

Kashi Ram Jain Vs. Delhi Development Authority and anr.

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Court : Delhi

Decided On : May-18-1979

Reported in : ILR1981Delhi524

Judge : Sultan Singh, J.

Acts : [Arbitration Act, 1940](#) - Sections 30 and 33; Evidence Act; [Code of Civil Procedure \(CPC\), 1908](#)

Appeal No. : Suit Appeal No. 847A of 1976

Appellant : Kashi Ram Jain

Respondent : Delhi Development Authority and anr.

Advocate for Pet/Ap. : R.L. Pal and; Usha Mehra, Advs

Judgement :

Sultan Singh, J.

(1) The petitioner entered into a contract with the respondent Delhi Development Authority for the execution of the work of Development of land in Zone E-8 to E-12 (Phase 1) as per agreement No. 14/EE/DDV/72-73. Clause 25 of the Agreement is as follows :

'EXCEPT where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions hereinbefore mentioned and as to the quality or workmanship or materials used on the work or as to any other question, claim, right matter or thing whatsoever, in any way arising, out of or relating to the contract, designs, drawings, specifications, estimates, instruction, orders or these conditions or otherwise concerning the works, or the execution or failure to execute the thereof same whether arising during the progress of the work or after the completion or abandonment shall be referred to the sole arbitration of the person appointed by the Vice Chairman, Delhi Development Authority at the time of dispute. It will be no objection to any such appointment that the arbitrator so appointed is a Delhi Development Authority employee that had to deal with the matters to which the contract relates and that in the course of his duties as Delhi Development Authority employee he had expressed views on all or any of the matters in dispute of difference. The arbitrator unto whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason, such Engineer Member Delhi Development Authority as aforesaid as the time of such transfer, vacation of office or inability to act shall appoint another person to act as arbitrator in accordance with the terms of the contract. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor it is also at terms of this contract that no person other than a person appointed by such Engineer Member, Delhi Development Authority as aforesaid should act as arbitrator and, if for any person, that is not possible, the matter is not to be referred to arbitration at all. In all the cases where the amount of the claim in dispute is Rs. 50,000 (Rupees Fifty thousand and above) the arbitrator will give reason for the award. Subject as aforesaid the provisions of the [Arbitration Act, 1940](#), or any statutory modification or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this Clause. It is a term of the contract that the party involving arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amount or amounts claimed in respect of each such dispute. 25 (a) The arbitrator (s) may from time to time with the consent of the parties enlarge the time for making and publishing the award.'

Disputes arose between the parties and by letter dated 10th September, 1977 Mr. J. K. Bhatte, respondent No. 2 was appointed as arbitrator for adjudication of the disputes. The arbitrator made and signed the award on 19-10-1976 (in the award the year is wrongly mentioned as 1967). The award was filed in court. Notice of the filing of the award was given to the parties. The petitioner filed objections (IA 1504/77) under Sections 30 and 33 of the Arbitration Act for setting aside the award. Under Clause 25 of the contract where the amount of the claim in dispute is Rs. 50,000 and above the arbitrator is required to give reasons for the award. The award in question deals with 11 claims. In the award on the stamp paper the arbitrator has mentioned either that the claim is rejected or the claim is justified to a certain extent. In support of the award the arbitrator gave so called reasons on a separate sheet of paper. The contention of the petitioner's counsel is that the arbitrator has not complied with the requirement of giving reasons and therefore, it is alleged, that he misconducted the proceedings. the various claims, the disputes and the award given by the arfirator are as follows :

Claim Dispute Award

1. Claimant claims a sum The Aabrbitra turn is to determine The Claim is rejected of Rs. 56,747.00 towards whether the short payment claim of the claimant made under agreement is justified and if so, No.

