
(2004) 11 DEL CK 0027
In the Delhi High Court
Case No : CS (OS) 664 of 1994

Shri M.C. Katosh APPELLANT
Vs
Union of India (UOI) and Others RESPONDENT

Date of Decision : 22-11-2004

Acts Referred:

Arbitration Act, 1940 — Section 14, 17, 30, 33

Citation : (2004) 3 ARBLR 518 : (2004) 115 DLT 466 : (2005) 79 DRJ 365

Hon'ble Judges : Ramesh Chand Jain, J

Bench : Single Bench

Advocate : Sandeep Sharma, for the Appellant; Pinky Anand and Richa Srivastava, for the Respondent

Judgement

R.C. Jain, J.—Parties had entered into a Work Contract No. EE/SDD-II/84-84/6 for Excavation of Supplementary Drain from RD 11375 M to RD 11975 M above S.S.W.L. Disputes/differences arose between the parties in relation to the said contract and Mr. I.J. Mamtani, Chief Engineer, Ministry of Surface Transport was appointed as the sole arbitrator in terms of clause 25 of the contract for settlement of the disputes/differences between the parties. The contractor filed its claim in regard to 11 items while the respondent also filed certain counter-claims. The sole arbitrator made and published his award dated 28.2.1994 thereby partly allowing some of the claims of the contractor for certain amount as also partly allowed some counter-claims filed by the respondent. The sole arbitrator has awarded a sum of Rs. 8,96,473/- along with 15% interest plus cost of Rs. 10,000/- in favor of the contractor. Pursuant to an application filed by the contractor under Sections 14 and 17 of the Arbitration Act, 1940 (hereinafter referred to as "The Act") the arbitrator filed his award and the proceedings. Notice of filing of the award was issued to the parties inviting objections, if any, and in response thereto, objections under Sections 30 and 33 of the Act have been filed on behalf of the respondent/Union of India. Through the objection the UOI has assailed the award of the sole arbitrator and has sought it to be set aside, inter alia, on the grounds that there are errors apparent on the face of the

award; the arbitrator has misconducted himself and the proceedings and the arbitrator has exceeded his jurisdiction in awarding certain claims of the contractor against the terms of the contract.

2. The contractor contested the objections and filed a reply raising preliminary objections about the maintainability of the award in the present form and that the objections are barred by limitation. Various grounds on which the award is sought to be as sailed have been controverted and it is denied that the award of the sole arbitrator is liable to be set aside on any ground whatsoever. On the pleadings of the parties, following issues were framed:

""1) Whether the objections filed by respondent No. 1 are beyond the statutory period for filing the same? If yes, what is the effect?

2) Whether the award dated 28th February, 1994 rendered by the Arbitrator-respondent No. 2 in respect of the work of excavation of supplementary drain from RD 11375 M to RD 11975 M above S.S.W.L. is liable to be set aside in view of the objections filed by respondent No. 1?

3) What order?""

3. The parties were directed to file affidavits by way of evidence and affidavit of Mr. M.C. Katoch has been filed on behalf of the plaintiff/contractor while that of Mr. S.D. Sharma, Executive Engineer, SDD-I (CD-IX), Rohini, Delhi has been filed on behalf of the respondent.

4. I have heard Mr. Sandeep Sharma, learned counsel representing the petitioner/contractor and Ms. Pinky Anand, learned counsel appearing on behalf of the respondent and have given my thoughtful consideration to their rival submissions.

ISSUE NO.1

5. Though in his reply to the objections under Sections 30 and 33 of the Act, a preliminary objection was taken about the objections being barred by time, but during the course of hearing learned counsel for the contractor did not advance any argument to show as to how the objections filed on behalf of the respondent/UOI against the award of the sole arbitrator are barred by time. In the case in hand, the notice of filing of the award and the proceedings was issued to the parties on 7.7.1994 and was served on the respondent only on 3.10.1994. The objections under Sections 30 and 33 of the Act were filed in Court on 01.11.1994 i.e. within the prescribed period of 30 days from the service of the notice and, Therefore, are well within time. The issue is answered accordingly in negative.

ISSUE No. 2

6. The onus to establish that the impugned award rendered by the sole arbitrator is liable to be set aside lay heavily on the respondent/objector. Before I proceed to examine the objections of the respondent on merits, it would be advantageous to recall the settled legal position in regard to the setting aside of the award of an arbitrator on objections under Sections 30 and 33 of the Act. It is a well

settled proposition of law that arbitrator is the sole and final judge of fact and the Court is bound by the findings of the arbitrator and cannot review them unless they are unsupported by evidence or unless it appears from the award itself that there was no evidence to support the finding. It is not open to the Court to examine the adequacy of evidence which led arbitrator to reach a finding of fact. The decision of the arbitrator, who is the chosen judge of the parties, is normally final both on facts and law and should not be lightly interfered. Further, that if the arbitrator gives reasons for the award that will not give a right to the losing party to challenge the said reasoning. Of course, the arbitrator is expected to adjudicate on the controversy and not make arbitrary and fanciful award. He cannot ignore the law or mis-apply it in order to do what he considers just and reasonable. Award of an arbitrator can only be set aside if either there is an error apparent on the face of the record or it is shown that the arbitrator has misconducted himself or the proceedings.

