Em and Em Associates Vs. Delhi Development Authority

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Court : Delhi

Decided On : Mar-11-1986

Reported in : 1986(2)ARBLR142(Delhi); 30(1986)DLT139

Judge : Jagdish Chandra, J.

Acts : Arbitration Act, 1940 - Sections 16(1)

Appeal No. : Suit No. 294A of 1984

Appellant : Em and Em Associates

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : L.M. Sanghvi and; M.L. Jain, Advs

Judgement :

Jagdish Chandra, J.

(1) -AWARD was filed in this case and notice was given to both the parties regarding the Award having been filed in Court and they were called upon to file objections, if any, against the same. respondent Delhi Development Authority (in short the DDA) filed objections against the Award which were resisted by the claimant M[s. Em & Em Associates. From the pleadings of the parties the following issues were framed :-

1. Whether the Award is liable to be set aside on the objections filed by respondent-DDA 2. Relief.

(2) The controversy under this issue was ordered to be revolved upon affidavits. One affidavit each was filed by way of evidence by both the parties.

(3) Clause (25) is the arbitration clause in the agreement between the parties and this clause provides that in all cases where the amount of the claim in dispute is Rs. 50,0001- and above, the Arbitrator will give reasons for the Award.

(4) The basic and the fundamental contention raised by Dr. L. M. Singhvi counsel for the respondent/Objector-DDA is that even though the Award purports to be a reasoned one the same is bereft of reasons and consequently, the same is liable to be set aside on that ground alone. This contention is challenged by Mr. D. K. Sayal, counsel for the claimant who has contended that the reasons given by the Arbitrator in support of the Award need not be in the form of an elaborate judgment as is given by the Judges in the litigation pending in Courts, and further more that the reasons given by the Arbitrator cannot be assailed in Courts which deal with the objections .preferred against the Award as the Courts do not sit in appeal on the Awards.

(5) In thin case reasons were required of the Arbitrator in support of his Award and he has given reasons, but the only question calling for determination is whether the reasons given by him are in fact reasons and not only trappings of reasons. The reason, in order to' be so, must necessarily he intelligible and comprehensible, even though not unnecessarily lengthy or elaborate. It has to provide a precise link between the question/ problem and the conclusion reached in regard thereto.

(6) Under Claims Nos. 1, 2, 6, 7, 8, 10 and 11 the following uniform reasons was given in the Award by the Arbitrator :-

'From the discussions, it was revealed that the claimants communicated the rates for the additional work and in fact the additional work was carried out by the claimants and the same was duly accepted by the respondents.'

On this reasoning, the various claims put-forth by the claimant were allowed. It would be seen that the awarding of the money claims of the plaintiff under these claims is necessarily dependent upon the rates for the additional work which was in fact carried out by the claimant. It was contended by Dr. Singhvi learn.ed counsel for the Objector-DDA that the due acceptance on the part of the respondent-DDA was only in respect of the factum of the carrying out of the additional work by the claimant and not in respect of the rates communicated by the claimant for the aforesaid additional work and consequently, the reason aforesaid given by the petitioner lacked the most important factor regarding the rates communicated, This contention of Dr. Singhvi has all force inasmuch as if the rates for additional work communicated by the claimant to the Dda had been accepted, the acceptance in respect thereof too ought to have been mentioned in the Award, and if the rates remained not objected to by the Dda during the carrying out of the additional work for a sufficiently long time, it could be said that the Dda had thereby impliedly consented to those rates, communicated by the claimant. But this does not appear in the reason given by the Arbitrator in his Award under the aforesaid claims. It would be further noted that the phrase 'duly accepted by the respondents' is preceded by the singular verb 'was' and not the plural verb 'were'. If this 'acceptance' was to pertain to both the factors, i.e. (1) the rates and (2) carrying out of the additional work the plural verb 'were ought to have been used. If the rates were contested by the Dda, the reason given by the Arbitrator should have specified precisely and concisely the factors which weighed with him for accepting the rates communicated by the claimant. Nothing of the sort finds mention in the aforesaid uniform reason given by the Arbitrator in his Award under the aforesaid claims and this makes the Award to that extent a non-speaking and unreasoned one, as the factor of rates happened to be of fundamental importance

(7) Regarding claims nos. 12. 13 and 14 the Arbitrator in the Award has given the following uniform reason :-

'During the discussions it transpired that the claimants had carried out this additional work and communicated the rates of this work to the respondents. The claim is, thereforee, justified, and, I, thereforee, direct the respondents to pay this

amount to the claimants.'

This reasoning also suffers from the fundamental defect regarding the rates communicated by the claimants to the Dda regarding the additional work as it is nowhere mentioned therein if the rates communicated by the claimant were accepted by the Dda or were not objected to for a sufficiently long time during the execution of the additional work. It is further not mentioned as to how it was concluded by the Arbitrator that the additional work had been carried out by the claimant, which conclusion could have been arrived either by the acceptance of this position by the Dda or by the visit at the site by the Arbitrator with the help of the necessary documents, including the drawings. Thus, the Award even under these items is a non-speaking and an unreasoned one.

(8) Under Claims Nos. 3 and 4 the Arbitrator gave the following uniform reason :-

'This claim is justified since the claimants quoted the rates keeping in mind the finished product. thereforee, reduction in over all sizes did not reduce the cost of over all product as envisaged. I, thereforee, direct the respondents to pay the aforesaid amount to the claimants.'

