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U. Kashyap Vs. D.D.A. and Others

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Court : Delhi

Decided On : May-29-1994

Reported in : 1994(2)ARBLR65(Delhi); 56(1994)DLT282

Judge : J.K. Mehra, J.

Appeal No. : Suit No. 583/91 and I.A. No. 505/91

Appellant : U. Kashyap

Respondent : D.D.A. and Others

Advocate for Def. : Ms. Ansuya Sawan, Adv.

Advocate for Pet/Ap. : Raman Kapoor, Adv

Judgement :

J.K. Mehra, J.

1. This is a petition under Sections 14, 17 and 18 of the Arbitration Act 1940 filed by the petitioner. On a notice of filing of the award by the arbitrator, Respondent No. 3, in the court, being served on the Respondents 1 and 2, the Respondents 1 and 2 filed the objections to the Award dated 31.1.1991 published by Shri R. C. Bakhru, the Sole Arbitrator. The said objections were registered as I.A. 505/91.

2. Counsel for the Objector has objected to the award only in respect of three claims, namely, Claims No. 1, 11 and 14.

3. I have been taken through the award and the objection petition.

4. On Claim No. 1, I find that the arbitrator had denied to the objectors a right to charge for the cement at the rate awarded and to make recovery at that rate. In the face of the law laid down by the Hon'ble Supreme Court in Hindustan Tea Co. v. K. Shashikant Co. : AIR 1987 SC81 , and also in Coimbatore District Podu Thozillar Sangam v. Bala Subramania Country and others : [1987]3SCR852 , the relevant portion whereof is quoted hereunder :

'An award can only be set aside where there is an error on its face. Further, it is an error of law and not mistake of fact committed by the arbitrator which is justiciable in the application before the court. It is an error of law and not mistake of fact committed by the arbitrator which is amenable to corrections by the Court' .....

'Where the alleged mistakes or alleged errors, if there be any of which grievances were made were mistakes of facts if at all, and did not amount to error apparent on the face of the award, the objections were not sustainable and award could not be set aside.'

I see no merit in the objection to the award on this claim which is based on reasons given by the arbitrator. The finding of the arbitrator cannot be faulted on this account. As such the objection on claim No. 1 is dismissed.

5. Coming to Claim No. 11, I find that the contractor had claimed a sum of Rs. 15,90,000/- on account of work done after the stipulated date of completion on account of increase in the prices of the material. The arbitrator on the face of the award base gone into the evidence and has furnished the reasons for not finding the claim of the claimant as reasonable and also what has already been given under Clause 10CC of the contract, between the parties, but awarding compensation on the basis of the actual escalation of the costs that had taken place minus what had already been granted in terms of Clause 10CC. The

argument of the counsel for the objector is that the arbitrator has travelled beyond the contract and the award to that extent is bad it should be set aside. In this connection, the counsel for the respondent/objector has relied upon the judgment in the case of Associated Engineering Co. v. Government of Andhra Pradesh and another (Rep. as 1991 (2) Arb LR 180, wherein the Hon'ble Supreme Court has, inter alia, laid down as under :

'If the arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction. But if the wanders outside the contract and deals with matters not allotted to him, he commits a jurisdictional error .....'

The counsel has vehemently argued that the arbitrator could not have considered any claim falling outside Clause 10CC.

6. Counsel for the claimants cited at the bar the decisions in the cases of Sawan Construction Co. v. Union of India (1977) 2 Del 748, Uttam Singh Duggal v. Union of India 1988 (2) Arb LR 225, in support of his contention that the arbitrator could award such an escalation by way of compensation. The opposite party has referred to Clause 10CC and has argued that what was claimed and what has been awarded is not covered by Clause 10CC which reads as under :

'Clause 10(CC) : If the prices of materials (not being materials supplied or services rendered at fixed prices by the department in accordance with clauses 10 and 34 hereof) and/or wages of labour required for execution of the work increase the contractor shall be compensated for such increase as per provisions detailed below and the amount of the contract shall accordingly be varied subject to the condition that such compensation for escalation in prices shall be available only for the work done during the stipulated period of the contract .....

.....'

The above assertion of the counsel for the Objector does not appear to be correct in the light of the arbitration agreement which, inter alia, provides as under :

'..... or as to any other questions claim, right matter or thing whatsoever, in any way arising out of or relating to the contract designs drawings, specifications,

estimates, instruction, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the person .....'

What was before the Arbitrator was not only what could be claimed strictly under the various clauses, but the arbitrator had the jurisdiction to consider all claims except those which had been specifically excluded under the contract from the scope of arbitration. The claim under Claim No. 11 was not a claim of the nature which has been specifically excluded under the contract between the parties and as such it could not be said that the arbitrators had no jurisdiction in the matter of such a claim. In arriving at what should be the reasonable amount, the arbitrator has duly considered the material placed before him and after considered all that material awarded Rs. 4,82,010/- in place of a claim of Rs. 15,90,000/- after giving his reasons for arriving at such a figure. As already held above, it is not necessary for the arbitrator to give the detailed working or calculations and award cannot be faulted on that ground. The objection to claim No. 11 is, thereforee, rejected.

9. On Claim No. 14, the main objection of the counsel for the objector is that no details of the working are available on the face of the award and it is absolutely vague and one cannot make as to how a sum of Rs. 70,400/- has been granted in favor of the plaintiff. Counsel for the claimant has drawn my attention to various documents including statement of claim and has worked out the details and has pointed out that the arbitrator has not allowed any compensation for the tools, plant and machinery and has given the compensation of site establishment only and that too only up to September 1986 and not up to April 1987 as was claimed. On the basis of Rs. 5,200/- per month multiplied by 13 months, according to the counsel, this amount comes to approximately Rs. 70,000/- and not Rs. 70,400/-. There does appear to be some ambiguity. I think, the arbitrator is the best person to sort out this and no reasons are given for awarding Rs. 70,400/-. As such, the award on claim No. 14 is set aside and is remitted back to the arbitrator.

10. In view of the above discussion, the award dated 30.1.1991 made by Shri R. J. Bakhru, Arbitrator except award on Claim No. 14, which is remitted back to the

arbitrator, is made a rule of the court. The Arbitrator is directed to reconsider his finding on Claim No. 14 and publish his award within two months from the date he receives a copy of this order. Let a decree be accordingly drawn up. The award shall form part of the decree. The respondents will also be liable to pay interest on the amount of the decree @ 12% p.a. from the date of the award till the date of payment. However, no interest shall be payable if the entire payment is released to the claimants within a period of 2 months from today.

Suit and I.A. are disposed of in the above terms.

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