
(1996) 08 DEL CK 0031

In the Delhi High Court

Case No : Suit No. 1774 of 1987 and I.A. No. 8823 of 1990

Trakru Projects (India) (P.) Ltd.

APPELLANT

Vs

International Airport Authority of India

RESPONDENT

Date of Decision : 13-08-1996

Acts Referred:

Citation : (1996) 08 DEL CK 0031

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

Bench : Single Bench

Advocate : Sh. M.K. Vashisht, for the Appellant; Sh. Nikhilesh, for the Respondent

Judgement

Dr. M.K. Sharma, J.—Disputes having between the parties the respondents appointed the Chief Engineer (CW) International Airport Authority of India as the sole arbitrator under clause 25 of the agreement in respect of work "Special Repairs to Bay No. 13 at Delhi Airport, Palam", to decide and make his award in respect to the disputes referred to him. The arbitrator entered into the reference and after considering the claims filed by the parties and upon taking evidence in the form of documents and after hearing the parties passed an award on 11.6.1987. The aforesaid award passed by the arbitrator was filed in this court Along with the proceedings. Upon filing of the said notice was issued to both the parties, on receipt of which the respondents filed an objection to the award seeking setting aside of the said award. The petitioner filed a reply to the aforesaid objections contending that the aforesaid objections have on merits and are liable to be dismissed and sought for making the award Rule of the court.

2. I have been taken through the contents of the award passed by the arbitrator as also through the proceedings before the Arbitrator by the learned counsel appearing for the parties. Upon hearing the counsel for the parties, I propose to dispose of the objections raised by the respondents.

3. The respondents did not raise any objection in respect of claim No. 1 which

relates to expenditure incurred by the respondents for submission of tender and various other expenses connected with it which came to be rejected by the arbitrator, and Therefore, does not call for my consideration at all.

4. In respect of claim No. 2 for Rs. 67,900.50 on account of incurring expenditure on idle wages of labour the Arbitrator has awarded a sum of Rs. 16,250/-. Similarly, in respect of claim No. 3 of the claimant/petitioner for the amount of Rs. 7,830/- for incurring expenditure on idle wages of staff the arbitrator has awarded a sum of Rs. 7,200/- in respect of the said claim.

4.1. The learned counsel appearing for the respondents submitted before me that the aforesaid award of the arbitrator awarding the aforesaid sum is without any reason. As is disclosed from the award, the arbitrator did not refer to any document on the basis of which he had arrived at the entitlement of the said amount. The learned counsel for the petitioner on the other hand submitted that the vouchers in respect of the said claims were submitted by the claimant/petitioner and on consideration of the same the arbitrator came to the conclusion that the claimant is entitled to the aforesaid amount in respect of the aforesaid two claims.

4.2. It has been settled by the Apex Court that the Court cannot probe into the mental process of the arbitrator and speculate, when no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. In *Bijendra Nath Srivastava (Dead) through LRs. Vs. Mayank Srivastava and others*, , the Supreme Court has held that as regards the award made by an arbitrator under the Act the law is well settled that the arbitrator's award is generally considered binding between the parties since he is the tribunal selected by the parties. In the said decision, it is further held that an award is not invalid merely because by process of inference and arguments it may be demonstrated that the arbitrator has committed grave mistake in arriving at his conclusion. The arbitrator is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or deed of settlement he is required to give such reasons.

4.3. In the present case it is admitted position that under the arbitration agreement the arbitrator was not required to give such reasons. Since on consideration of the evidence before him the arbitrator has come to the aforesaid conclusion that the petitioner/claimant is entitled to Rs. 16,250/- and Rs. 7,200/- towards expenses incurred on account of idle wages of labour and idle wages of staff, the aforesaid conclusion of the arbitrator cannot be interfered with.

5. So far as claim No. 4 is concerned, the same relates to expenses incurred by the claimant/petitioner on depreciation of machinery, tools, plants, centering and shuttering materials as against which a sum of Rs. 13,400/- has been awarded by the arbitrator as against the claim of the petitioner/claimant of Rs. 53,673/-. It is the clear case of the petitioner that as it was awarded with the aforesaid contract it brought all machinery and tools to the work site in order to start the

work and were awaiting handing over of the work site which was delayed by the respondents. As the petitioners placed all their machinery tools, plants etc, at the site they incurred an expenditure towards depreciation of the aforesaid machinery and tools which were arranged by them for the work.

Similarly, as against claim No. 5 of Rs. 1,03,000/- on account of expenditure incurred for purchase of materials the arbitrator on consideration of the pleadings and arguments held that the claim for the purchase of materials was justified to an extent of Rs. 16,600/-. Apparently, on the face of the award no reason has been assigned by the arbitrator in coming to the aforesaid conclusion of awarding Rs. 13,400/- in respect of the claim for incurring expenditure on depreciation of machinery, tools etc. and of Rs. 16,600/- in respect of the claim on account of incurring expenditure for purchase of materials. In my opinion, the ratio of the decision in B. N. Srivastava's case (supra) is applicable to these claims as well and Therefore, the objections raised as against the award are also not found to be tenable.

6. During the arbitration proceedings the claimant also preferred claim for the expected profit of 10% of the contract, which according to the claimant could not be carried out on account of defaults and circumstances created by the PL 100 respondents. As against the claim of claimant/petitioner of Rs. 72,000/- on the said account the arbitrator awarded a sum of 21,500 holding that the contractor was reasonably expected to earn a net profit of 3% on the amount of the work. The aforesaid claim is based on the provisions of Section 73 of the contract Act towards loss of profit due to the breach of the contract committed by the respondents by not handing over the site to the petitioner/contractor. The arbitrator has arrived at the aforesaid conclusion after making certain calculations in respect of the said claim.

In my considered opinion, as is held in B. N. Srivastav's case (supra) an award cannot be held to be invalid merely because by a process of inference and arguments it might be demonstrated that the arbitrator has committed grave mistake in arriving at his conclusion.

7. On an over all consideration of the entire facts and circumstances of the case I do not any infirmity in the award passed by the arbitrator. The objections filed by the respondents are found to be without any merit and are accordingly rejected. The award passed by the arbitrator on 24.7.1984 is made a Rule of the court. Let a decree be drawn in terms of the award. Decree sheet be prepared accordingly. With costs.