1. to what extent

2. Claimant claims a sum The Arbitrator is to determine The claim is rejected. of Rs. 14,534.00 towards whether the less payment m'de under claim of the claimant a greernent item No. is justified and if so, lii for carriage of materials. to whit extent

3. Clamant claims a sum -do- The claim is justified of Rs. 56,238.00 towsrds to the extent less paymeat made of Rs. 4691.00 for carriage of materrial by mech. transport lead up to 10km, 11km and 12 kms. Claim Dispute Award

4. Claimant claims a sum The Arbitration is to The claim is rejected. of Rs. 91,725.00 in agreement determine whether the iteem No. 8 for claim of the claimant is supply of moorum towards justified and if so, to what short payment.

extent

5. Claimant claims a sum -do- The claim is rejected. of Rs. 3200.00 towards refund of Royalty .charges deducted from him.

6. Claimant claims a sum -do- The claim is rejected. of Rs.7,623.00 towards deduction made by the respondents on account of voids under agreement item No. V.

7. Claimant claims a sum -do- The claim is rejected. of Rs. 65,000.00 towards damages.

8. Claimant claims a sum -do- The claim is rejected. of Rs. 9,820.00 towards disproportionate fixed expenditure incurred by him on account of reduction in the quantity of work etc.

9. Claimant claims a sum -do- The claim is rejected. of Rs. 50,076.00 towards increase in the minimum wages of labour under clause 10(c)

10. Claimant claims a sum The claimants intimated The claim is withdrawn of Rs. 41,400.00 towards that since security has by the claimant. refund of security deposit. been refunded he is withdrawing his claim.

11. Claimant claims a sum The Arbitrator is to determine The claim is rejected. of Rs. 50,500.00 towards determine whether the maintenance of the road claim of the claimant for 6 months as instructed is justified, and if so. by the deptt. to what extent

Along with this award reasons in support of the 11 claims given by the arbitrator are as follows :

' Claim No. 1 : The claim is rejected. The arguments of respondent vide his counter statement of facts and also made during proceedings on 1-4-76 are found valid. Counsel for the claimant was given one more chance to be more specific on the claim on 1-4-76. This opportunity was not availed on 15-7-76 by the claimant.

Claim No. 2 : The claim is justified to the extent of Rs. 4691. The nomenclature clearly indicates leads up to 4 km and up to 7 km in agreement item No. 3. thereforee Arbitrator has decided to treat the lead exceeding 4 kms as lead up to 7 kms and accordingly to be paid in item No. 3(b) as per exhibit C-23. The claimant has indicated lengths of roads Abd, Cd and D as 1.219 kms .274 kms and .427 kms, total being 1.92 kms. Total quantity as paid in final bill up to 4 km is 11492.69 cums. It is decided that quantity in road Cd ad D will be paid under item 3(b). Proportionate quantity works out to 4196 cums. Extra amount payable works to Rs. 4691.

Claim No. 3 : The claim is rejected. Rate as claimed by the claimant is at exhibit filed with letter dated 7-7-76 while rate as paid by the respondent is at exhibit R-15. Rate paid by the respondent is found in order.

Claim No. 4 : Claim is rejected. Claimant has not able to prove his contention about extra quantities of moorum.

Claim No. 5 : Claim is rejected. Recovery for royalty has been correctly made by the respondent. Counter statement of facts and arguments on 27-5-76 of the respondent are accepted.

Claim No. 6 : Claim is rejected. Cpwd specifications are applicable to work and hence voids deducted are in order.

Claim No. 7 : Claim is rejected. Arguments of counsel for the respondent as per hearing held on 6-8-76 are accepted.

Claim No. 8 : This claim has been withdrawn by the claimants on 6-8-76.

Claim No. 9 : The claim is rejected. Claimant has not been able to satisfy the respondent as per terms of clause 10(c) that enhanced wages were actually paid by him to the labourers.

Claim No. 10 : This claim has been withdrawn by the claimant on 15-1-76.

Claim No. 11 : The claim is rejected. This has not pursued by the claimant in statement of facts and also during hearing held on 27-5-76 (correction issued on

20-8-76 by the Arbitrator regarding claim No. 11 having been discussed on 27-5-76).'