7. Though in the memorandum of objections, the respondent sought to challenge the award against all the claims, but during the course of arguments the attack was confined to the awarded amount against few claims. The first and foremost challenge is against the award of a sum of Rs. 6,49,029/- against Claim No. 2 for a sum of Rs. 5,58,690/- and it is stated that by granting a higher amount i.e. approximately Rs. 90,000/- over and above the amount claimed by the claimant, the arbitrator has misconducted himself and the proceedings. It is true that the arbitrator had awarded a sum of Rs. 6,49,029/- as against the claimed amount of Rs. 5,58,690/- and at first sight it may appear to be somewhat awkward or an error apparent on the face of the record but if we go deep into the matter and the reasoning given by the arbitrator, it would be manifest that the arbitrator had granted this amount not only against Claim No. 2 but also on account of certain other claims viz. Claims No. 4, 5 and 7 which were to the extent of Rs 55,536.23 paise; 4,562/- and Rs. 1,50,000/- respectively. Claims No. 4, 5 and 7 were taken care of while making the award against Claim No. 2. Claim No. 2 raised by the claimant was for the balance payment of final bill. The arbitrator has recorded that the respondent during the course of proceedings admitted that the claimant was entitled to such claim as the respondent could not readily confirm the amount payable as difference in respect of the substituted item involving earth work and mechanical transport lead of 2.0 km as against item of earth work under item 1 of the agreement and another item with mechanical transport lead of 1.0 km. Since the records were in custody of the CTE, the arbitrator gave a direction to the respondent and pursuant to that the respondent filed the draft final bill, inter alia, including the dues as admissible for other items of claim. The draft final bill showed a balance payment for Rs. 6,49,029/- payable to the contractor and, accordingly, the arbitrator awarded the said sum of money in favor of the claimant. It was contended on behalf of the respondent/objector that the arbitrator was not justified in awarding the amount as per the draft final bill because in the said draft bill the respondent had made certain counter claims, which aspect has not been considered by the arbitrator. In the opinion of this

Court, this contention is without any merits because as per the respondent's own final draft bill, a particular sum was payable to the contractor. It was an admission of the claimant and, Therefore, the arbitrator was fully justified in granting the said amount. Admission of a liability is perhaps the best available proof for granting the relief. This Court, Therefore, finds no merit in the objection of the respondent at least, qua this item.

8. Award of certain amounts against Claim No.3 for reimbursement of the difference in the statutory labour rate during the period of the contract also appeared to be in consonance in accordance with clauses 10 C and 10 CC of the draft agreement which provided for the escalation in respect of rise in prices of labour. In terms of the said clauses if the period of contract was more than six months, the difference due to rise in the cost of labour, materials, petroleum, oils and lubricants was payable under clause 10 CC as per cost indices prevalent during the corresponding period and the precedence laid down by the Department. The respondent did not admit this claim despite a direction given by the arbitrator to the respondent. The respondent expressed his inability to verify the claims and, accordingly, the arbitrator taking note of the indices held that as per clause 10 C the amount of the work to be considered for escalation was 85% and allowed a claim of Rs. 90,313/- as against the claim of Rs. 92,268. 9 paise.

9. The arbitrator has then awarded a sum of Rs. 21,513/- against Claim No. 6 for additional sum of Rs. 3,62,075/- on account of extra two lifts of excavated soil. Learned counsel for the objector could not point out any infirmity in the award on this account against this claim of the claimant.

10. Claim No. 8 was for a sum of Rs. 57,750/- being the difference between the hard soil and ordinary soil which has been rejected by the arbitrator. As against the claim of Rs. 88,126/- against Claim No. 9 payable as extra for dewatering 1 m depth above 21 2.350 level the arbitrator has further given reasons and awarded a sum of Rs. 33,465/- only and this is also based on a concession/admission made on behalf of the respondent during the course of hearing before the arbitrator.

11. The arbitrator has then awarded a sum of Rs. 30,396/- as against the claim of Rs. 50,000/- in Claim No.10 on account of idle establishment for the period of suspension of the work during 2.2.1985 to 20.12.1985. No arguments were advanced to show that the award of this amount was not justified or against the terms of the agreement.

12. The arbitrator has also allowed certain sum to the respondent against counter-claim No. 1(b) and counter-claim No.3, which award has not been challenged on behalf of the claimant/contractor and, Therefore, is liable to upheld. The arbitrator has awarded interest @15% per annum against the claim of 18% per annum on the amount of Rs. 8,96,473/- w.e.f. 10.9.1989 uptill the date of payment or passing of decree by the Court. In the opinion of this Court, the award of interest at the above rate cannot be said to be unjust or harsh

keeping in view the bank interest rate during the relevant period of 80's and in the decade of 90's.

13. Thus, this Court having considered the objections filed by the respondent and the matter in its entirety, is of the considered opinion that the award of the sole arbitrator dated 28.2.1994 is not liable to be set aside on any grounds and deserves to be made a rule of the Court. Accordingly, the objections are hereby dismissed as being devoid of any merits and the award of the sole arbitrator dated 28.2.1994 is hereby made rule of the Court. Parties are left to bear their own costs. Let a decree sheet be drawn.