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Bumbrah Electric Co. Vs. Delhi Development Authority and anr.

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Court : Delhi

Decided On : Feb-07-2002

Reported in : 2002IIAD(Delhi)753; 2003(1)ARBLR421(Delhi); 97(2002)DLT130; 2002(62)DRJ213

Judge : J.D. Kapoor, J.

Acts : Arbitration Act

Appeal No. : Suit No. 787A/95 and is 12003/95

Appellant : Bumbrah Electric Co.

Respondent : Delhi Development Authority and anr.

Advocate for Def. : Amita Singh, Adv.

Advocate for Pet/Ap. : Vivekanand, Adv

Disposition : Suit decreed

Judgement :

J.D. Kapoor, J.

1. There is no gainsaying the fact that the Arbitrator is an instrument of the agreement and is not over it. If the Arbitrator traverses beyond the terms of the agreement such an award is liable to be set aside. He has to remain within the four

corners of the agreement. However, at the same time, it is cardinal principle that the sanctity of the award should always be preserved because the parties choose their own forum reposing their full faith not only in his competence but also in his integrity and impartiality. The parties, are, therefore restrained from picking holes with the findings of the Arbitrator unless bias or perversity is manifest and pronounced.

2. At the same time, the court should also refrain from re-appreciating or re-assessing the evidence or material on which the Arbitrator has based his findings. If this is allowed, it would amount to functioning of court as appellate court which it is not. This is neither the object of Arbitrator Act nor the permissible area. The above principles have been culled out mainly in view of the objections of the respondent to the award that the Arbitrator has gone beyond his brief and has transgressed the arena that did not belong to him.

3. As many as 12 claims were preferred by the petitioner. Out of these only three found favor with the Arbitrator and that too partially. Respondent-DDA has challenged even those claims which on the face appear to be based upon evidence and material produced by the parties.

4. The claimant was awarded electrical work of 408 MIG dwelling units at 'A' Dakshini Pitampura. Some disputes arose which were referred to the arbitrator of Superintending Engineer (Arbitrator)-II. The Arbitrator entered into reference and made the award on 20th March, 1995 which through this petition is being sought to be made rule of the court.

5. The respondent has filed objections to the award through is 12003/95. The main thrust of the objection is that under the arbitrator clause, obligation was cast upon the Arbitrator to give cogent reasons while awarding the claims. Apart from this, the learned counsel for the respondent has also contended that Arbitrator has ignored the relevant record placed before him and has thus misconducted himself.

6. However, the aforesaid objections are without any substance as the Arbitrator has given reasons for the award. Merely because the reasons in the opinion of one party are not cogent is not a ground for setting aside the award. The cogency of the reasons of the Arbitrator cannot and does not come within the ambit of

misconduct. Even if reasoning is erroneous, it is the finding of the Arbitrator which is to be upheld unless it is unsound and unworthy of acceptance.

7. With regard to claim No.1, the respondent has contended that this claim was decided ex-parte and without affording any opportunity to the respondent. It is contended that final bill in respect of this claim was paid on 15th March, 1998 and the same was accepted by the petitioner without any protest on the same day. The perusal of the award shows that the learned Arbitrator has specifically observed that the final bill was paid in April, 1988 as earlier to this, the claimant had demanded the copy of final bill and analysis for reducing the rates through letters exhibits C-24 & C-25 but the respondent did not furnish the details and the claimant accepted reduction in rates for not providing electric cables/wires on the basis of rates available in Delhi Schedule of Rates (DSR) as applicable in terms of agreement. In view of the letters exhibits C-24 & C-25 of the petitioner, the Arbitrator found the claim of the petitioner partly justified and not in whole. Merely because the final bill was accepted by the petitioners does not mean that he had accepted it without protest. By not responding to the letters Exhibits C-24 & C-25 the respondent made the petitioner accept the final bill under reservation as the petitioner accepted reduction in rates available in Delhi Schedule of Rates as applicable in terms of agreement.

