
(2001) 05 DEL CK 0170

In the Delhi High Court

Case No : IA.9220/95 in Suit No. 1617-A of 1995

Surender Kumar and Brothers

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 14-05-2001

Acts Referred:

Arbitration Act, 1940 — Section 30
Contract Act, 1872 — Section 74

Citation : (2001) 05 DEL CK 0170

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. Rajesh Lakhanpal, for the Appellant; Mr. Rakesh Kumar, for the Respondent

Judgement

A.K. Sikri, J.—Mr. S.S. Soneja, Chief Engineer (NDZ) II, CPWD, New Delhi was appointed as the Arbitrator by the respondent as disputes arose between the parties. The Arbitrator entered upon the reference on 6th September, 1993 and after adjudicating the matter, made and published award dated 13th March, 1995. By means of this application, the respondent has filed objection against award of certain claims.

2. Objections to grant of claim nos. 2, 3, 9, 10 and 14 are of similar nature and can be disposed of together.

3. Against Claim no. 2 preferred by the petitioner, the Arbitrator awarded a sum of Rs. 22,500/-. This was on account of difference of quoted rates and rates paid. The objection is that the Arbitrator ignored the objectors' contention that difference in the rates claimed are because of abnormally high rated items and Arbitrator has not given reasons while awarding this claim.

4. Claim no. 3 was preferred by the petitioner on account of double rate recovery and a sum of Rs. 40219/- in respect of this claim. It is the submission of the objector that it was the responsibility of the petitioner to restrict the use of the

material within prescribed limits.

5. Against Claim no. 9 which was on account of rise in prices, a sum of Rs. 12,042/- is awarded under Clause 10-C of the Agreement treating it as escalation in price. It is stated that the Arbitrator has not given reasons in arriving to the awarded amount.

6. Claim no. 10 was in respect of derivation of rates of extra items. For certain extra items executed by the petitioner he had made the claim at a particular rate which was higher than the rates at which he was paid by the respondents. The Arbitrator has awarded a sum of Rs. 12,722/- on this account. In the objections, it is mentioned that the learned Arbitrator has failed to consider the contention raised by the objector that the payment made to the petitioner for EI/SI during the running payment were provisional and as such were to be treated as advance payments and the payments made by the objector were correctly made as per Clause 10 of the Agreement.

7. In so far as Claim no. 14 is concerned, it was preferred on account of certain deductions made by the respondents which the petitioner had challenged as unauthorised. A sum of Rs. 15,762/- is awarded under this Claim. The objection is that decision of the Superintending Engineer, regarding this deduction was final and was not open to challenge.

8. The challenge to the award of aforesaid Claims shows that it is the correctness of the award on merits which is challenged by the objector. Such type of objections are not permissible as this Court is not to sit in appeal over the findings of the Arbitrator. The impugned award is a reasoned award. The Arbitrator has considered the entire relevant material while adjudicating these claims as is clear from the impugned award.

9. Once it is seen that the learned Arbitrator has not ignored any evidence and the submission of the objector is clearly fallacious on this aspect, further enquiry to examine the correctness of the award on merits is clearly impermissible. It is a well settled principle of law, which needs no elaboration, that when a court is called upon to decide the objections raised by a party against an arbitration award, the jurisdiction of the court is limited, as expressly indicated in Section 30 of the Act itself and it has no jurisdiction to sit in appeal and examine the correctness of the award on merits. (Refer: 1) Food Corporation of India Vs. Joginderpal Mohinderpal, K.S. Randhawa Vs. Union of India & Ors. reported as 2000 3 AD (DELHI) 285).

10. In the case of Hindustan Tea Co. Vs. K. Sashikant Co. and Another, , it was held as follows:-

"Under the law, the arbitrator is made the final Arbiter of the dispute between the parties. The award is not open to challenge on the ground that the Arbitrator has reached a wrong conclusion or has failed to appreciate the facts."

11. Similarly, in the case of Municipal Corporation of Delhi Vs. Jagan Nath Ashok

Kumar and Another, it was held that:-

"The Arbitrator, in our opinion is the sole Judge of the quality as well as quantity of evidence and it will not be for this court to take upon itself the task of being a Judge of the evidence placed before the Arbitrator. It may be possible that on the same evidence the court might have arrived at a different conclusion that the one arrived at by the Arbitrator but that by itself is no ground for review for setting aside the award of an Arbitrator."

12. In the case of Har Govind Jaggi versus Delhi Development Authority reported in 1997 (vol. 27) Arbitration Law Reporter 425 it was held that in view of Section 74 of the Contract Act, irrespective of Clause 42 of the contract being there department is not entitled to effect double rate recovery unless evidence of loss over and above the single issue rate is furnished by it.

13. Similarly, the Supreme Court in the case of Puri Construction Pvt. Ltd. Vs. Union of India (UOI), has held that:-

"When a court is called upon to decide the objections raised by a party against an arbitration award, the jurisdiction of the court is limited as expressly indicated in the Act and it has no jurisdiction to sit in appeal and examine the correctness of the award on merits."

