Delhi Development Authority Vs. Uppal Engineering Construction Co.

Delhi Development Authority Vs. Uppal Engineering Construction Co.

SooperKanoon Citation : sooperkanoon.com/683841

Court : Delhi

Decided On : Mar-05-1982

Reported in : AIR1982Delhi425; 21(1982)DLT457; ILR1982Delhi713

Judge : A.B. Rohatgi and; Leila Seth, JJ.

Acts : Arbitration Act, 1940 - Sections 30

Appeal No. : First Appeal No. 42 of 1980

Appellant : Delhi Development Authority

Respondent : Uppal Engineering Construction Co.

Advocate for Pet/Ap. : N.S. Sistani and; R.L. Pal, Advs

Judgement :

Leila Seth, J.

(1) The short point in issue in this appeal is the seope of seruitiny of a speaking award. Does the fact that the arbitrator has given a speaking award enlarge the function of the court and permit it to examine the reasons, as a court of appeal, reviewing their 'reasonableness'? In a detailed judgment delivered by us on 24th February, 1982 in Delhi Development Authority v. M/s. at Karma F.A.O. (O.S.) 142 of 1979(1), we have held not.

(2) Section 30 of the Arbitration Act, 1940 prescribes the grounds on which an award can be set aside. The fact that an award is a reasoned award does not extend or change the Arbitration Act or law. If the error is apparent on the face of the award, it can be set aside. Naturally in a speaking award the reasons are apparent on the face of it. thereforee, if these reasons are based on any legal preposition which is erroneous, the award can be set aside.

(3) The respondent M/s. Uppal Engineering Construction Co. (in short 'the contractor') entered into a contract with the appellant, Delhi Development Authority (in short, 'DDA'). The contract was for building blocks of lower income group and middle income group flats in Wazir Pur, Ashok Vihar Phase III. Disputes arose and as the agreement contained an arbitration clause, being douse No. 25, these disputes were referred to arbitration. Mr. R. S. Jindal Superintending Engineer of the Dda was appoint, the arbirator.

(4) Mr. Jindal gave his award on 20th June, 1977, As the claim was for more than Rs. 50,000.00 the arbitration clause required the arbitrator to indicate his reasons. He did so. The respondent moved this Court under sections 14 and 17 of the Arbitration Act to have the award made a rule of the court. The Dda filed objections, R. N. Aggarwal, J. heard the matter. By his order dated 6th October, 1977, the learned Judge remitted the award to the arbitrator for reconsideration and directed him submit his reasons in datail with regard to claims 5(b) and 6 to 12.

(5) In pursuance of this direction, the detailed reasons pertaining to claims 5(b) to 11 were submitted to this Court as per letter -dated 7th November, 1977. Thereafter the Dda once again, filed their objections dated 6th July, 1978.

(6) Before the arbitrator there were 20 items of claim. The claims partially allowed were these, pertaining to items 1 (a). 1 (b), 1(c). 5 (b), and 6 to 11 and 17, Yogeshwar Dayal,J. who heard the matter, on agreement of parties, set aside the award in relation to item No. 17. As a result, subjest to his decision in relation to claim No. 17, the learned Judge made the award a rule of the court and passed a decree in terms thereof. He also directed that interest at the rate of 6 per cent per annum from the date of the decree till the date of the realisation, be. paid, unless

the decretal amount was paid within two months. He assessed costs at Rs, 500.00 payable to the contractor. The judgment was delivered on 26th October, 1979,

(7) The Dda being aggrieved have appealed against the above mentioned judgment. They have challenged the decision pertaining to items No. 1(a), 1(b), 1(c),5(b), and 6 to 10. The main contention of Mr. Sistani, appearing for the Dda is that the reasons are neither reasonable nor relevant nor are they based on any evidence.

(8) As already noted, we have dealt with this matter in the case of M/s. at Karma (supra). We have held that the arbitrator when called upon to give a reasoned award is still not required to write a detailed judgment as judges do. However, he is required to indicate the trend of his thought process but not his mental meanderings. The purpose of commercial arbitration, being speed, certainty and a cheaper remedy. Since the parties choose their own arbitrator they cannot, when the award is good on the face of it, object to the decision either, upon law or facts, unless such mistake appears, on the face of the award on a document appended to or incorporated with it. M/s. Allen Berry & Co. P. Ltd. v. Union of India, : [1971]3SCR282

(9) In any case the award will not be lightly set aside. The court cannot exarcise appellate powers over the arbitrator's verdict. It cannot review his award or correct mistakes in his adjudication unless apparant on the face. (Firm Madan Lal Roshanlal Mahajan v. Hukumchand Mills Ltd., Indore. : [1967]1SCR105 . It is clear that an acceptance of the contention of learned counsel for the appellant, that the court can examines the reasonableness of the reasons would cut at the root of the whole purpose of arbitration, the purpose being finality.

