

Pride Construction Vs. Delhi Development Authority and anr.

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Court : Delhi

Decided On : May-01-1989

Reported in : 1989(2)ARBLR211(Delhi); 38(1989)DLT340; 1989(17)DRJ117

Judge : Sunanda Bhandare, J.

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

Appeal No. : Suit No. 949A of 1987 and Interim Application No. 7536 of 1987

Appellant : Pride Construction

Respondent : Delhi Development Authority and anr.

Advocate for Pet/Ap. : B.M. Sehgal and; Harish Malhotra, Advs

Judgement :

Sananda Bhandare, J.

(1) The petitioner was awarded a contract for the work of contraction of 936 Janta House Pocket V (Poorvi) at Pitampura, Sh : Construction of 888 Janta House by respondent no, I wide agreement No. 2/EE/HDXXVI/83-84. On disputes and differences having arisen between the parties, as provided in the agreement, disputes were referred to the sole arbitration of respondent no. 2 by the appointing authority vide letter dated 10.4.1985 The Arbitrator entered upon the reference and made and published bids award on 24 24.4.1987

(2) A petition was filed by the petitioner under Section 14 of the Arbitration Act and pursuant to a notice issued by this Court, respondent no. 2 filed the award and the proceedings in this Court. Notices of the filing of the award were sent to respective parties and the respondent no. 1 Delhi Development Authority filed its objections against the award. This order will dispose of the objections filed by the respondent.

(3) It was contended by the learned counsel for respondent no. 1 that under Clause 25 of the agreement and under the terms of the reference, the Arbitrator was required to give reasons for awarding any of the claims however the learned Arbitrator has misconducted himself by not giving reasons for the claims awarded in favor of the petitioner. It was contended that the Arbitrator has merely incorporated the contentions of both the parties and given his conclusions but no reasons for coming to that conclusion have been indicated. Learned counsel relied on D.D.A. v. M/s. Uppal Engineering Construction Co. : AIR1982 Delhi425 and College of Vocational Studies v. S. S. Jaitley, Air 1987 Delhi 134 and D.D.A. v. M/s. Alkaram, : AIR1982 Delhi365 in support of this contention. Learned counsel further submitted that the arbitrator has no power to grant pendente lite interest, however in the present case the Arbitrator has awarded pendente lite interest @ 12% per annum on the awarded amount from 17.4.1985 to 24-7-1987 and thus the Arbitrator has exceeded his jurisdiction. Learned counsel relied on Rajdev Engineering Works v. D.D.A. : 35(1988)DLT197 , Food Corporation of India v. Mis Swendra Devendra & Mehendra Transport Co. : [1988]2SCR329 . Executive Engineer Irrigation Calimala & Others v. Abnaduta Jera : [1988]1SCR253 and State of Orissa & Others v. Construction India, : [1988]2SCR145 in support of this contention.

(4) On the Other hand it was contended by the learned counsel for the respondent that the Arbitrator has only to indicate his mind on the different heads on which he was awarding various items and it is not necessary that speaking award should give detailed reasoned judgment. He submitted that since Arbitrator in the present case has discussed the contentions of the parties, even if he has not given detailed reasons, the award cannot be set aside on that ground. Learned counsel relied on D. D. A. v. M/s. Uppal Engineering Construction Co., : AIR1982 Delhi425 and Puri Construction Pvt. Ltd. v. Union of India, : AIR 1989 SC777 in support of

this contention. As regards the pendente lite interest, learned counsel for the petitioner maintained that the Arbitrator has the power to grant pendente lite interest.