Regarding this reason, it is pointed out by Dr. Singhvi for the Objector-DDA that the claim had been put up towards short payment for difference in percentage of wrong quantities in the schedule items and wastage occurring and the same could be adjudicated upon by the Arbitrator with reference to the only criterion provided for in the agreement between the parties and that the criterion was the 'detailed measurements' which could determine the wrong quantities and the wastage, and nut by resorting to any other criterion which was extraneous to the said agreement between the parties, and in this connection.be has. invited the attention of the Court to Clauses (7) and (8) of the agreement in question. When actual measurement was the only criterion for these two claims, provided for in the agreement. the Arbitrator was bound by the same and could not resort to any other criterion for determining these claims which factor has resulted in the fundamentally invalid and ultravires Regarding this reason, it is pointed out by Dr. Singhvi for the Objector-DDA that the claim had been put up towards short payment for difference in percentage of wrong quantities in the schedule items and

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(9) Regarding Claims Nos. 5 and 9 the Arbitrator gave the following uniform reason .'-

During the course of discussions, it transpired that the claimant did the republishing as the original polish had been spoiled due to the work of other agencies. thereforee, the claim of the claimants on this account is justified.'

CLAIMNo. 9 pertains to repainting by the claimant. It would be seen that no rate and area have been specified in the Award under Claim No. 5 arid those were two important factors which alone could determine the awarded amount. Under Claim No. 9 even though the claimed area of repainting had been mentioned as 5900 sq. metres and the rate claimed was Rs. 1.50 per sq. ft. and the Arbitrator found during the course of discussion' that the area of repainting was approximately 1500 sq. metres, he did not specify what rate had applied for warding the amount under Claim No. 9 or whether he had accepted the claimed rate of Rs. 1.50 per sq. ft. specifying further the justification of that rate. Thus. even these reasons are in fact no reasons,

(10) Under Claim No. 16 the claimant had claimed a sum of Rs. 2.50.000,- on account of extra labour arid materials consumed for civil rectification work and wastage due to the same but the same was denied by the DDA. The arbitrator gave the following as the reasons for his award under this During the course of discussions it was admitted by the respondents that the civil work was defective

which was got rectified by the Department from the agency concerned. It was further revealed that on account of the said defects the claimants were put to extra expenditure in the form of extra labour and wastages of material. thereforee, I consider the claim of the claimants justified to the extent of Rs. 75.000.00 on this account and direct the respondents to pay this amount to the claimants.' The perusal of the aforesaid reason shows that it is lacking in very important matters such as in what manner the claimant was called upon to employ extra labour and materials when the civil work defects were got rectified by the department of Dda from the agency concerned which was a person other than the claimant, and whether this extra labour and materials were put into action before or after the defects were removed. The substratum in the reasoning of the arbitrator is, thus, not there. Furthermore, the Arbitrator has not specified any material on the basis of which he considered the claim of the claimant to the extent of Rs. 75,0001- reasonable on this account. All this appears to be quite fanciful if not imaginary and. thus, the award under this claim is bereft of any reason.

(11) Under Claim No. 17 it will be desirable to set out the entire observations of the Arbitrator under this claim and the game arc reproduced as under :-

The claimants claimed Rs. 3,00,000.00 towards loss on account of idle labour for a period of 60 days. The respondents, however, stated that the claimants are not entitled to this claim. The claimants, however, satisfied me that the payment was made to the labour for sitting idle. But from replies to the questions put by me to the claimants I could gather that about 50 per cent of the labour must have been put to some other work of the claimants to the extent of 25 per cent i.e. an amount of Rs. 75,0001- and direct the respondents to pay this amount to the claimants.'

The Arbitrator does not specify in the Award under this claim the material on which he felt satisfied that the payment was made by the claimant to the labour for sitting idle. Thereafter, if he could gather from the replies to the questions put by him to the claimant that about 50 per cent of the labour must have been put to some other work of the claimant, it is not known as to how he allowed the claim of the claimant to the extent of 25 per cent, i.e. an amount of Rs. 75,000.00 . All this is indicative of the non-existence of any reason regarding his satisfaction as also his

coming down to the extent of 25 per cent or even as to the correctness of the amount of Rs. 75,000.00

(12) Under Claim No. 18 the Arbitrator avowed interest to the claiment at the rate of 18 per cent per annum on the total 532 claim of Rs. 7,61,894.03 P. which according to the learned counsel for both the parties is the sum total of the awarded amounts under Claim Nos. 1 to 17 in this Award, from 10-10-82 the date of completion of the work till the date of the award. This interest had been awarded by him towards the claim of the claimant for Rs. 5 lakhs alleging the same to be losses suffered by the claimant on account of the delay on the part of the Dda in not releasing the payment of the amounts subject matter of claim Nos. I to 17 of this Award till the date of the Award as a result of which the claimant was not able to work at all for that delay of 7 months. This was within the distention of the Arbitrator and he would have been justified in doing so but as the Award under Claim Nos. I to 13 and 15 to 17 have been held to be suffering for want of reasons, the amount of interest awarded by him under Claim No. 18 also falls through for the time being.

(13) In view of the aforesaid discussion the want of reasons is the illegality suffered by the Award and this illegality is apparent on the face of it and so in' view of the provision of law contained in Section 16(l)(c) of the Arbitration Act, 1940 the award is remitted to the Arbitrator for giving reasons within four months from today and submit the same to the Court by '20-8-1986.