
(2009) 11 DEL CK 0275

In the Delhi High Court

Case No : I.A. No. 1294 of 1996 in C.S. (OS) No. 2519A of 1995

S.K. Grover and Co.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 12-11-2009

Acts Referred:

Arbitration Act, 1940 — Section 30, 33
Contract Act, 1872 — Section 55

Citation : (2009) 11 DEL CK 0275

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : D. Moitra, for the Appellant; None, for the Respondent

Final Decision : Disposed Off

Judgement

Valmiki J Mehta, J.

I.A. No. 1294/1996 in CS(OS) No. 2519-A/1995

1. These objections have been filed against the Award dated 28.9.1995 under Sections 30 and 33 of the Arbitration Act, 1940 by the contractor whose claims have been either rejected or only partly allowed.

2. Mr. Moitra who appears for the objector has pressed objections as regards Claim Nos. 1, 3, 6, 7 and 10.

3. As regards Claim No. 1 in which nominal amounts have already been awarded (and in fact which claims were also for negligible amounts only) on account of the fact that no proofs were given with respect to these claims. After arguing this claim, Mr. Moitra says that he does not press the objection with respect to Claim No. 1.

4. Claim No. 3 was also argued and thereafter Mr. Moitra has said that he will not press this claim as this claim was based on Clause 10CC of the agreement and there is a factual finding of the Arbitrator that Clause 10CC does not even form

part of the contract. During the course of the arguments, I asked Mr. Moitra to show anything from the contract as to how Clause 10CC forms a part of the contract. Mr. Moitra however was unable to do so. No fault can therefore in any case be found with this portion of the Award.

5. Claim No. 6 in the Award is with respect to loss of business profit for not being given the complete amount of work. The arbitrator has arrived at finding of fact that the deviation limit i.e. lower work awarded is within the deviation limit permissible as per Clause 12. Again, I put to Mr. Moitra to show me from the contractual documents how much was the work given against which deviation was permitted and also the value of the work, however, Mr. Moitra was not able to show any factual basis to challenge the finding of the Arbitrator that the balance work reduced was not within the deviation limit. Accordingly, this objection also fails.

6. Claim No. 7 is based on charges towards idle labour, tools and plants. In this regard, the Arbitrator has arrived at a finding of fact and held that during the stipulated period of contract, no tangible breaches were attributable to the non-objector/respondent before the Arbitrator. This is a finding of fact and the Objector had to show perversity for this Court to interfere under Sections 30 & 33. Again, Mr. Moitra has not been able to refer to anything at all to show that this finding is in any manner perverse. I am, therefore, unable to agree with this objection.

7. That takes me to the final objection with respect to Claim No. 10. This claim is a claim for Rs. 90,000/- on account of 20% additional enhancement for the work done after the stipulated date of completion. In this regard, the Arbitrator has clearly noted that the extended period of work (which was just of about 3 months) was as per the consent of the parties meaning thereby the objector never objected or claimed any rights for delay when the contract was being performed and which is a legal requirement u/s 55 of the Contract Act 1872. This claim, therefore, was also misconceived and therefore, the Arbitrator was justified in rejecting the same.

8. Before I conclude I must record that this case has been regularly and repeatedly coming up for arguments before this Court right from 4.10.2009. Mr. Moitra has however been taking adjournments. Firstly, adjournment was taken on the ground that he did not have the proper file. Thereafter, Mr. Moitra said that these are objections are of a widow (as the contractor has died) and, therefore, he sought further accommodation. This case was thereafter called out when no one was present and has now been taken up today. Ordinarily, considering that this is a very old case of the year 1995 and since repeated adjournments have been granted at the request of the objector, I would have, indeed imposed very heavy costs, however, on the plea of the Counsel for the objector that the widow of the contractor is not in a sound financial condition, I am not imposing costs in the matter. Accordingly, with the above observations, the objections and also the suit stand disposed of. The Award dated 28.9.1995 is

made rule of the Court.