(2) By giving reasons the arbitrator is supposed to state what is the claim of the contractor, what is the reply of the department, what is the oral or documentary evidence on record, relating to a particular claim and what is the decision and the reasons thereof. From the reasons given by the arbitrator it is not possible to find out what is the claim, what is the reply and what is the evidence in support of the claim and what are the reasons for the decision arrived at by the arbitrator. The arbitrator has only rejected the claim or has held under claim No. 2 that the claim is justified to the extent of Rs. 4691, The reference is made to the various proceedings and no reason is given in support of the decision arrived at by the arbitrator. Under Claim No. 9 the arbitrator rejected the claim on the ground that the claimant has not been able to satisfy the respondent as per terms of clause 10(c) that the enhanced wages were actually paid by him to the labourers, This does not appear to be a method for decision of a claim of the contractor by the arbitrator. It appears that the claimant contractor filed his claim and the Delhi Development Authority filed its reply and the arbitrator has observed that the contractor has failed to satisfy the respondent. For a decision it is not the satisfaction of respondent but it is the satisfaction of the arbitrator whether the contractor is or is not entitled to a particular claim. From the reasons given under the claim No. 9 it does not appear what was the claim and what was the defense of the department. Clause 10(c) of the contract pertains to the enhanced price of the material used or the enhanced wages paid by the contractor on the basis of some increase either in the price of material or the labour charges. It appears that the arbitrator did not apply his mind while settling the claims. Some of the claims, the arbitrator states, were withdrawn by the petitioner contractor.

(3) The reasons given in support of the award are not intelligible. When a matter is referred to arbitration and the arbitrator is required to give reasons in support of the award he has to follow the principles of natural justice although he is not bound to follow the procedure prescribed under the evidence Act or the Code of Civil Procedure. A reasoned award should be self-contained. The so called reasons given by the arbitrator attached to the award are not reasons in support of the

award. The learned counsel for the Respondent has taken me through the proceedings of the arbitrator with respect to each and every claim of the petitioner. The arbitrator 1 must say did not apply his mind while deciding claim of the petitioner. Parties have chosen him to decide the disputes between them and the arbitrator without applying his mind to the statement of claim, the counter statement of claim and the evidence on record cannot reject the claims of the contractor. It is true that the court is not to sit as a court of appeal over the award of the arbitrator but when the arbitrator is required to give reasons in support of the award it is expected that the arbitrator follows the principles of natural justice and give reasons which are intelligible, so that the court may come to the conclusion whether there is any error of law apparent on the face of the award. The facts and the law if any applicable to particular claim have to be mentioned. For these reasons I am of the view that the arbitrator has not complied with clause 25 of the contract whereby he was required to give reasons in support of the award. For these reasons I hold that the arbitrator has misconducted the proceedings and I set aside the award.

(4) The next question is how the claim of the petitioner is to be adjudicated now. The learned counsel for the petitioner submits that an independent arbitrator be appointed. It appears that under clause 25, the arbitrator is to be appointed by the Engineer Member of the Delhi Development Authority. This clause contains a provision that no person other than a person appointed by such Engineer Member of Delhi Development Authority should act as arbitrator. It is further provided that if for any reason it is not possible to appoint an arbitrator the matter is not to be referred to arbitration at all. It therefore appears that the court has no jurisdiction to appoint an arbitrator. The power to appoint an arbitrator vests with the Engineer Member, Delhi Development Authority.

(5) In *Kishan Chand vs. Union of India*; *B. L. Kapoor vs. Union of India*, 1974 Rlr 553 it has been held that where an arbitration agreement provides for the appointment of an arbitrator by named person and no arbitration in case of his failure or default then the court cannot appoint an arbitrator. It appears that the court cannot in the present case appoint an arbitrator and that it is only the Engineer Member of the Delhi Development Authority who has power to appoint

an arbitrator. The award in question is therefore set aside and the Engineer Member of the Delhi Development Authority is directed to appoint a new arbitrator within two months for adjudication of all the disputes raised by the petitioner. The arbitrator would decide the disputes in the manner as stated. A copy of this order be sent to the Engineer Member of Delhi Development Authority. There will be no order as to costs.

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