 30 & 33 of the Arbitration Act, 1940 (in short "the Act"), this Court cannot loose sight of the fact that it is not to act as an appellate authority and reappreciate the evidence on the record, but is only required to see whether there is any mis-appreciation of evidence on the part of the learned Arbitrator. Re-appreciation or re-examination of the evidence on the record does not come within the scope of interference by a Court while dealing with the objections filed in respect of an award under the provisions of the Act. Ref.: D.D.A. Vs. Bhagat Construction Co. Pvt. Ltd., .

11. It is also to be noted that unless the award is patently illegal, perverse or contrary to the law, ordinarily, the court should desist from interfering with the same Ref. Food Corporation of India Vs. Joginderpal Mohinderpal, .

12. In the present case, as noted above, there is no error apparent on the face of the record or any mis-appreciation of the evidence on the part of the Arbitrator which requires interference by this Court. It can also not be said that the decision arrived at by the learned Arbitrator is absurd or implausible. Rather, the same indicates application of mind. Further, the findings given by the Arbitrator in his award, form the basis of adjudicating the claims raised by the respective parties, as required under Clause 70 of the General Conditions of the Contract.

13. Insofar as the objection of the objector/Union of India with respect to payment of interest on the amount awarded under Claim No.1 is concerned, the learned Arbitrator has awarded simple interest @ 14% per annum from the date of the reference, till the date of award and interest @15% per annum from the date of award till the date of payment. Counsel for the petitioner/contractor fairly concedes that rate of interest imposed by the learned Arbitrator may be reduced, taking into consideration the time span and the applicable rate of the interest from time to time.

14. The interest is therefore reduced from 14% per annum to 10% per annum for the period with effect from the date of appointment of the Arbitrator i.e. 9.4.1994, till the date of the award i.e. 1.2.1996 and from 15 % per annum to 12% per annum from the date of the award till the date of payment.

15. The last objection raised by the objector/Union of India is with regard to the rejection of its counter claim No.1 for a sum of Rs. 1,68,555.12 paise. It is pertinent to note that the learned Arbitrator, while rejecting the aforesaid counter claim raised by the objector/Union of India, adverted to paras 3, 4 & 5 of the findings and held that the said claim is not sustainable. In the findings, the learned Arbitrator took note of the fact that in the new contract executed by the objector/Union of India and concluded at the risk and cost of the claimant, a number of new buildings which were not covered in the original contract, were

included. It was also observed that instead of oil painting, synthetic enamel painting was included in the new contract. Thus, he held that the basic structure of the original contract was changed. There appears no reason to interfere with the aforesaid findings of fact returned by the learned Arbitrator, in the given facts and circumstances of the case. Hence his rejection of counter claim No. 1 raised by the objector/Union of India is found to be justified and tempered with reason.

16. It cannot be said that no reasons have been given by the learned Arbitrator as claimed by the objector/Union of India as even in cases where mere reference to the claims of the respective parties was made followed by an award, they have been refused to be interfered with by the courts on the ground that it is not necessary for the award to indicate the mental meanderings of the Arbitrator. As held by the Supreme Court in the case of State of Rajasthan Vs. Puri Construction Co. Ltd. and Another, the reasonableness of the reasons given by the learned Arbitrator in his award cannot be challenged. Nor is it necessary to indicate in the award, the computation made under various heads and that it is open to the Arbitrator to give a lump sum award. A perusal of the impugned award shows that the learned Arbitrator was well-aware of the factual matrix of the case. He has referred to the facts of the case and then given his findings followed by claim-wise award. Thus, it is held that the award complies with the requirement of giving findings and that those findings themselves form the reasons for rendering the award.

17. In view of the aforesaid facts and circumstances of the case, the objections filed to the award by the objector/Union of India are dismissed. The award dated 1.2.1996 is made rule of the Court, subject to the modification that the petitioner/contractor shall be entitled to interest @10% per annum w.e.f. 9.4.1994 till the date of the award i.e. 1.2.1996 and future interest shall be payable @ 12% per annum till the date of realization of the amount. Decree shall be drawn accordingly.

18. File be consigned to the record room.