(10) It would, however, appear to us that if from the reasons mentioned in the award it is apparent that there is a complete non-application of mind by the arbitrator because the reasons are totally irrelevant and|or uninteligible, the award can be set aside; for example, if an arbitrator stated in his award that his only reason for not granting a particular claim for damages was that he did not like the face of the claimant. In such a case it would be patent on the face of the award that the referred reason is no reason at all. Because a reason is something which

must be in conformity to what is fairly to be expected or called for' (Chambers Dictionary).

(11) But if the arbitrator gives reasons, it is not permissible for the court to go into the sufficiency or adequacy of them or of the evidence. In any case the arbitrator is not required to give a detailed analysis or calculation of his conclusion even where the requirement is to give a reasoned award.

(12) With this background we proceed to examine the matters in controversy, which mainly pertain to items 1 (a), l(b) and l(c). These are :

'CLAIMS: 1(a) The claimants claim a sum of Rs. 26,000.00 on account of bricks as refeund for effecting excessive recovery as sales tax and mineral tax on 70 lacs bricks. 1(b) The claimants claim a sum of Rs. 94,800.00 on account of cartage of bricks carted by the claimants 1(c) The claimants claim that in case the arbitrator came to the conclusion that the cartage was to be borne by the claimants the amount of Rs. 33,600.00 should still be paid to then instead of Rs. 94,800.00 claimed in claim No. 1(b) above anaccount of the increased rate of cartage. Award; The claim Nos. 1(a), 1(b) and 1(c) are justified to the extent of Rs. 37,000.00 only. Reasons : I am inclined to agree to the contention of the claimant that by virtue of the special condition given by the claimant in the tender which formed part of the agreement, the respondent was bound to supply the bricks to the claimant at the site of work at controlled prices. As the respondent did not abide by this condition and merely issued permits for 42,90,902 bricks they did not have right for the availing of the rebate offered by the claimants in this condition for this quantity of bricks. So, the rebate of Rs. 60,610.95 as deducted by the respondent from the bills of the claimants is refundable to the claimants. However, the respondents have paid an extra amount of Rs. 79,578.11P to the claimants for the increase in the rates of bricks over the prevailing control rate at the time of receipt of the tender on the basis of the condition of rebate offered by the claimants. Accepting the condition of rebate, as inoperative the amount Rs. 79,578.11P in repayable by the claimants to the respondents. However, in that, case, the claimants would be entitled to the payment of the extra cost of bricks as a result of Notification issued by the Govt.of of India under clause 10(c) of the

agreement. The claim Nos. 1 (a), l(b) & l(c) are thereforee, justified to the extent of Rs. 37,000.00 only.'

(13) The basis of the claim pertaining to cartage of bricks and rebate are dependent on a specific condition Which was introduced subsequently to the printed conditions of contract. Clause 26 of the printed conditions of contrast reads:

'26. Permits for 71,81,600 Nos. of second class bricks as per Cpwl specifications, would be given to the contractor at the controlled rates plus one rupee per thousand number of bricks for mineral tax plus sales tax and other tax at prevailing rates. The payment for the cost of bricks will be made by the building contractor to the kiln contractor and the bldg. contractor shall have to arrange for the transport from the kiln to the work site.'

The specific condition which was introduced subsequently is in the following terms:

'IF the bricks are given to us at present, control rate (i.e., the day we have submitted tender), we shall give rebate of Rs, 3.00 per cubic metre on brick work items.'

(14) It is apparent from the reasons indicated above that the arbitrator considered this aspect of the matter and accepted the submission of the contractor. The said submission was that the Dda was bound to supply the bricks at the control rate prevalent on the date of subsmission of tender and that these were 'to be supplied at site the giving of a permit to procure bricks at the subsequently prevailing rates was not compliance of the terms of the contract.

(15) 'THE reasoning of the arbitrator is both relevant and,in telligible, and is not based on any erroneous proposition of law. He noticed that though the bricks were not supplied at the control rate at site, a deduction by way of rebate of Rs. 51- per cubic metre on brick work items had been made. He, thereforee, after considering the claims jointly held that the claimant was entitled to Rs. 37,000.00 only- taking note of the fact that the Dda had paid an extra amount of Rs. 79,578.11 for the increase in the rate of bricks and deducted a sum of Rs. 60,610.95 by way of

rebate.

