
(2001) 03 DEL CK 0096
In the Delhi High Court
Case No : AA No. 96 of 2000

Shri Satya Prakash

APPELLANT

Vs

MCD and Another

RESPONDENT

Date of Decision : 09-03-2001

Acts Referred:

Citation : (2001) 3 AD 632 : (2001) 9 DLT 38 : (2001) 58 DRJ 370 : (2001) 3 RAJ 139

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : Mr. Dinesh Minocha, for the Appellant; Mr. J.D. Mudgal, for the Respondent

Judgement

J.D. Kapoor

1. Sole objection as to appointment of the Arbitrator that has been sought by the petitioner u/s 11 of the Arbitration and Conciliation Act, 1996 is that the petition is hopelessly time barred and hit by limitation which provides that if the Contractor does not make any demand for Arbitration in respect of any claim in writing within 90 days of receiving the intimation from the Corporation/respondent or any other officers authorised in this behalf that bill is ready for payment the claim of the Contractor will be deemed to have been waived and absolutely barred and the corporation/respondent shall be discharged and released of all liabilities under the Contract in respect of these claims.

2. I am afraid the objection is preposterous as in para 16 of the reply to the petition, the respondent has admitted that the final bill has not been passed yet and the same cannot be passed till the extension of time is granted by the competent authority of the MCD. The work order was issued on 29.5.1994. The work was commenced on 30th May, 1994 and was completed on 15.12.1994.

3. Till date no final bill has been passed or intimated. The petitioner had written various letters for releasing of the payment and asking for appointment of the

Arbitrator and receiving no response, the petitioner preferred this petition in March, 2000.

4. Thus objection is wholly groundless and without any substance as the limitation of 90 days will start running from date of intimation that the bill is ready for payment. The petitioner has not received the requisite intimation from the corporation/respondent about the final bill till date. As per its own admission no such intimation has been sent to the petitioner and Therefore question of petition being barred by time does not arise.

5. It is the duty of the respondent to finalise the account by preparation of final bill and not to expect and wait for the contractor to put forth his claim regarding dues in respect of work completed by him.

6. In M/s. R.P. Souza & Co. & ORs. Vs. The Chief Engineer, Public Works Department & Ors. 2001 (1) RAJ 34, it was held that cause of action for assessment of claim cannot arise unless either final bill is prepared or the respondent disputes or denies the right of the applicant for the dues payable in respect of the work done by the applicants for the respondents. It was further observed that it is not the duty of the contractor to raise a claim against the respondent on completion of the work.

7. Again the view was taken that no right vests in the petitioner to apply until there is a clear and unequivocal denial of the right by the respondent. Further that application u/s 20 of the Act of 1940 for appointment of the Arbitrator is also governed by Article 137 of the schedule to the Limitation Act, 1963 and must be made within three years from the date when the right to apply first accrues. Clause 25 of the Agreement cannot come to the rescue of the respondent.

8. Objections are not sustainable and are hereby dismissed. Application is allowed.

9. Respondent is directed to appoint an Arbitrator within three months for deciding the disputes that may arise after passing of the final Bill. Final bill shall be passed and intimated within one month.