

(1996) 02 DEL CK 0032

In the Delhi High Court

Case No : Suit No. 411/91 and IA. 9302/91

Shri S. S. Jain

APPELLANT

Vs

Delhi Development Authority and Shri R. K. Sundaram

RESPONDENT

Date of Decision : 01-02-1996

Acts Referred:

Citation : (1996) 02 DEL CK 0032

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Sh. B.K. Dewan, for the Appellant;

Judgement

K. Ramamoorthy, J.—The construction of Community Shopping No. 5 in Sector VII, Rohini Phase I was a subject matter of contract between M/s. S. S. Jain & Co. (hereinafter called the contractor) and the Delhi Development Authority (hereinafter called the respondent). Dispute arose between the parties and as per the provisions in the contract, they were referred for arbitration to Shri R. K. Sundaram, Chief Engineer (Retd.). The arbitrator passed the award on 14.1.1991. The contractor filed a suit No. 411-A/91 under Sections 14 and 17 of the Arbitration Act for making the award rule of the court. The respondent filed is 9302/91 u/s 30 and 33 of the Arbitration Act for setting aside the award. In the petition, it is stated by the respondent that the agreement was executed on 12.5.1986. The date of commencement of the work was fixed as 16.5.1986. The work was to be completed within four months. The contractor did not complete the work and consequently by letter dated 31.5.1988, the respondent rescinded the contract. In spite of it, the contractor had come forward with claims and that was considered by the arbitrator. The arbitrator has not considered the breach committed by the contractor. Therefore, according to the respondent the award is liable to be set aside on this ground alone.

2. Claim No. 1 relates to the refund of security deposit to the extent of Rs. 62,000/-. The Arbitrator as against the above claim, awarded a sum of Rs. 49,865/- to be refunded by the respondent.

3. The objection by the respondent on claim No. 1 is that the finding given by the arbitrator that the rescission of the contract was not in accordance with law. The arbitrator has not properly appreciated the allegations leveled against the respondent by the contractor in its letters marked as Ex. C-1 - Ex. C-11. Those Exhibits are the measurement books, site order books etc. which would show how the work progressed and how the contractor did not do the work in accordance with the terms of the contract. The arbitrator failed to note that the security deposit was liable to be forfeited in spite of the contractor not fulfilling his obligations under the contract. On 31.10.1987 (Ex. R-1), the respondent gave notice to the contractor to speed up the work and complete the same without any delay. The arbitrator had ignored a crucial fact that the contractor did not have the required resources and the capacity to complete the work which had undertaken. The arbitrator came to an erroneous conclusion that the rescission of the contract was unjustified.

4. The arbitrator has given reasons for his conclusion. He being a retired engineer could cull out from the facts and circumstances who was responsible for the delay and how far any delay had impeded the progress of the work. The Arbitrator had also adverted to the way in which the Show-cause Notice was issued by the respondent to the contractor. The arbitrator had noticed that :

"The respondent has admitted that site handed over on 15.7.1986 while the date of commencement of work was 16.5.1986 i.e., delay of two months when the total period for completion was four months. Respondent also admitted that structural design for RCC were handed over in stages up to December 1986 much beyond the stipulated period. There were also problems in issue of adequate sum required for works".

5. About the Show-cause Notice the arbitrator has stated to the notice R-16 and R-10, the contractor sent a reply in C-8 and they were not properly dealt with by the respondent. The arbitrator has also noticed that the respondent did not respond to the letter dated 11.3.1988 (C-9) from the contractor about the hindrance to the work due to cable laying work being down by DESU.

6. I do not think that I will be justified in accepting the objection made by the DDA. The arbitrator has considered all aspects of the matter and he has directed the refund of Rs. 49,865/- to the contractor. I, Therefore, confirm the award of the arbitrator of claim No. 1.

7. Under claim No. 2, contractor claimed Rs. 3,000/- towards a refund of rebate wrongfully recovered by the respondent.

8. In the objection petition, the respondent took the plea that the respondent would be entitled to certain rebate if the payment of the running bills was made within one month. The contractor had accepted the deductions of rebates made by the respondent from the bills without any demur and, Therefore, the arbitrator was not within his powers in interfering in the matter.

9. The claimant though mentioned a sum of Rs. 3,000/-, he reserved his right to make a larger claim on verification of the details.

