
(1999) 12 DEL CK 0027
In the Delhi High Court
Case No : F.A.O. NO. 359 of 1996

Sukumar Chand Jain

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 21-12-1999

Acts Referred:

Citation : (2000) 6 AD 135 : (2000) 3 ARBLR 82 : (2000) 86 DLT 498 : (2000) 3 RAJ 173

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. Ravi Gupta, for the Appellant; Ms. Anusuya Salwan, for the Respondent

Judgement

Dr. M.K. Sharma, J.—The appellant entered into a contract agreement with the respondent for development of land at Rohini Phase II, New Delhi by way of construction Peripheral Storm Water Drainage of Block A,B,C,D, Sector XVIII, Rohini. The contract agreement entered into between the parties contained an arbitration clause being clause No. 25. During the course of execution of the contract disputes arose between the parties and the appellant invoked the arbitration clause and requested for appointment of the arbitrator in terms of the arbitration agreement to adjudicate the claims of the appellant. The persona designate under the contract agreement by letter dated 17.5.1993 appointed Shri M. Kuppaswamy as the sole arbitrator. The arbitrator entered into the reference, received evidence adduced by the parties and thereafter upon hearing the parties made and published his award on 31.8.1994.

2. The aforesaid award was filed in the Court of the Additional District Judge, Delhi whereupon it was registered as Suit No. 247/1994. Upon receipt of notice of filing of the award in the aforesaid manner the appellant filed his objections. The Additional District Judge took up for consideration the aforesaid objections as also the award filed by the arbitrator and on consideration of the same and upon hearing the parties dismissed the objections filed by the appellants and made the

award a Rule of the Court by his judgment/order dated 30.9.1996. Being aggrieved by the said order the present appeal has been preferred by the appellant.

3. Learned counsel appearing for the appellant during the course of his submissions submitted that the appellant is primarily aggrieved by the conclusions and the findings of the Additional District Judge in respect of the award given as against claim No. 4. It was submitted that the trial court failed to appreciate that the decision of the arbitrator in respect of claim No. 4 is erroneous inasmuch as claim of the appellant under clause 10(c) of the contract agreement was valid and legal. He submitted that the appellant was entitled to the claim made for the increase in the labor rates by the Government of India which although was made effective from 1.5.1989 was accepted by the respondent subsequent to the execution of the contract agreement with the appellant and Therefore, the amount claimed in respect of the aforesaid hike of the labor rates was justified. I have also heard the learned counsel appearing for the respondent on the afore-said issue, who submitted that the aforesaid hike and increase of wages of labor was circulated under Delhi Administration's notification dated 28.4.1989 and effective from 1.5.1989. Therefore, it was submitted that when the aforesaid contract was executed there was already increase in the wages of labor and the said factor was also taken note of while agreeing upon the rates in terms of the contract agreement.

4. In the light of the aforesaid submissions of the counsel for the parties, I have to consider in the present case as to whether the conclusions and findings recorded by the trial court in respect of the award and claim No. 4 was legal and justified or not.

5. Item rate tender was invited on 11.4.1989 as against which the appellant submitted its item rate which however, was modified subsequently during negotiations as is established from the letter dated 12.6.1989 which formed part of the agreement. Notification for the increase in the wage rate was issued on 28.4.1989 which took effect from 1.5.1989, according to which the labor rates stood increased. It is thus clear and apparent that the aforesaid modification and increase in wage rates was prior to the negotiations that took place before the execution of the contract with the appellant. The arbitrator before whom the aforesaid claim was raised being claim No. 4 held that as the aforesaid increase had come into existence prior to the negotiations on 12.6.1989 as per the conditions of the contract, the appellant was not entitled to any increase on such account as the said increase had been absorbed in the same agreement and Therefore, no payment fell due because of increase in labor rates. The arbitrator further held that it could not be said that the contractor was not aware of the revision of labor rates, which came into effect much prior to the submission of modified rates. It was also held that the maximum labor rate paid as per evidence adduced by the appellant did not exceed Rs. 29.50 and Therefore, the aforesaid claim was disallowed.

6. Challenge was made to the aforesaid conclusions of the arbitrator before the trial court, who considered the plea and thereafter it was held that since the notification was issued on 28.4.1989 and the revision was to take effect from 1.5.1989, it would be deemed as if the letter dated 28.4.1989 by which the rates were modified also included the revised rates of the labor. The trial court apparently, Therefore, considered the afore-said plea regarding entitlement of the appellant to the increase labor wages in terms of the notification made effective from 1.5.1989.

7. It cannot be denied that Delhi Administration issued a notification on 28.4.1989 making increase in the wages of labor effective from 1.5.1989. The said notification was a public document. Negotiations between the appellant and the respondent took place subsequent to the issuance of the aforesaid notification and Therefore, the provisions of clause 10C providing that if during the progress of the work the price of any material incorporated in the works (not being a material supplied from the Engineer-in-Charge's stores in accordance with clause 10 hereof) and/or wages of labor increase as a direct result of the coming into force of any fresh law or any Statutory Rules or Order and such increase exceeds 10% of the price and/or wages received at the time of tender for the work, the contractor would be entitled to such increase, cannot be made applicable to the facts and circumstances of the case. Admittedly, the increase in the wages of labor took place prior to the execution of the contract and during the course of negotiations itself and thereof, the appellant cannot be said to be entitled to the benefit of clause 10C, for such increase in wages of labor is admissible only when price of the materials or wages of labor would be claimed and availed of only when increase in made during the progress of the work. Even otherwise the arbitrator has considered the records of the case and held that even on merits the appellant is not entitled to the aforesaid claim, for they have not produced any valid documents in support of this claim, making them entitled to such payment. The aforesaid findings of the arbitrator are findings of fact and such findings of fact cannot be interfered with by the Court sitting as an appellate court.

8. In that view of the matter there is no merit in this appeal and the same stands dismissed as having no merit.