14. Therefore, I do not find any merit in these objections and reject the same.

15. The learned objector had seriously pressed the objection in respect of the Claim No. 13. Under this Claim, the Arbitrator has awarded a sum of Rs. 90,000/- as damages due to prolongation of work. The execution of the contract was prolonged and went beyond the stipulated date of completion. There is no dispute about it. The Arbitrator found that this prolongation was because of the fault of the respondent. After recording this finding, the learned Arbitrator considered the question of quantum of damages awarded. He accepted in that award itself that the petitioner had not placed any documents/vouchers on record to prove the loss due to maintaining establishment during the prolongation period. However, on the ground that some minimum quantity of T&P had to be maintained by the petitioner, the Arbitrator awarded a sum of Rs. 90,000/- to the petitioner for 20 months for maintaining the establishment and T&P during the prolonged period. The objection to this award is two folds, namely:-

1. Learned Arbitrator has not considered relevant documents placed by the respondent on record. It was submitted that in the applications for extension submitted by the petitioner, the petitioner had admitted that there was no fault of the respondent and on extension being given petitioner would not make any claim on this account. It was for this reason, learned counsel for submitted, that extension was given without levy of compensation. The impugned award does not even refer to these documents and the effect thereof. The learned Arbitrator, at least, was required to take into consideration these documents and deal with

the same in the impugned award. Non consideration of such material documents amounts to misconduct as held in by the Supreme Court in the case of K.P. Poulose Vs. State of Kerala and Another, . Relevant portion of the judgment reads as under:-

"Under Section 30(a) of the Arbitration Act an award can be set aside when an Arbitrator has misconducted himself or the proceedings. Misconduct u/s 30(a) has not a connotation of moral lapse. It comprises legal misconduct which is complete if the Arbitrator on the fact of the award arrives at an in consisted conclusion even on his own finding or arrives at a decision by ignoring very material documents which throw abundant light on the controversy to help a just and fair decision. It is in this sense that the Arbitrator has misconducted the proceedings in this case. We have, Therefore, no hesitation in setting aside such an award."

2. The petitioner had not placed any material on record to prove that alleged loss. This was even admitted by the Arbitrator in the impugned Award. The petitioner had made a claim of Rs. 1.54 lakhs on this account. On what basis the Arbitrator awarded a sum of Rs. 90,000/- is not understandable. Relevant para of the award in this respect is reproduced below:-

"Some minimum quantity of T&P has also to be maintained by the claimants till the work is completed. The claimants have filed details amounting to Rs. 1.54 lakhs. In the absence of vouchers, I assess and hold that the payment of Rs. 90,000/- to the claimants for 20 months for maintaining establishment and T&P during the prolonged period would be fair and just."

16. Taking the aid of principle laid down by this Court in the case of Uttam Singh Duggal & Company versus International Airports Authority of India reported in 1993 (2) Arb LR128 it was submitted that the grant of damages without disclosing the basis of calculations was clearly erroneous.

17. I am of the opinion that the respondent's objection to the award of this Claim is liable to succeed on both the aforesaid counts. The learned counsel for the respondent has rightly argued that the application/proforma for seeking extension were relevant documents which had to be taken into consideration and effect thereof had to be stated. Non consideration thereof would amount to legal misconduct. Learned counsel for the petitioner tried to argue that these documents were taken into consideration as in the recital portion of the award, the Arbitrator has stated that he has carefully considered the evidence adduced, submissions made etc. I do not agree that the omnibus statement to this effect in the opening para would be sufficient to demonstrate that the Arbitrator had considered the aforesaid document when it was a very material and important document and there is no specific reference to the same while adjudicating this claim. Award had to be reasoned one and the Arbitrator has given reasons. While specifically dealing with this Claim the Arbitrator has referred to scores of documents produced by both the parties but there is no reference to this specific

document which was filed as Annexure R-83. The Arbitrator was supposed to deal with this document as the entire case of the respondent rested on this vital document. This plea is specifically raised in the reply filed by the respondent to the statement of fact filed on behalf of the petitioner before the Arbitrator. Significantly, there is no rejoinder filed by the petitioner refuting this contention or challenging the stand in any manner. Further, I also do not agree with the contention of the petitioner that the Arbitrator was not supposed to give the basis on which he came to the conclusion that an amount of Rs. 90,000/- was payable. No doubt meticulous detail are not required but some indication should have been there to point out as to how he was arriving at the figure of Rs. 90,000/-. The judgment cited by the counsel for the petitioner namely, Har Govind Jaggi versus Delhi Development Authority (supra), MCD versus Jagan nath Ashok Kumar (supra) therefore would not apply to the facts of this case and the judgment cited by the objector apply in all force. The award of Rs. 90,000/- against Claim no. 13 is accordingly set aside.

18. The respondents have also objected to the grant of interest @ 12% per annum on the ground that there is no provision in the Agreement for award of such interest. Objections is also raised against award of Rs. 4000/- as cost by contending that award of cost is arbitrary and without any justification. Both these objections are unsustainable. Perusal of the award shows that simple interest @ 12% is awarded from 16th September, 1993 against certain claim i.e. the date when the petitioner had raised these Claims and demanded interest therein. This is granted till the date of publishing of the award. The Arbitrator has also granted simple interest @ 14% per annum on the awarded amount from the date of award to the date of payment or decree, whichever is earlier. Even in the absence of agreement regarding interest, interest could be awarded from the date when the claims are made and interest is demanded thereon. Precisely this is done by the Arbitrator. Further, the Arbitrator has jurisdiction to award pendente lite interest as well as interest till the date of passing of the decree. Likewise grant of award of cost of Rs. 4000/-, as against claim of Rs. 11,000/- preferred by the contractor was within the discretion of the Arbitrator. Both these objections are, Therefore, rejected.

19. is accordingly partially allowed. The objections of the respondents qua the Claim no. 13 are accepted and other objections are hereby rejected.

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20. The award stands modified by excluding the award in respect of the Claim no. 13. Rest of the award, as modified above, is made the Rule of the Court. The Petitioner shall also be entitled to interest @ 12% per annum from the date of decree till payment. Decree be drawn accordingly.

21. In so far as Claim no. 13 is concerned the matter is remitted back to the Arbitrator for deciding the same afresh after taking into consideration all the relevant documents and in accordance with law.

22. is and Suit stand disposed of.