10. The Arbitrator considered the rival contentions and held :

"It is fact admitted by both the parties that monthly bills were not paid which is a pre-condition for availing of 0.5% rebate. Though there is a stipulation that no monthly bill will be paid if the gross amount of the work done in a particular month is less than Rs. 25,000/-, a fair interpretation of the stipulation will lead to the conclusion that the onus of being on record that gross value of work done in a month is less than Rs. 25,000/- will fall on the party which would like to avail the rebate while paying the next monthly, bill and obtain the concurrence of the other party to the contract. Since the respondent did not pay monthly bills (only 10 bills were paid in a period of 18 months from 7/86 to 12/87) and did not indicate to the claimant that the nature of work done in the months of non-payment was less than Rs. 25,000/-. They are not entitled to avail the rebate stipulated for making monthly payments."

11. On the strength of this reasoning, the arbitrator directed the respondent to pay Rs. 3,986.45 to the contractor.

12. I am not able to appreciate the objection by the respondent.

13. The fact that the contractor accepted the amounts paid by the respondent without any demur would not preclude him from claiming any amount which he is entitled to under law. Accordingly, I come to the conclusion that the award of the arbitrator on this part of the claim is valid and it is confirmed.

14. On claim No. 3, the contractor made a claim of Rs. 30,000/- subject to verification on account of amount paid short/withheld due to part rates. In claim No. 4, the contractor claimed Rs. 40,000/- towards, balance of payment of the work done partly recorded and partly unrecorded.

15. The arbitrator on these two claims together awarded a sum of Rs. 37,365.50.

16. In the objection petition, the respondent has challenged the award on these two claims in the following manner :

"(i) In the final bill a sum of Rs. 8,209/- was found payable to the petitioner subject to deductions. After deducting a sum of Rs. 1,27,900.75 on various counts, the final bills went into minus. The learned arbitrator committed gross legal misconduct by disallowing the deduction on account of (i) balance security, (ii) non-submission of labour returns, (iii) penal rate for recovery of steel (only partly disallowed), compensation under clause 2 and (iv) extra cost of work done at the risk and cost of the petitioner, which deductions are the subject matter of counter claim No. 1, 6, 3, 2 and 4 respectively. The learned arbitrator has given the reasons for disallowing the above deductions while adjudicating upon the above said counter-claims which correspond to the deductions made by the respondent in the final bill. The ground of objections made against the award

made on counter claims No. 1, 6, 3, 2 and 4 above, supra may kindly be adverted to and be read as a part of objections herein.

(ii) The learned Arbitrator without applying his mind committed legal misconduct in disallowing the rebate for Rs. 322/- without any cogent reason. The award of the arbitrator on this part of the claim is, Therefore, liable to be set aside."

17. The Arbitrator after scrutinising the final bill and referring to various aspects had come to the conclusion that the contractor is entitled to the amount mentioned above. I do not find any error apparent on the fact of the record. Therefore, I confirm the award of the arbitrator on these two claims.

18. The arbitrator rejected the claims No. 5, 6, 7, 8, 9, 10 and 11.

19. In all, the arbitrator had awarded a sum of Rs. 90,216.95 on claims No. 1 to 4.

19A. In counter claim No. 1, the respondent claimed a sum of Rs. 21,948/- on account of recovery of balance security deposit from the contractor.

20. The arbitrator rejected this claim.

21. In the objection petition, the respondent would adopt the same grounds of objections taken with reference to the claims of contractor. I do not repeat them.

22. The arbitrator had expressed the view that inasmuch as the had come to the conclusion that the rescission of the contract by the respondent was not proper. The respondent was not justified in claiming the balance amount of security deposit. On the basis of clause 3(a) of the agreement, he rejected the counter claim. I do not find any error committed by the arbitrator in coming to this conclusions. I, Therefore, confirm the view taken by the arbitrator on counter claim No. 1.

23. On counter claim No. 2, the respondent sought to recover as compensation to the tune of Rs. 61,813/- for extension of time.

24. The arbitrator rejected this counter claim also.

25. In the objection petition, the respondent relying upon the decision of the Supreme Court in Vishwanath Sood Vs. Union of India (UOI) and Another, , the levy of compensation was within the authority of the respondent and as per the provisions of the contract, such levy of compensation by the respondent was made final and, Therefore, the arbitrator cannot interfere with the decision of the respondent and Therefore, the award is liable to be set aside.