8. It is a settled law that the findings of the Arbitrator on factual matrix should not be disturbed even if these are erroneous. The scope of challenge as to the findings of facts based on material and evidence placed before the Arbitrator is almost non-existent. On the anvil of this principles, the objection of the respondent lacks merit.

9. As regards the objection with regard to claim No. 2 which is on account of expenses incurred on drawing fish wire, it is contended by the counsel for the respondent that the said item is not covered under the scope of the agreement. According to the counsel, as per Clause 1 of the additional condition of the agreement, the work was to be carried out strictly conforming with the C.P.W.D. specifications for electrical work, Part-I and in support of that copy of the said specification was submitted before the Arbitrator which clearly mentions that the fire wire of 10 SWG shall be drawn by the Contractor but the said specification was

slightly modified by the respondent and as per the additional condition No. 18 it was mentioned that the fish wire of 16SWG shall be drawn by the contractor. Since this variation is in accordance with the agreement and claimant had not incurred extra expenditure, the objection appears to be untenable in view of the observations and findings of the Arbitrator that the fish wire is required to be provided along with laying the recess conduits in terms of specifications produced by respondent but technically the same was to be taken out after inserting wires in conduit. Hence, it was not part of installations. I do not find any fault in the findings of the Arbitrator and dismiss the objection.

10. Last objection is with regard to claim No. 9 which was not account of loss of profit on balance work. It is contended that Arbitrator did not take into consideration exhibit C-4 vide which the claimant had withdrawn the said claim, as such the claim was outside the scope and ambit of arbitrator agreement. In this regard, referring to Clause 4 which provides that if the site for work is not available either in part or in full for any reason, the time of execution of the electric work shall be correspondingly extended and no claim for idle labour or any other request for compensation (except as provided) under Clause 10 shall be entertained, it is contended by counsel for the respondent that since agreement was closed at the request of the claimant, no question of un-earned profit arises and therefore award in this regard is liable to be set aside.

11. Admittedly, stipulated period of contract was 12 months but the respondent was not in a position to make the site in question available for about 42 months. The petitioner made a request for closure of the contract on 16.4.1984 which was accepted in September, 1986. According to the petitioner, the claimant closed the contract out of frustration as the claimant was to work with clear coordination but the work was stopped due to some unknown reasons. The contract was therefore closed by the claimant to mitigate his losses.

12. Perusal of exhibit C-24 shows that the claim by the petitioner in this regard was withdrawn on the promise of the respondent that it will refer the matter to the arbitrator but the respondent did not keep its promise and as such the petitioner was at liberty to prefer this claim. However, the aforesaid position of not keeping

the promise and to refer the matter to arbitrator was made clear when application containing the disputes and the claims of the petitioner including claim No. 9 was referred by the court to the Arbitrator for adjudication. The contention of the counsel for the respondent has been well taken care of by the Arbitrator with the observation that respondent closed the contract after about 2 & 1/2 years after request of claimant to close the contract. It was on this ground that claim on account of loss of profit on balance work at the rate of 10% was reduced to 5%.

13. As is apparent, the aforesaid claim is neither beyond the terms of the agreement nor is against letter and spirit of the exhibit C-24 whereby contract was closed by the respondent. The very fact that the disputes referred by the petitioner in the main petition filed before the court was considered as disputes referable for arbitrator fortifies the stand of the petitioner. The circumstances of not providing the site for such a long time and then taking two & half years for closing the contract after request of the petitioner to do so could not have been lost sight by the Arbitrator nor can this court excuse the cavalier, casual and indifferent attitude of the respondent firstly in not providing site within the stipulated period and secondly in taking inordinately long time to close the contract after receipt of such request by the petitioner which was made out of frustration and due to non-cooperation of the respondent.

14. In view of the foregoing reasons, I do not find any merit in the objections and the same are hereby dismissed.

15. Award is made rule of the court. Suit is decreed for the amount awarded against these claims with pendent lite and future interest @ 12% till realisation. Decree sheet be prepared accordingly.

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