
(2011) 12 DEL CK 0448
In the Delhi High Court
Case No : O.M.P. 487 of 2009

Union of India

APPELLANT

Vs

M/S Manoj Builders and Another

RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2011) 12 DEL CK 0448

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Reeta Kaul with Mr. Sandeep Khatri, for the Appellant; Suman Doval, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—The challenge by the Union of India ("UOI") in this petition u/s 34 of the Arbitration and Conciliation Act, 1996 ("Act") is to the Award dated 26th March 2009 passed by the Sole Arbitrator in the dispute between the Petitioner and Respondent No. 1, M/s Manoj Builders, arising out of the award of the work of "widening of Delhi-Rohtak Road, NH-10 from 4 lanes to 6 lanes from RD 16.500 km to RD 21.300 km".

2. The learned Arbitrator allowed Claim Nos. 1 to 4 and 8 preferred by Respondent No. 1. Further, he awarded Claim No. 13 relating to interest as well as Claim No. 14 relating to costs. In all, the Petitioner was to pay the Respondent No. 1 an amount of Rs. 30,30,310.99 inclusive of interest. Future simple interest @ 8% per annum was awarded from the date of Award till the date of payment. Future interest was directed to start after a grace period of three months from the date of the Award.

3. Ms. Reeta Kaul, learned counsel appearing for the Petitioner first submitted that Respondent No. 1 did not submit the running bills within three months of the physical completion of the work. Moreover, the Respondent No. 1 never really

protested about the deduction of rebate by Petitioner or raised any claim for refund of the rebate wrongly deducted. In other words, it was submitted that Respondent No. 1 could not have been rewarded for its own default. It is submitted that in terms of Clause 9 of the agreement, the final bill had to be submitted in the same manner as the interim bills in terms of Clause 7 thereof. Respondent No. 1 filed its claim after it had accepted the final bill with the deduction of rebate without any protest. On the other hand, learned counsel for the Respondent pointed out that these are pure questions of fact for which evidence was led before and examined by the learned Arbitrator. The findings of fact, therefore, did not call for interference.

4. A perusal of the impugned Award shows that the learned Arbitrator has examined the documents as well as the evidence in great detail. Respondent No. 1 was to execute the gross value of work of not less than Rs. 5,00,000/- in the previous month. Despite the contract requiring him to do so, the Engineer in-charge had not fixed any definite date by which the Respondent was to be paid every month. In case the department wanted to avail of the rebate, it had to ensure that the payment was made by the date specified by the Engineer In-charge. It was in these circumstances that Respondent No. 1 was held entitled to the refund of the rebate deducted from those running bills where the payment had been delayed. As regards Claim No. 2, although Respondent No. 1 had offered a rebate of 1.5% on the amount of the work done, this was subject to the final bill being paid within six months of the completion of work. Here again on facts, it was held that without the Petitioner asking the Respondent to submit the final bill within a reasonable time, the question of computation of six months for making of payment did not arise. It was factually held that the Petitioner did not pay the final bill within six months of the completion of work and, therefore, it was not entitled to the rebate that could have been offered by Respondent No. 1 to the Petitioner.

5. As regards Claims 1 & 2, having examined the impugned Award, this Court is unable to be persuaded to hold that it is contrary to any clause of the contract or any provision of law.

6. Claim No. 3 was for extra rates demanded for quantity of agreement item No. 1/1 executed beyond the deviation limit prescribed in the contract documents. On an examination of the concerned clauses of the contract and the evidence, the learned Arbitrator came to the conclusion that Respondent No. 1 had established the claim for the extra rate of item only from the date on which he executed the deviated quantity. Claim No. 4 was in relation to the quantity of agreement item No. 1/14. As regards Claim Nos. 3 & 4 the impugned Award was based entirely on the evidence placed on record and the determination in that behalf is factual. Claim No. 5 was rejected. Claim No. 6 was on account of wrongful deduction of sales tax from the running bills. The claim was allowed and interest on refunded amount also awarded. Claim No. 7 pertained to interest on delayed payment of escalation. Claim No. 8 was on account of the idle

establishment on account of the breach of contract by Respondent No. 1. The findings on claim No. 8 were again purely factual. Learned counsel for the Petitioner has been unable to persuade this Court to hold that the Award in respect of the above claims is perverse or contrary to the clauses of the contract or the substantive provisions of law.

7. No grounds for interference with the impugned Award u/s 34 of the Act have been made out. The petition is dismissed with costs of Rs. 5,000/-which will be paid by the Petitioner to Respondent No. 1 within four weeks.