

Mohan Construction Co. Vs. Dda and anr.

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Court : Delhi

Decided On : Mar-27-1998

Reported in : 73(1998)DLT12

Judge : S.N. Kapoor, J.

Acts : [Arbitration Act, 1940](#) - Sections 30 and 33; [Income Tax Act, 1961](#) - Sections 149 and 194C

Appeal No. : Suit No. 1133/93

Appellant : Mohan Construction Co.

Respondent : Dda and anr.

Advocate for Def. : Ms. Anusuya Salwan. Adv.

Advocate for Pet/Ap. : Mr. Tarun Sharma, Adv

Judgement :

ORDER

S.N. Kapoor

1. This judgment shall dispose of an application under Sections 14, 17 and 29 of the Arbitration Act and objections against the award is 769/94.

2. The relevant facts are as under:

2.1 The petitioner entered into a contract agreement for construction of '560 MIG houses at Pitampura, Pkt A(P) including internal development SH:192 MIG Houses Grp.III. The contract agreement contained an arbitration clause. Certain disputes arose between the petitioner and the respondent No.1. In terms of Arbitration clause, R.C. Malhotra, respondent No.2 was appointed as a sole arbitrator to adjudicate upon the disputes. Mr. Malhotra published his award on 29th April 1993.

2.2 The award has been filed. Notice of filing the award was served on petitioner/claimant on 20th December 1993 and on the respondent on 3rd January 1994. The objections have been filed by the respondent vide is 769/94 on 22nd January 1994. The objections are obviously within time.

3. I have heard parties counsel and gone through the record.

3.1 There are certain general objections to the effect that the Arbitrator has misconducted himself and the proceedings. Though the arbitrator was required to give reasoned award, he failed to do so and the award is contrary to the basic conditions of the contract. He also ignored certain important documents. These general objections without having any reference to any claim shall be considered wherever deemed appropriate along with different claims and counter claims.

4. Claim No. 1.

4.1 In regard to claim No.1(a) relating to refund of security amount of Rs.1,00,000/-, one of the objections taken is that the claimant had not obtained the Clearance Certificate from the Labour Officer and therefore the security deposit has not been released. The learned arbitrator by ignoring clause 46 of the agreement, has misconducted the proceedings.

4.2 In response to this submission, the claimants deny that the findings suffer from any error. The learned arbitrator has given sufficient reasons for allowing the refund of security deposit for the amount which was admittedly rejected by the Objector and which was liable to be refunded to the contractor.

4.3 Clause 46 of the agreement reads as under:

'Security deposit shall not be refunded till clearance certificate from the labour officer is obtained by the contractor.'

4.4 It is not the case of the claimant that any clearance certificate was obtained from the Labour Officer by the contractor. The facts (i) that the provisional Completion Certificate was recorded in terms of clause 6 of the agreement; (ii) that the provision that the bill was to be finalised within six months of the completion of the work; and (iii) that the security was to be released within one month thereafter; and the provision under clause 17, obviously, would not amount to wiping out clause 46. While one would agree that the Department cannot forestall finalisation of the account and items not having been sanctioned and withheld the security deposit, it is also true that the contractor also does not become entitled to refund of security deposit without obtaining clearance certificate from the Labour Officer. Since neither before the Arbitrator nor before this court it is pleaded that the clearance certificate was obtained from the Labour Officer, it would appear as if the order of refund could not be passed in view of clause 46. Learned Arbitrator certainly acted beyond his jurisdiction by not adhering to clause 46. However, it is clarified that the Decree Holder shall be entitled to the amount, the moment he obtains and files certificate in terms of clause 46 from the Labour Officer and in case of nonpayment of the security deposit, the claimant would be entitled to interest at the rate of 14% on this amount from the date of filing the certificate.

5. Claim No. 1(b) and Counter Claim No. 1 & 2.

5.1 In so far as claim No. 1(b) and 1(i) and counter claim No. (i) and (ii) are concerned, the findings of the learned Arbitrator are said to be erroneous for the learned Arbitrator ignored the fact that the amount had been withheld on account of defective work and the same work has been got executed at a reduced rate. He also ignored that the Superintending Engineer in respect of the rates to be paid against the sub-standard work was final under clause 25(b) of the agreement. As such, this aspect was beyond the Arbitrator's jurisdiction, as per submissions of learned counsel for the Objector.

5.2 It is contended by the claimant that this objection is misconceived. The learned Arbitrator has given sufficient reasons for allowing claim No. 1(b). Since the

counter claim No.1 was preferred before the learned Arbitrator by the respondent/Objectors themselves, they could not raise the objection that the learned Arbitrator has no jurisdiction to entertain the said claim. They are estopped from making out the above said grievance.