(5) I have gone through the award dated 24-4-1987 and I find that though the main award does not give reasons, the learned Arbitrator has filed Along with the award Annexure-A, which he has titled 'reason for the award'. The Arbitrator has allowed claim no. 2, 3, 4 and 7 Claims no. 2 is for a sum of Rs. 3,27,000.00 on account of procurement of bricks. Admittedly the petitioner has secured advance for 19,53,700 bricks at Rs. 315.00 per thousand bucks i.e. 75% of Rs. 420.00 per thousand bricks. Thus, the balance amount-payable to the claimant worked out to Rs 2,05,138,50 however over and above 19,53,700 bricks for which the petitioner had secured advance the petitioner had procured 2 lacs more bricks: The respondent however agreed that the bricks over and above 19,53,700 bricks turn which advance was taken can be lifted by the petitioner. However, when verification was done at the site, a shortage of 1,36,648 bricks was found. The petitioner by his letter dated 5.11.1986 admitted the shortage, however stated that these bricks were used for building huts for the labour. Now, it appears that the Arbitrator has come to a conclusion that since the contract was closed, the watch and ward was the responsibility of the respondent and thus even if there is a shortage, the petitioner cannot be held responsible for it and accordingly allowed the claim of the petitioner for Rs, 2,05,138,50. It is not clear Whether the storage of 1,36,648 bricks was from the total of the 21,53,700 bricks or from 19,53,700 bricks for which the petitioner had secured an advance. There is no reason given by the Arbitrator as to how and why he came to the conclusion that there was a closure of the contract and the watch and ward was the responsibility of the respondent. In fact it appears that the verification of the site was done after the written statement was filed. Thus, it is not clear whether there was a valid closure when the petitioner filed his claim. Moreover, I find that the Arbitrator has only discussed the rival contentions of the parties and given a conclusion to the following effect:

'ON due consideration of the facts placed before me and submissions made by the parties, I find that the documents placed on record are sufficient to establish that the material was under the possession/watch and ward of the respondents.'

(7) I do not think there is any dispute regarding the proposition of law as enunciated in the two judgments cited by the learned counsel for the petitioner. It is true that the Arbitrator is not expected to give a detailed judgment as long as the reasons given indicate his thought process. However, it is not sufficient for him to reproduce the rival contentions and give his conclusion. The Arbitrator must on consideration of the rival contentions give the reason why he accepts the contentions of the claimant and why he was arrived at a particular conclusion. In my view, in the present case the Arbitrator has not indicated the reason why he has come to the conclusion that the contract was closed and thus the watch and ward was the responsibility of the respondent. He was required to give reasons which he has not done and thus the findings of the arbitrator on these claims cannot be sustained.

(8) Claim no. 7 deal with pendente lite interest. The position in law is well settled. The Supreme Court in *Executive Engineer, Irrigation, Galimala & Others (supra)* has observed as follows :

'IN regard to pendente lite interest that is, interest from the date of reference to the date of the award, the; claimants would not be entitled to the same same for the simple reason that the arbitrator is not a Court within the meaning of Sec. 34 of the Cpc, nor were the reference to arbitration made in the course of suits. In the remaining cases which arose before the commencement of the Interest Act, 1978, the respondents are not entitled to claim interest either before the commencement of the proceedings or during the pendency of the arbitration. They are not entitled to claim interest turn the period prior to the commencement of the arbitration proceedings for the reason that the Interest Act, 1839 does not apply to their cases and there is no agreement to pay interest or any usage of trade having the force of law or any other provision of law under which the claimants were entitled to recover interest. They are not entitled to claim pendente lite interest as the arbitrator is not a Court nor were the reference to arbitration made in suits.'

In another judgment i.e. *State of Orissa & Others (supra)* the Supreme Court has reiterated the above view.

(9) In the present case. the reference was not made in the course of a suit and the Arbitrator not being a Court, the petitioner was not entitled to claim interest from the date of reference to the date of award. Thus, the Arbitrator had no authority to grant pendente lite interest.

(10) The next question is whether the award should be set aside or whether it should be remitted back to the Arbitrator to give reasons. Under Section 16(1)(c) of the Arbitration Act, the court has the power to remit the award to the Arbitrator if the objections to the legality of the award are apparent upon face of the record with a specific direction to the Arbitrator to submit his decision to the court within a specified time. Learned counsel for the respondent submitted that the award be remitted back with directions to the Arbitrator to re-submit it by giving reasons after hearing both the parties. Learned counsel for the petitioner cannot have any objection if this course is adopted.

(11) The objections are thus allowed. The finding of the Arbitrator on claim no. 7 is set aside and the case is remitted back to the Arbitrator to re-submit the award by giving detailed reasons after hearing both the parties on claims 2, 3 and 4. Since the claims pertain to the year 1985, the Arbitrator is directed to give his award within three months. Record of the case be sent back to the Arbitrator forthwith. No costs.