

(1994) 03 DEL CK 0026
In the Delhi High Court
Case No : Suit No. 951-A of 1989

Shri Swaran Singh

APPELLANT

Vs

University of Delhi and another

RESPONDENT

Date of Decision : 17-03-1994

Acts Referred:

Arbitration Act, 1940 — Section 29, 30

Citation : (1995) ILR Delhi 129

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : Mr. Mukul Rohtagi, with Ms. Amrita Snaghi, for the Appellant; Mr. V.P. Chaudhary with Mr. Rajan Sareen, for the Respondent

Judgement

1. This is a petition filed on behalf of Shri Swaran Singh (hereinafter referred to as the Contractor) under Sections 14 and 17 of the Arbitration Act, 1940, and in this petition it has been prayed that respondent No. 2, the sole arbitrator, be directed to file the award dated 21st March, 1989 along with the proceedings in this Court and thereafter the objections, if any, be called for and the award be made a rule of the Court.

2. After the receipt of the award from the arbitrator, notice of filing of the award was issued to the parties on 4th July, 1989. Thereafter, respondent No. 1, University of Delhi (hereinafter referred to as the University) filed objections against the award vide application bearing is No. 6175/89. These objections were controverted by the Contractor in his reply to the said application. The following issues were framed on 26th February, 1990:--

1) Whether the award dated 21st March, 1989 is liable to be set aside for the grounds taken by the respondent in the objection petition?

2) Relief.

On the same date the parties were directed to file affidavits. Pursuant to this order, the University filed its affidavit by way of evidence on 24th July, 1991 and

counter-affidavit on behalf of the Contractor was filed on 11th Nov. 1991.

3. Mr. Chaudhary, the learned Senior Counsel, appearing on behalf of the University submitted that the learned arbitrator committed error apparent on the face of the award while interpreting the provisions of clause 7 and clause 25 of the conditions of the contract. He submitted that in terms of clause? the Contractor was required to submit a list of disputed items within 30 days from the disallowance thereof and if he failed to do so, the claims were deemed to have been waived and since the Contractor did not submit any list of disputed items within the stipulated period, any claim filed on his behalf was not maintainable. He further submitted that clause 25 would come into operation only if the Contractor had submitted a list of disputed items within the period mentioned in clause 7. He submitted that the learned arbitrator committed grave error in holding that under clause 25 limitation was 90 days and as such the Contractor had invoked the arbitration clause within limitation. He, Therefore, contended that interpretation of clause 7 and clause 25 by the arbitrator was contrary to the law and as such the award was liable to be set aside by this Court. In support of his contention, the learned counsel placed reliance on two judgments of the Supreme Court reported in Bungo Steel Furniture Pvt. Ltd. Vs. Union of India (UOI), and Allen Berry and Co. Pvt. Ltd. Vs. The Union of India (UOI), New Delhi, .

4. The learned counsel further submitted that there was another error on the face of the award as the learned arbitrator ignored the material documents filed on behalf of the University particularly the documents which were exhibits R 3 to R 5, R 9 to R 12 and R 14. He, Therefore, contended that since the arbitrator ignored the said important documents filed on behalf of the University, the award was liable to be set aside on this ground. In support of this contention, the learned counsel placed reliance on a Division Bench judgment of this Court in College of Vocational Studies v. S.S. Jaitley, AIR 1987 Del 134.

5. The learned counsel further submitted that from the award it was also apparent that the arbitrator was biased against the University. In this connection he drew my attention to the observations of the learned arbitrator that, "the University is not agreeable for extension of time. This was obviously very improper behavior of the University engineer, as this amounts to nullifying reference of the disputes by the Vice-Chancellor of the University to me". The learned counsel also submitted that the arbitrator committed error in granting interest even for the preference period. The learned counsel also submitted that the conclusion arrived at by the arbitrator against the various claims of the Contractor were not valid ones. He, Therefore, contended that the award should be set aside.

6. Mr. Rohtagi, the learned Senior Counsel on behalf of the Contractor submitted that in the present case the award was a speaking one and the findings of the learned arbitrator were based on evidence on record. He further submitted that the relevant clause to invoke arbitration was clause 25 and not clause 7 of the

conditions of the contract. He submitted that clause 25 clearly provided that the arbitration in respect of any claim in writing could be invoked within 90 days of receiving the intimation from the University that the bill was ready for payment. He submitted that in the present case the final bill was submitted on 24th August, 1985 and the arbitration was invoked on 29th Sept. 1985 and till 28th Sept. 1985 no communication of disallowance of the final bill was received by the Contractor. He further submitted that in any case the arbitration was invoked within 90 days from the date of submission of the final bill. He further submitted that the learned arbitrator had interpreted both the clauses in harmonious manner and it could not be said that the interpretation given by the arbitrator was not conceivable or possible. He also submitted that even for the sake of arguments there was some mistake in the interpretation of the two clauses, such a mistake was not amenable to be corrected in respect of the award by the Court. In support of his contention he placed reliance on two judgments of the Supreme Court in the case of *Sudarsan Trading Co. Vs. Government of Kerala and Another*, and *Food Corporation of India Vs. M/s. Veshno Rice Millers*, .