5.3 Clause 25(b) of the agreement - which is relevant here reads - as under:

'The decision of SE regarding the quantities of the reduction as well as justification thereof in respect of rates for sub-standard work which may be decided to be accepted, will be final and would not be open to Arbitration.

5.4 The learned Arbitrator, it appears, has rejected the claim about the defective work for the provisional completion certification issued in terms of clause 6 and pre-final bill was paid on 7th November 1988 and in this bill, a sum of Rs.2,52,944.35 admitted by the respondent vide Ex.R-96, was retained in part rates. The Arbitrator may be right in taking the view that the objection, in respect of this claim came up on 26th June 1991, i.e. more than three years after the completion of the work on the plea that the part rates retained are to be adjusted for defective and incomplete work executed by the claimant, had no weight. According to clause 6 of the agreement, the Engineer-in-Charge, while recording the completion certificate or provisional certificate of completion, is required to indicate the defects '(a) to be rectified by the contractor and/or (b) for which payment will be made at reduced rates'. It is not claimed by the Objector that any such provisional completion certificate was issued indicating the defects.

5.5 Clause 14 of the agreement relates to action and compensation payable in case of bad work. Thus, in case of defective execution or use of defective material, the contractor on (i) demand in writing, (ii) within six months of completion of the work, the contractor is supposed to rectify the defect at his own cost, within the time specified by the Engineer-in-Charge and in case contractor fails to rectify the defects, the same would be got rectified at his risk and cost. Serving a notice calling upon the contractor under clause 14 of the agreement for setting right the defect in the work is a pre-requisite, before directing the contractor to rectify the defects or to rectify the work at the risk and expenses of the contractor. In absence of notice, the recovery made from the bills of the contractor cannot be justifiably

effected (See Nav Bharat Construction Co. v. DDA, 1997(1) ALR 541 (Pr. 12). It is not claimed that any such notice calling upon the contractor to get the defect removed at his cost was served. Consequently, the two reasons given by learned Arbitrator are appropriate for just by mentioning that the matter falls within the exceptional clause, the objection could not be sustained if all the ingredients to sustain the objection are not established strictly in accordance with the terms of clause 6 and clause 14. The objector has failed to point out the defects at clause 6 as well as clause 14-D stages to justify their decision in the reduction in rates. To claim that the decision was final and binding cannot be accepted in absence of certificate showing the noncompletion of any item and notice calling upon the contractor to rectify the defects. The question of decision of the rates by the Superintending Engineer would arise only after the declaration of sub-standard work by the Engineer-in-Charge indicated in the completion certificate and the provisional certificate, and after issuing pre-requisite notice under clause 14. The work was completed in March 1988 and the reduction rates items were sanctioned in August 1991. Since, there was no justification whatsoever in reducing the rates of the work, or withholding payment of Rs.2,52,944.38 or Rs.10,000/- withheld for rectification, award cannot be interfered with at this stage. In so far as counter claim No. (i) and (ii) are concerned, the Arbitrator has already allowed it.

6. Claim No. 1(c)

6.1 In regard to claim No.1(c), relating to claim of Rs.1,75,400 due to increase in labour wages, the objector's case is that the award is erroneous for two reasons: firstly, the arbitrator has ignored important documents on records; and secondly, the petitioner did not fulfill the mandatory conditions laid down in clause 10-C to be entitled for payment of the same. The response of the claimant/petitioner is that the learned Arbitrator has carefully examined the matter. He referred to Ex.C/47 letter dated 9th April 1986 and Ex.C/73 letter dated 23rd September 1989 to indicate that the petitioner had offered the respondents to verify the records, if so desired, or alternatively, it could be verified from the labour itself whether they were being paid the revised wages. Even the inspection is offered vide Ex.C/47 and C/73 letters dated 9th April 1986 and 23rd September 1986. So far as calculation is concerned, the arbitrator considered both the calculations given by

the parties and did not accept either of them. He reduced the claimant of skilled labour from 13.5% to 10%.

6.2 The learned Arbitrator has not in any manner exceeded his jurisdiction while allowing the claim. Even otherwise, the learned Arbitrator had jurisdiction to entertain all these claims. In this regard, a perusal of the award shows that the learned Arbitrator has specifically considered and not ignored clause 10-C. Consequently, objections in this regard are rejected.

7. Claim 1(d)

7.1 In so far as claim 1(d) is concerned, the award is certainly not without reasons. From the side of the claimant it is submitted that the stipulation for deduction of rebate was never fulfilled by the respondent to justify deduction. Learned Arbitrator was absolutely right when he observed that question of rebate was to be governed by the rebate condition in the award letter. Moreover, reasonableness or adequacy of the reason is not open for scrutiny by this court so long as it is not against the terms of the agreement or it is based on no evidence.