(16) Mr. Sistani appearing for the appellent contended that the two above mentioned clauses have been erroneously interpreted and as such, the arbitrator's conclusion is erroneous on the face of the award.

(17) Mr. Lakhanpal for the contractor, however submitted that the purport of introducing a special condition in the contract and offering a rebate was that bricks were to be supplied at the control rate at site. It was because of the allurement of getting the bricks at site that the contractor readily agreed to grant a rebate of Rs. 5.00 per cubic metre on brick work items. As far as the interest in the rates, was concerned this would be available to him under clause 10(c). According to him the provision for rebate was in view of getting the bricks at site rather than being given permits where the contractor was at the mercy of the kiln owner with regard to supply and had to provide for cartage.

(18) It would appear to us that it is not necessary for us to examine this aspect of the matter as the reasons indicated by the arbitrator are intelligible and this enquiry would be beyond the scope of the court.

(19) If the interpretation accepted by the arbitrator of a clause in the agreement is absolutely absurd and this is apparent from the face of the award then it would be an error of law and the court would be justified in setting it aside. But if two interpretations are plausible and the arbitrator accepts one of them, it cannot be said to be an error of law apparent on the face of the award or misconduct by him. In such a case there is no question of setting aside the award.

(20) Coming next to the other claims these are set out below as also the award and reasons thereto : 'Claim No. 5(b). The claiments claim a sum of Rs. 25,000.00 on account of increase in the cost of material like flush door, shutters, sanitary wares angle iron flat etc. Award : The claim is justified to the extent of Rs. 5,200.00 only Reasons: The claimants claim a sum of Rs. 25,000.00 on account of increase in the cost of material like flush door, shutters, M. S. flats for grills and sanitary wares etc. The claimants could not prove the increase in the cost of, flush door shutters beyond 10% of its original cost, so, he is not entitled to extra

payment for this item. There has been more than 10% increase in the cost of M. S. fiats, sanitary wares like Indian WC. Wash basin etc. as a resuit of statutory orders of the Govt. So, the claimants is entitled to an amount of Rs. 5,200.00 only on account of this increase. Claim No. 6: The claimants claim a sum of Rs. 60,000.00 on account of non-payment for the item of glazed doors etc. Award: The claim is justified to the extent of Rs. 4.500.00 only. Reasons: The claimants had claimed a sum of Rs. 60,000.00 on account of non-payment of full rate for the item of glazed doors but they have further reduced their claim to Rs. 13,832.00 . The shutters manufactured by the claimants had not been provided with the glass panes and also had not been painted besides non-payment provisions of fittings. The respondents have made part payment for this incomplete shutters but the same was considered to be less than that justified on the basis of the actual work done. So, this claim is justified to the extent of Rs. 4,500.00 only. Claim No. 7: The claimants have claimed a sum of Rs. 1.20 lacs of extra substituted items for steel glazed windows etc. M/S. Uppal Engineering Construction Co. Award : The claim is jutifid to the extent of Rs. 26,500.00 only. Reasons: The claimants have claimed a sum of Rs. 1.20 lacs for item of steel glazed windows etc. This item has not been completely executed by the claimants i.e. the manufactured windows have not been completely fixed at site, provided with glasspanes fittings, painting etc. The item executed by the claimants is not as per agreement and also is not a schedule rate. The substituted rate has also not been finalized by the respondents and he has only made an ad hoc payment for the work done by the claimants. The payment made by the respondents is considered on the lower side as compared to the actual work done by the claimant and as, claim is justified to the extent of Rs. 26,500.00 . Claim No. 8 : The claimants claim a sum of Rs. 14,850.00 on account Of non-payment of ornamental grills provided by them. Award: The claim is justified to the extent of Rs. 4,600.00 only. Reasons : The claimants claim a sum of Rs. 14,885.00 on account of non-payment of the justified rate for the ornamental grill provided by them. Elliptical Shaped pieces have been provided in the grill, which are of course more of ornamental value. But the respondent had made payment to the claimant for the ordinaly grill only which carries a lesser rate. According to the ornamental element involved in the manufacturing of these grills, the claim is justified to the extent of Rs. 4000.00 only. Claim No. 9: The claimants

