
(1998) 01 DEL CK 0087

In the Delhi High Court

Case No : Suit No.2754-A/87 and I.A. No. 1342/89

Union of India

APPELLANT

Vs

Indira Rai and another

RESPONDENT

Date of Decision : 13-01-1998

Acts Referred:

Arbitration Act, 1940 — Section 14, 17

Citation : AIR 1998 Delhi 160 : (1998) 71 DLT 720 : (1998) 44 DRJ 312

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Mr. K.C.Mittal Adv, for the Appellant; Mr. D.P.Sharma and Ms. Ginny Jaitley, for the Respondent

Judgement

C.M.Nayar, J.—This petition has been filed under Sections 14 and 17 of the Arbitration Act, 1940 for filing of the Award dated 12th November, 1987 and for making the same rule of the Court. The petitioner Union of India entered into a contract for renovation of sample room at Red Fort, Delhi vide agreement dated 18th August, 1979 bearing No. B/87090/DGI/VEH/TCV(STAT). The said contract contained an arbitration clause (Clause 6) wherein it was provided that in case of any differences and disputes arising between the parties out of this contract, the same shall be referred to arbitration.

The said clause (6) may be read as follows:-

"(6) Supervision of work:- Settlement of disputes Any disputes arising out of this contract shall be referred to arbitration by an officer of the corps of Engineers appointed by the Government. The decision of the arbitrator will be final and binding on both parties."

2. In pursuance of the above said clause an arbitrator was appointed vide communication dated 16th July, 1981 which reads as follows:-

"No.B/87090/DGI/VEHS/TCV(STAT)

Government of India

Ministry of defense

Deptt of defense Supplies

New Delhi the 16.7.81

Brig. J.C.Sachdeva E-in-C's Branch E 8 Army Hqrs, New Delhi.

Sub:- Contract No.B/97090/DGI/VEGS /TCV(STAT) dt:17.8.79 for Renovation of Sample Room at Red Fort Delhi.

Whereas certain disputes and differences have arisen in connection with the contract cited as subject above between Mrs. Indira Rai B 105 defense Colony New Delhi the contractor and the President of India.

2. Whereas the contract cited above is subject to the condition of contract Appendix D of the contract the clause of which provides for reference of disputes or differences arising under these conditions or any special condition of contract or in connection with the said contract to the sole Arbitration of an office of the corps of Engineers appointed by the Government to hear and decide the dispute and differences between the parties so far as they are referable to arbitration under the said arbitration clause.

3. You are hereby nominated by me to act as sole arbitrator to hear and decide the disputes and the differences between the parties so far as they are referable to arbitration under the said arbitration clause.

4. By virtue of the aforesaid arbitration agreement the venue of Arbitration shall be New Delhi.

Sd/-

(R.P.SINGHAL)

Joint Secretary to the Government of India"

3. The arbitrator rendered his Award on 12th November, 1987. The claims of the respondent no. 1 were dealt with in the following manner:-

"Claims by Mrs. Indira Rai Union of India represented by Joint Secretary (Supplies), Department of defense Supplies, Ministry of defense shall pay to the Claimant, Mrs. Indira Rai the amount set out herein under vide column against respective item.

Srl. Description in brief Award No. and amount of the claim with findings in brief 1. Work done up to the Rs.77,314.01* stage of Joint *Against this Measurements. Mrs.Indira Rai Amount-Rs.90,053.80 has received (Claim partially an amount of sustained) Rs.49,260.00 as advance payment. 2. Claim for extra items Rs.1,692.90 ordered by GE Red Fort. Amount - Rs.4,853.65 (Claim partially sustained) 3. Claim for work carried

Rs.2,220.00 out after Joint Measurements were recorded. Amount - Rs.4,100.00 (Claim partially sustained) 4. Claim for supply of NIL materials to have been provided by the respondent. Amount-Rs.65,499.00 (Claim not sustained) 5. Claim for loss/damage Rs.8,500.00 due to infringement of copy right and use of drawings by M/s Punnsons for completion of the work. Amount-Rs.1,00,000.00 (Claim partially sustained) 6. Claim for materials Rs.2,300.00 removed from site by the respondent. Amount-Rs.1,20,200.00 (Claim partially sustained)"

4. Similarly the claim filed by Union of India was disposed of as follows:-

"Claim by Union of India Mrs.Indira Rai shall pay to the Union of India represented by Joint Secretary(Supplies), Department of Supplies, Ministry of defense the amount shown vide column against respective item.

Srl Description in brief Award No. and amount of the claim with findings in brief 1. Work not executed by Rs.70,368.04 Mrs.Indira Rai and got completed by M/s Punnsons at risk and cost of Mrs.Indira Rai. Amount-Rs.76,910.85 (Claim partially sustained) 2. 10 per cent compensation NIL Amount-Rs.16,420.80 (Claim not sustained)"

5. Reading of the above will indicate that the Arbitrator has passed a non-speaking Award without giving any reasons in the Award for his conclusions. The record has been produced before this Court which will indicate the thought process of the arbitrator and that both the parties have been provided ample opportunity to put forward their claims. In any case it is not obligatory on the part of the arbitrator to assign reasons which are not required to be given as has been clearly settled by the Supreme Court in the judgments as reported in AIR 1990 1426 (SC) and Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, which categorically established that the Award is not merely to be set aside on the ground of absence of reasons as the arbitrator is not obliged to give reasons unless so stipulated in the agreement itself. In Raipur Development Authority's case (supra) the Con situation Bench held as follows in paragraph 23:-

"23. This Court also relied on the decision in Haigh v. Haigh (1861)31 LJ Ch 420 which required an arbitrator to act fairly in the course of its duties. The two well recognised principles of natural justice are (i) that a Judge or an arbitrator who is entrusted with the duty to decide a dispute should be disinterested and unbiased(*nemo judex in causa sue* ;and (ii) that the parties to dispute should be given adequate notice and opportunity to be heard by the authority (*audi alteram partem*) (See Administrative Law by H.W.R.Wade, Part V and Judicial Review of Administrative Action by S.A.de Smith, Third Edition, Chapter 4). Giving reasons in support of a decision was not considered to be a rule of natural justice either under the law of arbitration or under administrative law."

6. The reading of the arbitration clause as well as the subsequent reference Order did not make it imperative for the arbitrator to give reasons. In view of the

settled position of law the learned counsel for the respondent has not been able to assail the Award on that ground. He, however, has contended that the arbitrator could not have considered the claim of the Union of India as the reference was only sought by the respondent. This submission cannot be entertained as all disputes which were required to be adjudicated were referred by the petitioner as well as by the respondent and the arbitrator did not go beyond his jurisdiction to decide the same.

7. The Award dated 12th November, 1987 is, accordingly, made rule of the Court and decree in terms thereof shall be drawn. In the facts and circumstances of the present case the respondent is granted two months' time to pay the awarded amount failing which she will be liable to pay interest at the rate of 12% p.a. from the date of decree till realisation. There will be no order as to costs.