

Union of India Vs. Devidas Construction

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Court : Mumbai

Decided On : Dec-09-1997

Reported in : 1998(2)ALLMR381

Judge : V.R. Datar, J.

Appeal No. : Arb. Petition No. 156 of 1994 in Award No. 155 of 1994

Appellant : Union of India

Respondent : Devidas Construction

Advocate for Def. : Sh. S.U. Kamdar and ;H.S. Desai, Advs. i/b. ;Virsen L. Panjwani

Advocate for Pet/Ap. : Ms. S.I. Shah, Govt. Adv.

Judgement :

V.R. Datar, J.

1. The Union of India through Executive Engineer, Department of Telecommunications, Civil Wing, Sion, Bombay, has filed this petition under Section 30 of the Indian Arbitration Act, 1940 for setting aside the award made and published by the sole Arbitrator Mr. J. Pal on 13th April, 1994.

2. The respondent is a proprietary concern carrying on business as engineers and civil contractors. Tenders were invited for the work of construction of cable duct from Prabhadevi T.E. building to Bandra T.E. building sub head Part II 32 way duct from MH014 to MH024. The respondent submitted their tender on 3rd September, 1987 and this tender was accepted. A contract bearing No. 18/EET/BII/87-88 was entered into between the parties on 27-1-1987. This agreement contained an arbitration clause in case disputes and differences arose between the parties. The work was to commence on 13-12-1987 and was to be completed within 6 months i.e., on or before 11-6-1988. According to petitioner, the respondent could not complete the work. On 15th June, 1990 the respondent wrote a letter to the petitioner stating therein that the work was completed in March, 1990. The engineer of the petitioner denied that claim.

3. Thereafter disputes and differences arose between the parties and, therefore, the respondent invoked arbitration clause for appointment of sole Arbitrator to decide the claim and make an award. Initially, one Mr. N. S. Chakravarthy had been appointed as sole Arbitrator but he vacated the office and resigned from the appointment and, therefore, Mr. J. Pal came to be appointed as sole Arbitrator.

4. On behalf of respondent-firm, in all 10 claims were put forth before the Arbitrator while petitioner filed its reply to the said claim and further preferred counter claims containing 8 items. The Arbitrator after hearing the parties at length and carefully considering the evidence adduced and the documents produced by the parties, made and published his award as stated above, which is challenged in this petition.

5. The challenge is only to certain items and it is contended that the learned Arbitrator has gone beyond the scope of the contract and has not taken notice of terms and provisions incorporated in the contract and, therefore, his award is liable to be set aside. In this behalf, it is stated that in respect of item No. 6 from Claim No. 1, the learned Arbitrator erroneously held that there was interpolation by adding the word 'providing' at three places in the said item and that this word at those three places was already there even in the copy supplied to the respondent on the same day. As per this clause, the nylon rope which was to be inserted in

the ducts was to be provided by the respondent and thereupon the testing was to be done by the department. That is how the work is stated to be not completed by the respondent. And that is how the Arbitrator is alleged to have gone beyond the scope of the contract. In regard to Claim No. 2, it is contended that there is an error apparent on the face of the award; inasmuch as the learned Arbitrator held that the addition of the word 'providing' was not attested by any party when in fact in the margin of the page where this item 6 SH : A occurs there are signatures of both the parties. In regard to Claim No. 3, it is contended that when the work was not completed, the Arbitrator was not justified in directing refund of security deposit and this direction is beyond the scope. In regard to Claim Nos. 4, 5, 6 and 7, it is contended that when the respondent failed to complete the work in terms of the agreement, it was wrong to hold that petitioners were responsible for breach of the contract and, therefore, award of damages on that basis under these claims was beyond the scope of the arbitration. So also the learned Arbitrator awarded payment of bank charges in respect of bank guarantee, which was taken in lieu of security deposit and since the work had not been completed and the bank guarantee was required to be extended, petitioners cannot be said to be responsible for the bank charges. Claims Nos. 9 and 10 relate to award of interest on Claim Nos. 1, 2, 3, and 8 and since the main items are stated to be in excess of jurisdiction of Arbitrator the interest awarded thereon cannot be sustained. So far as Counter Claim Nos. 2, 4, 5, 6 and 8, it is contended that the award made by the Arbitrator is bad in law and in regard to Counter Claim No. 4, the observation of the Arbitrator that PVC pipes issued to the respondent by the petitioners under the terms of contract had been completely utilized in the work is not based on the provisions of the agreement. That is how it is stated that the award under Challenge is liable to be set aside.

6. On behalf of respondent firm affidavit in reply has been filed by one Suresh Arjandas Bakhtiani denying all the grounds stated above.

7. I have heard Ms. Shah for the petitioner and Mr. Kamdar for the respondent's firm. After considering the submissions, I find that none of them is covered by provisions of Section 30 of the Indian Arbitration Act, 1940.

8. Mr. Shah laid considerable stress upon item No. 6 from Claim No. 1 and Claim No. 2 in regard to nylon rope. It was contended that the Arbitrator's finding that there was an interpolation not attested by anybody and thereby the department was to supply the nylon rope is contrary to the record and erroneous and on erroneous view of law. I find little substance in this submission because not only on the alleged interpolation but by support of other facts on record, the Arbitrator has come to the said conclusion. In that behalf, it was pointed out that earlier 10 running bills were passed by the department on the basis that the nylon rope was required to be provided by the department and in those running bills the word 'providing' was not mentioned there, though subsequently such a word appears in item No. 6.

9. However, it would be sent that the Arbitrator was free to decide the matter on his own interpretation of the terms of the agreement and this court cannot sit over that award as an Appellate Court. I do not find that there is any excess of jurisdiction on the part of the Arbitrator or there is any error apparent on the face of the award. Equally there is nothing to support that the Arbitrator is guilty of legal misconduct. Assuming for the moment that the conclusion of the Arbitrator regarding interpolation by adding the word 'providing' in item No. 6 from Claim Nos. 1 and 2 is not correct, that would not be a ground for setting aside the award. All these are factual aspects and on the basis of the documents and submissions, the Arbitrator has come to certain conclusion and made the award. It was contended that at least in regard to security deposit, the learned Arbitrator has recorded a contrary finding. In regard to the counter claim of the petitioners for compensation inspite of the delay in completion of the work, the learned Arbitrator has stated that the claim is beyond the scope of arbitration by relying upon certain decisions of the Supreme Court but then he directed the refund of security deposit when the department had a lien over the amount and could have withheld the payment until the claim was satisfied. However, it would be seen that the claim for damages was not ascertained at all. Anyway this aspect of the matter does not attract any of the grounds specified in Section 30 of the Indian Arbitration Act. After having considered all the submissions of Ms. Shah, I find no merit in this petition and the same is dismissed with costs.

10. At this stage Mr. Kamdar for the respondent makes oral application under Rule 787(5) of High Court (OS) Rules for drawing decree in terms of the award since the petition is dismissed. As such the award is directed to be made a rule of the court and the decree in terms of the award be drawn.

11. Drawing up of decree and issue of certified copy expedited.

12. Mr. Kamdar stated that the amount awarded by the Arbitrator is deposited in court and he may be permitted to withdraw the same. The respondent is permitted to withdraw the amount after the period for appeal is over.

13. Petitioner dismissed.

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