claim a sum of Rs. 45,826.00 on account of less payment made to them by the respondents for the tanks. Award: The claim is justified to the extent of Rs. 4,200.00 only. Reasons : The claimants claim a sum of Rs. 45,826.00 on account of less payment made to them by the respondents for the tanks. The tanks as provided in the agreement were supposed to be of 90 and 60 gallons capacity only but as actually provided by the claimants at the instance of the respondents, capacities of the tanks are higher and so, the claimant is entitled to an extra payment for the extra capacities provided by him. The claim on this account is justified to the extent of Rs. 4200.00 only. Claim No. 10: The claimants claim a sum of Rs. 2,400.00 on account of chasing and making good the same for laying electrical conduits. Award: The claim is justified to the extent of Rs. 1700.00 only. Reasons : The claimants claim a sum of Rs. 2,400.00 on account of chasing and making good the same for laying ele- ctrical conduits. It has been observed at site also that the claimant had made good the chasing made by the Department for the laying of the electrical conduits but he had not been paid by the respondents for this work. However, as assessed on the basis of the actual work done by the claimants, the claim is justified to the extent of Rs. 1,700.00 only.

(21) It is apparent from the above that the reasons indicated are both relevant and intelligible and are not based on any erroneous proposition of law. The arbitrator has indicated under each claim 'the reason why' he had arrived at a particular conclusion. A detailed Judgment is not required and even if the reasons are sketchy but throw light on the trend of thought that is sufficient. The arbitrator's award both on facts and law is final. There is no appeal from his verdict. The court cannot review his award and correct any mistakes in his adjudication, unless the objection to the legality of the award is apparent on the face of it, we do not find any such illegality nor has any been brought to our notice.

(22) Mr. Sistani for the appellant also finally contended that it was not proper for the arbitrator to award a lamp sum amount with regard to claims 1 (a), l(b) and l(c) and this invalidated the award. We do not agree. Tre fact that a lump sum of Rs. 37,000.00 was awarded does not make the award invalid, Bachawat, J. speaking for the Court in Firm Madanlal Roshanlal Mahajan's case (supra) observed that the arbitrator can give a lump sum award.

(23) We would once again emphasize what has often been said before, that the award of the arbitrator is final and conclusive. Wrong or right the decision is binding, if it be reached fairly or after giving adequate opportunity by the parties to place their grievance. The Court cannot re-examined and reappraise the evidence which has been considered by the arbitrator and sit in appeal over the conclusion of the arbitrator in proceedings to set aside the award. The Court has no jurisdiction to investigate into the merits of the case and to examine the documentary and oral evidence on the award for the purpose of finding out whether or not the arbitrator has committed an error of law. (N. Challapan v. Secretary Kerala State Electricity Board,).

(24) If the arbitrator makes a non-speaking award and has not given reasons the Court cannot probe into the mental processes of the arbitrator. If the arbitrator makes a speaking award and given reasons the Court cannot set aside the award merely because the Court would have come to a different conclusion. The mere discent of a court from the arbitrator's conclusion is not enough to set aside the award unless it can be shown by anything appearing from the face of the award that the arbitrator has tied himself down to some special legal proposition which is unsound.

(25) Applying these principles to the present, case what do we find The sole arbitrator has awarded certain sums to the contractor on account of certain claims made by him against the DDA. He has given reasons for awarding various amounts. But these are all conclusions of fact. He has decided the dispute between the disputants in a manner which appeared to him most just and reasonable. In some cases he has applied the principle of quantum meruit and awarded compensation for the work actually done. The Court cannot quarrel with his reasons and say that on this claim he ought to have awarded less and on that item nothing. This is within the domain and jurisdiction of the arbitrator. He is a domestic tribunal of parties' choice and they have agreed to be bound by his decision. The Court cannot set aside the award because his reasoning is not immaculate or flawless. An award is not invalid merely because by a process of inference or argument it may be demonstrated that the arbitrator has committed some mistakes in arriving at his conclusions. (Bungo Steel Furnitures Pvt. Ltd. v.

Union of India, : [1967]1SCR633 . We have restated these propositions of the risk of repeptiation because it has too often been urged upon us that the Court is entitled to examine closely the reasons of the arbitrator and sets aside the award if those reasons do not appeal to the Court to be convincing. Our short answer to this arugment is that the Dda has taken the chance of a favorable decision before the arbitrator and now that the award has gone against it, it cannot ask the court to set it aside because the arbitrator is generally the final a judge of law and fact, reasons or no reasons.

(26) For the reasons outlined above, we uphold the order of the learned Judge and dismiss the appeal with costs.