7. The learned counsel drew my attention to the award and submitted that in the award it has clearly been stated that, "after careful consideration of written statements and documentary evidence produced by both the parties, the two Installments of detailed written arguments on behalf of the claimants on 2-2-1988 and 15-2-1989 and the oral but elaborate arguments of the counsel for the respondents concluded on 6-2-1989, I have come to the conclusion that the respondents have committed breach of contract in the supply of drawings/details, cement and steel." Relying on these observations, the learned counsel submitted that the contention urged on behalf of the learned counsel for the University that the arbitrator had ignored some of the important documents filed on behalf of the University was without any merit. The learned counsel further submitted that the learned arbitrator had given adequate opportunity to the parties to place their grievance in the manner provided by the arbitration agreement and after considering the material on record, he had given his findings. He further contended that this Court could not re-examine and re-assess the materials in these proceedings and reasonableness of the reasons given by the arbitrator could also not be challenged. In support of this contention, the learned counsel placed reliance on two judgments of the Supreme Court in *Puri Construction Pvt. Ltd. Vs. Union of India (UOI)*, and *Sudarsan Trading Co. (supra)* and a judgment of this Court in *Mehta Teja Singh and Co. Vs. Delhi Development Authority and Another*, .

8. The learned counsel for the Contractor further submitted that the reasons given by the arbitrator were valid ones and were based on the evidence on record. He, Therefore, contended that in the present case it could not be said that the reasons given by the arbitrator were so palpably erroneous in law that they had resulted in the arbitrator taking a view which could not be sustainable in law and as such the award cannot be set aside. In support of this contention the learned counsel has placed reliance on a judgment of the Supreme Court in

9. Lastly the learned counsel contended that the arbitrator had awarded the amount on account of interest in accordance with the law laid down by the Supreme Court. In support of this contention he placed reliance on a judgment of the Supreme Court in Gujarat Water Supply and Sewerage Board Vs. Unique Erectors (Gujarat) (P) Ltd. and Another, .

10. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties and have also perused the record. From the award I find that the arbitrator has given elaborate reasons in support of his findings. From the award it is also clear that the arbitrator has considered the written statements, documentary evidence produced by both the parties, detailed arguments filed on behalf of the Contractor and the oral arguments of the counsel for the University and thereafter he came to the conclusion that the University had committed breach in the supply of drawings/details, cement and steel. As held by the Supreme Court in the cases of Puri Construction Pvt. Ltd. (supra) and Trading Company (supra) this Court has no jurisdiction to re-examine the evidence adduced before the arbitrator and the reasonableness of the reasons given by the arbitrator cannot be challenged in these proceedings. I, Therefore, do not find any merit in the contention urged by the learned counsel for the University that the findings given by the arbitrator are perverse as he has failed to refer to certain documents filed on behalf of the University.

11. As regards the interpretation of clauses 7 and 25 of the conditions of contract, by reading of these two clauses it is clear that the clause for invoking arbitration is clause 25 and not clause 7. In terms of clause 25, the Contractor was required to raise demand in writing in respect of any claim within 90 days of receiving the intimation from the University that the bill was ready for payment. In the present case admittedly the final bill was submitted on 24th August, 1985 and the demand in terms of clause 25 was raised by the Contractor on 28th Sept. 1985 i.e. within 90 days from the date of submission of the bill itself. Further from the award I find that with regard to the interpretation of these two clauses by the arbitrator, it cannot be said that such an interpretation is not conceivable or possible. As held by the Supreme Court in the case of Food Corporation of India (supra), even assuming for the sake of argument that there was some mistake in the construction of a particular clause of the contract, such a mistake is not amenable to be corrected in these proceedings. I, Therefore, do not find any merit in this contention urged on behalf of the learned counsel for the University that the interpretation of the aforesaid two clauses by the arbitrator was contrary to law.

12. From the award I also find that the parties were given adequate opportunity to place their grievance and examine their witnesses. The reasons given by the arbitrator in respect of the various claims cannot be said to be palpably erroneous in law. I, Therefore, do not find any merit in the objections raised on behalf of the University with regard to the various claims in their objection

petition. In fact there is no error apparent on the face of the award, and as such the objection petition of the University is liable to be dismissed.

13. I also do not find any merit in the contention raised by the learned counsel for the University that the arbitrator was biased against the University as he had given some observations against the University. From the award I find that these observations in fact are not against the University but are against the improper behavior of the University engineer. The said remarks cannot be a ground for bias particularly when the arbitrator has given comprehensive reasons in support of his conclusions.

14. As regards the grant of interest by the arbitrator I do not find any infirmity except regarding the grant of interest for the period 15th December, 1984 to 19th April, 1986 amounting to Rs. 23,778/-. In this connection a reference may be made to a judgment of the Supreme Court in the case of Gujarat Water & Sewerage Board (supra) wherein it was held by the Supreme Court that, since in this case reference to arbitration was made after the commencement of the Interest Act, 1978 the arbitrator u/s 3(1)(a) of the said Act was entitled to award interest from 6th August, 1981 till 21st August, 1984. From the said judgment it is clear that on 6th August, 1981 the Contractor had approached the Civil Court for appointment of an arbitrator. In terms of this judgment the interest could be awarded from the date of appointment of the arbitrator and not for the period prior to his appointment. Since the reference was made on 15th January, 1986 the Contractor will be entitled to interest only from 15th January, 1986 and not from 16th December, 1984. Accordingly, the interest from 15th December, 1984 to 14th January, 1986 is disallowed.

15. In view of the above discussion the objection petition being is No. 61/75/89 is dismissed. The objections having been dismissed the award as modified with regard to interest hereinabove, is made a rule of the Court. Let a decree be drawn in terms of the award as modified, which shall form part of the decree. I further direct that in case the decretal amount is not paid within a period of two months from the date of decree, the Contractor will be entitled to interest at the rate of 15 per cent per annum from the date of decree till realisation. The parties are, however, left to bear their own costs.

16. Order accordingly.