

Delhi Development Authority Vs. Bhagat Construction Co. (P.) Ltd. and anr.

Delhi Development Authority Vs. Bhagat Construction Co. (P.) Ltd. and anr.

SooperKanoon Citation : sooperkanoon.com/683533

Court : Delhi

Decided On : Aug-08-1983

Reported in : AIR1984Delhi358; 24(1983)DLT256

Judge : D.K. Kapur and; S. Ranganathan, JJ.

Acts : [Arbitration Act, 1940](#) - Sections 30

Appeal No. : First Appeal No. 60 of 1979

Appellant : Delhi Development Authority

Respondent : Bhagat Construction Co. (P.) Ltd. and anr.

Advocate for Pet/Ap. : Usha Kumari and; D.P. Sharma, Advs

Judgement :

D.K. Kapur, J.

(1) AS a result of a contract for constructing 448 dwelling units in the Middle Income Group at Malvia Nagar, New Delhi, some disputes had arisen which were referred to arbitration. By an award dated 27th April, 1977, Shri J. K. Bhatte, Superintending Engineer awarded a sum of Rs. 1,48,145.00 in favor of the contractor. This award was filed in Court and the Delhi Development Authority filed objection, to the same; particularly, to the decision regarding claims Non. 3,5,15,16 and 17.

(2) THE objections and the award were considered in Suit No. 394- A/77 on the Original Side of this Court. R. N. Aggarwal, J., rejected the objections holding that there was no error of law on the face of the award nor was there any legal misconduct on the part of the arbitrator in making the award. So, the award was made a rule of the Court. Reliance was placed on the judgment of M/s Alien Berry and Co. Pvt. Ltd. v. The Union of India, : [1971]3SCR282 , and N. Chdlappan v. Secretary, Kerala State Electricity Board and another, : [1975]2SCR811 .

(3) THE present appeal is directed against the learned Single Judge' decision. We have examined the award, the objections and a great deal of material relating to the five claims appearing on the arbitration record. We are well aware that an award which does not give reasons is not easily capable of being set aside, but the objection, were such that it was conceivable that the arbitrator had given an award in a case where payment was already provided for under the original contract. We were of the view that though the arbitrator is the final arbiter or Judge both on law and facts, if the award grants relief with regard to matters already provided for by the contract or contrary to the contract, that

(4) FR this point of view, we have critically examined the five claims mentioned above as made before the arbitrator and the replies or the defense of the Delhi Development Authority. We have also examined the relevant provisions of the contract with the express purpose of determining whether the arbitrator has granted a relief which could not be granted under the contract and for no other reason.

(5) THE five claims are-a claim for wax polishing in regard to which a sum of Rs. 6,640.00 was awarded; a claim of Rs. 5,325.00 towards difference in cost of ISI ball valve and sanifix ball valve, in regard to which a sum of Rs. 3,692.00 was awarded; a claim for short payment in respect of steel reinforcement against which a sum of Rs. 1,726.00 was awarded; a claim for Rs. 61,506.00 towards short payment in respect of steel reinforcement due to a difference between actual and theoretical weight of steel against which a sum of Rs. 20,693.00 was awarded. We have also examined the 5th claim, but nothing need be said about that matter.

(6) AS regards wax polishing, we have found that the contract provided for payment for rubbing and polishing the floors to a granolithic finish. On examining the dictionary meaning of granolithic, we have found it means consisting of cement and granite chips. There was nothing in the contract about wax polishing, so it was extra item which could be awarded under the terms of the contract. The award is, therefore, incapable of challenge on this point.

(7) ON the ISI Ball question, there is no doubt a term that supplies bearing 'ISI' mark will be preferred. But, at the same time as far as the cisterns, of which the ball valve is a part, are concerned, there is a specific entry in the contract that 'sanifix' cisterns have to be supplied. It was, therefore, a matter of construction of the contract of which the arbitrator was the final Judge. The award cannot be challenged or set aside in respect of this question also.

(8) AS far as the short payment of steel reinforcement is concerned, the claim was Rs. 17,255.00 of which only Rs 1,726.00 was awarded. So, it is a comparatively trivial sum concerning which no serious objection has been taken.

(9) THE main question which was argued before us was the short payment in regard to steel reinforcement. In regard to this claim, both the claim as well as the reply of the Department presented considerable difficulty and it seemed to us at first that the claim did not arise under the contract. The terms of the contract were that steel was to be supplied by the Department to the contractor, who was in turn to use it in the work. After the work was done, the utilisation of the steel was to be determined by measuring the quantum of steel used in the work. The method used by the Department in paying the final bill was to take the ISI co-efficient and thereby to determine the theoretical weight of the steel utilised in the work. This is done by determining the volume of the bar by measuring its length and its circumference and applying the co-efficient to determine the probable weight. According to the contractor, some of the bars had been weighed at the time they were utilised and at that time the weight was more than that determined by the above method. It was, therefore, claimed that the actual weight was more than the theoretical weight. In fact, as a large amount of steel was utilised and only a few bars were weighed, even the method of the contractor was of a theoretical

type being based on an average based on a few bars which had actually been weighed, and applying that average to a large number of bars which had not been weighed at all.

(10) IT would thus appear that both the method of the contractor as well as of the Department were theoretical in nature. According to term 5-4-4-appearing on page 35 of the C.P.W.D. Specification Volume I, which apparently applied to the agreement for doing the work, the reinforcement was to be measured in length of different diameters as actually used in the works nearest to a G.M. and the weight calculated on the basis of which the steel was supplied to the contractor by the Department. It appears from what learned counsel said that the steel was supplied in a lorry and was weighed in bulk. It was, therefore, impossible to use the method employed for weighing the steel at the time of supply, at the last stage when payment was to be calculated.

(11) THE steel having been fixed in the reinforcement, it was impossible of being re-weighed. There had to be a theoretical method of calculation. The question would arise, which is the proper theoretical method, the one used by the Department or the one suggested by the contractor. Learned counsel for the contractor submitted that payment for the running bills were made by employing the average weight determined from some sample weightings and the same method should be used at the end.

(12) WE find on a careful consideration of the submission and our understanding of the contract that an arbitrator had generally to find out what would be the proper method of computing the payment to be made to the contractor in circumstances where an actual weighment was impossible and a theoretical calculation had necessarily to be made to find the amount of steel used in the work. This question was a matter entirely for the arbitrator, and keeping in view that he was a trained Engineer used to determining such vexed questions, we are sure that he has not erred in allowing part of the claim; because, a theoretical calculation based only on the length of the rod, its circumference and normal specific gravity, does not take into account the actual weight of the steel used in the rod which may vary from normal. There can be variation in the diameter of a rod and also the specific

gravity of the material can vary from rod to rod. There being instance of actual weight ant showing that some of the rods were heavier than their weight based on the theoretical calculation, the arbitrator would be justified in allowing part of this claim. We hold that there was no legal defect in the arbitrator's conclusion.

(13) THE last item which relates to certain balances due does not appear to raise any question requiring our consideration.

(14) THE result is that the judgment of the learned Single Judge has to be affirmed and this appeal dismissed. As we have closely examined thi(r) case with a point to determine whether a non-speaking award of this type is open to challenge and to what extent, we would leave the parties to bear their own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com