

J.S. Constructions Vs. Delhi Development Authority

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Court : Delhi

Decided On : Feb-18-2002

Reported in : 2002IIIAD(Delhi)525; 2002(62)DRJ269

Judge : J.D. Kapoor, J.

Appeal No. : Suit No. 2158/1992

Appellant : J.S. Constructions

Respondent : Delhi Development Authority

Advocate for Def. : B.B. Sharma, Adv.

Advocate for Pet/Ap. : M.S. Vinayak, Adv

Disposition : Suit dismissed

Judgement :

J.D. Kapoor, J.

1. Both the parties have filed objections to the the award. The petitioner has challenged the rejection of claim No.1 whereas the respondent DDA has assailed the award in respect of every claim. As many as 11 claims were preferred by the petitioner before the learned Arbitrator.

2. It is needless to say that the Court does not sit in Appeal while examining the award and as such should refrain from re-appraising or re-appreciating the evidence and the material on record. Unless the Arbitrator travels beyond the terms of the agreement or ties himself down to such a legal proposition which when examined is found wholly unsound or ignores any material document which has significant bearing to the result of the award itself, interference is uncalled for.

3. Claim No. 2 is on account of reimbursement of wage rate of labour under Clause 10C of the agreement.

4. The main objection of the respondent is that the Arbitrator has ignored the terms of Clause 10C, according to which it was incumbent upon the contractor to maintain and submit labour records during the currency of the work and also to intimate that there was increase in the labour by notification and the said increase was also 10%.

5. I have perused the award and find that the learned Arbitrator has given careful consideration to the objection raised by the respondent DDA and has returned the finding based on facts. Such a finding of the Arbitrator even if it is erroneous need not be disturbed.

6. In this regard learned Arbitrator has observed that since the respondent was principal employer and there was no labour complaint nor had it alleged that regular fortnightly labour reports were not submitted by the claimant. In view of these observations of the learned Arbitrator the objection of the learned counsel holds no water and is untenable.

7. Claim No. 3 is on account of refund of rebate. Again it is a finding of fact. The objection of the respondent is that the Arbitrator has misconducted the proceedings in this regard inasmuch as he has failed to consider the material provision of clause 8 of the agreement wherein it is incumbent upon the contractor to prepare the bills and submit the same to the respondent for payment. In the opinion of the Arbitrator the first RA Bill was paid in June, 1988 and thereafter 10 more RA Bills were paid up to 30th September, 1989. Some of the Bills even were paid monthly while others were not paid. According to Clause 8 the respondents

were not entitled to avail the rebate in the RA Bills which were paid monthly. As regards the availing of the rebate on account of final bill for the refund of security deposit from the RA Bills the respondent was required to fulfill contingent conditions. Since the respondent has not made the payment of monthly bills regularly they were not entitled to the rebate as claimed by it. There is no infirmity in the award in this regard and is hereby maintained.

8. Some is the position with regard to the claim No. 4 as the respondent is entitled to avail the rebate from the RA Bills for sanctioning of extra items and substituted items if the statements are filed within three months. Admittedly the respondents did not file the aforesaid sanctioned statements within three months and as such the Arbitrator rightly awarded the claim of the petitioner in this regard.

9. Claim No. 4 is on account of refund of illegal deductions made for deficiency and according to the respondent the Arbitrator has returned the finding on completely erroneous basis. Defects were reflected in the documents R-18, R-20 & R-21. Admittedly the work was inspected by the Quality Control Wing of the respondent from time to time and the defects were pointed out and subsequently were rectified by the petitioner. However on the other hand the respondent had accorded a certificate to the effect that there were no deficiencies and the work was executed as per specifications. Satisfaction in this regard was recorded in each of the RA Bill and no specific defects were communicated to the petitioner. This is again a finding of fact based on the material before the Arbitrator and is not assailable.

10. Claim No. 6 is of declaratory nature inasmuch as that no action is warranted under Clauses 2, 3 & 14 of the agreement. Under these clauses the respondents can take some penal action for getting the work completed from some other contractor if they are not satisfied with the work of the contractor. However this is a finding of fact and is not challengeable. The Arbitrator has returned the finding that the respondent committed fundamental breach of the contract as the time did not remain the essence of the contract. So much as the respondent also failed to point out any deficiency or incomplete item of work left over by the petitioner/claimant. The respondent was also unable to bring on record any material to show that the

remaining items of work and defects have been rectified by some other agency employed by the respondents. No fault finding exercise can be allowed in respect of such a finding of the Arbitrator.

11. as regards claim No. 8 it was on account of loss of profitability. The respondent was to provide 265 DUs whereas it provided only 65 DUs till the expiry of the stipulated period of the contract. So much so the respondent did not decide till 1.1.89 i.e. the date of the expiry of the contract for the work to be done in the remaining 200 DUs. It is on account of loss of profits suffered by the claimant that the Arbitrator awarded @ 4%. Whereas the petitioner had claimed Rs. 3,79,240 the Arbitrator has excluded the cost of the material. The award in this regard is based upon the rational application of rule in such like eventualities. Even otherwise it is finding of fact and need not be disturbed.

12. Claim No. 10 is on account of refund of the cost of the over weight steel issued by the respondents. Admittedly the steel was to be issued from the respondent's store by weight measurement and the payment was recorded in length and thereafter the weight was worked out theoretically. However there was no serious objection by the respondent to this claim as they did not dispute the quantity of the steel nor did they dispute the amount claimed. The objection is without substance and groundless.

13. Claim No. 11 is on account of flush band in outside plaster. This again is a finding of fact and is within the terms of the agreement. The award in this regard is based upon the admission of the respondent that the groove in the plaster provided at the junction of RCC and brick work. Extra work done by the petitioner was also not disputed.

14. For the foregoing reasons I do not find any merit in the objections and dismiss the same. The award is made a rule of the Court suit is decreed for Rs. 5,56,031/- with pendent lite and future interest @ 12% per annum till realisation.