26. The arbitrator while considering the claim of the respondent for the recovery of compensation had observed that :

"Curiously, both the parties agreed that though the Superintending Engineer is the final authority under Class 2 the arbitrator was within his limits to give a decision on the merits of this claim. While the respondent wanted the claim to be

upheld based on SE decision, the claimants wanted rejection of the claim since the decision of SE was belated and without justification when time was set at large."

27. It has been admitted by the respondents that the reason for delay in the decisions of SE taken on 2.1.1990 especially after the arbitration proceedings had commenced, was because of procedural formalities which were taken up after the contract was rescinded on 31.5.1988. It has also been admitted that after expiry of the stipulated period of completion on 15.6.1986, time was set at large and no revised date for completion of the work taking into account the various factors which caused delays, was fixed. Thus, time ceased to be the essence of the contract and whatever and whatever action that was being initiated by the respondent on the basis of delay in cause of action of the work was being taken in vacuum. Since no reasonable date for completion was agreed upon between the parties.

28. The arbitrator had already come to the conclusion that the rescission was bad in law and for the above reasons, the arbitrator came to the conclusion that the respondent was not entitled to any compensation. I am in complete agreement with the view taken by the arbitrator. I, Therefore, confirm the award with reference to counter claim No. 2.

29. In counter claim No. 3, the respondent made a claim of Rs. 8565.25 towards penal rate recovery of materials from the contractor. The arbitrator had awarded Rs. 7,745/-.

30. The objection made by the respondent is absolutely frivolous and I have no hesitation in rejecting the objection made by the respondent. I, Therefore, confirm the award of Rs. 7,745/- made by the arbitrator to be payable by the contractor to the respondent.

31. On counter claim No. 4, the respondent made a claim of Rs. 19,099/- on account of work done at the risk and cost of the contractor.

32. The arbitrator rejected this claim.

33. In the objection petition, it is stated that the award is ex facie, illegal and is an abuse of powers vested in the arbitrator.

34. The arbitrator expressed the view as under :

"I have already come to the conclusion under claim 1 that action taken to rescind the contract on 31.5.1988 was not justified. Further the respondent has committed serious mistakes in fixing up the successor agency by not keeping the claimant informed about tender action taken and details of contract fixed. They have also substantially enlarged the scope of the successor contract changing the complexion of the tender. By not informing the claimant above the tender notification for the contract they have deprived claimants the opportunity to mitigate their loss by participating in the tender and ensuring that the rates for

the items of wash relating to his contract are not unreasonably high."

35. I do not find any error in the reasoning given by the arbitrator. Therefore, the award is confirmed.

36. On counter claim No. 5, the respondent made a claim of Rs. 14,710/- and what was awarded by the arbitrator. The contractor has not filed any objections.

37. Counter claim No. 6 was rejected. No objection filed by the contractor.

38. On counter claim No. 7 the respondent claimed Rs. 1,113/-, on account of recovery of expenditure incurred for completion of the left out components in agreement item Rs. 36.670 at the risk and cost of the claimant.

39. The arbitrator rejected the claim of the respondent.

40. The respondent filed objections stating when the arbitrator had allowed counter claim No. 5 they are to allow counter claim No. 7 also. The arbitrator has expressed the view :

"I have already upheld claim No. 5 based on the rates of the old contract items of work not executed by the claimant. This claim relates to action taken under Cl. 3 after rescission of the contract which has been held as unjustified. I, Therefore, reject them which is on the same basis as claim No. 4 which has already been rejected."

41. I entirely agree with the arbitrator and reject the objection and uphold the award of the arbitrator.

42. In fine, the arbitrator held that the contractor was entitled to Rs. 91,212.95 and the respondent was entitled to get Rs. 68,757.95 and, Therefore, the claimant was awarded Rs. 22,455/-.

43. The arbitrator had not awarded interest on this amount. The claimant would be entitled to interest from the date of the award.

44. The award is made rule of the court. There shall be a decree directing the respondent to pay the contractor a sum of Rs. 22,455/- with interest at 12% per annum from 14.1.1991 up to the date of realisation. There shall be no order as to cost.