7.2 In such circumstances, it is very difficult to accept the contention of the learned counsel for the Objectors.

8. Claim No. 1(e)

8.1 It is evident from Ex. R-51 that the claimants were made to hand over flats to the allottees, beyond the terms of contract. Ex. C-118 dated 26th August 1988 further shows that out of 192 houses, 164 had been allotted and the respondents were requested to take over possession of the remaining houses. Ex. C-124 dated 1st March 1989 and Ex. C-33 dated 15th November 1989 reveals that in addition to handing over of possession of the flats to the allottees, the claimant, were made to provide watch and ward of the houses after they were completed. Facts and reasons stated by the Arbitrator in regard to claim No. 1(e) are such which justify the conclusion arrived at by the arbitrator in awarding Rs.24,000/- in respect of watch and ward even after completion. But this amount is covered in clause 1(o) also and there appears mistake on the face of record to award separately. It is

required to be corrected.

9. Claim 1 (g)

9.1 Arbitrator considered this claim in three parts. In respect of first part, the Arbitrator allowed reduced claim of Rs.65,542.93 on the basis of technical and essentiality point of view and measurement of work worth Rs.14,752.75 having been taken by the respondent. In regard to second part of the claim, out of Rs.1,99,926.20 he awarded Rs.1,50,000/- after considering not one but numerous documents before coming to the conclusion based on 'technical requirements without which further work cannot be continued/completed'. No amount appears to have been awarded in respect of third part by accepting the contention of the respondents that it related to the value of items which were inadmissible. So objection in this regard cannot be accepted.

10. Claims 1 (i) and (j)

10.1 Claim 1 (i) relates to withheld amount of Rs.10,000/- for rectification of defective work done by the petitioner. According to the objector, this amount could be withheld under the agreement, and the arbitrator has committed misconduct. According to the petitioner, there is no such clause in the agreement and even clause 14 is not applicable. Clause 14 requires that a notice should be given, along with fulfilling of other requirements of the clause. But the petitioner does not allege any such thing, to substantiate its allegation of misconduct. therefore, this objection cannot be accepted.

10.2 Award is self-explanatory in so far as awarding release of withheld amount Rs.2500/- under the plea of full test check not done by the Asstt. Engineer. If full test check was copal requirement, on account of lapse on the part of the respondent claimant could not be penalised. There are appropriate reasons for awarding release of withheld amount of Rs.2500/- in respect of claim (1) (j) specially in absence of any such provision in the agreement.

11. Claim 1 (k)

11.1 Award of Rs.15,000/- was certainly withheld wrongly for in clause 42(i) does not provide penal recovery rate in relation to the trials (twice the issue rate) as provided in case of cement, steel, cables, and bitumen in clause 42(ii) to clause 42(v). Consequently, award under clause No. 1(k) is justified.

12. Claim 1 (l)

12.1 In regard to claim No.1(l) and counter claim No.1(v) relating to Rs.1000/- withheld and a sum of Rs.2,600/- claimed by the respondent under claim No.1(v) withheld for non-submission of fortnightly returns, under clause 19-D contractor became liable to pay Rs.50/- for each default as fine levied and the decision of the Divisional Officer shall be final in deducting from any bill as due to the contractor the amount levied as fine. It is not the case of the respondent/objector that deduction was justified in respect of 20 defaults and Divisional officer has passed any order to deduct the amount. If these conditions are fulfilled, the deduction would be certainly be justified and in that case, arbitrator would be acting beyond his jurisdiction by awarding refund of each deducted amount. The fact that there is no complaint of labour is not germane and relevant for the labour may not gather courage to complain against the contractor. But in absence of any order of Divisional Officer to impose the levy and order to deduct it from the bill, the bill clerk cannot be allowed to deduct any amount on either of the two counts. Seen in this light, the award appears to be justified in this respect.

12. Claim 1 (n)

12.1 In regard to claim No. 1(n) of Rs.4,25,476 being difference of reasonable price and price paid, it appears that this amount was claimed for failure of the respondent in timely supplying the stipulated material. From a perusal of the award, it appears that the arbitrator allowed escalation of 15% and awarded a sum of Rs.2,16,448 in addition to Rs.1,28,552 already awarded on account of 10-C against claim No.1(c). By no stretch of imagination, this can be justified for in view of the specifications and conditions No.1 at p.42 referred to by learned counsel for petitioner. This condition reads as under:

1. 'The contractor must get acquainted with the proposed site for the works and study specifications and conditions carefully before tendering. The work shall be executed as per programme approved by the Engineer-in-Charge. If part of site is not available for any person or there is some unavoidable delay in supply of materials stipulated by the Department, the programme of construction shall be modified accordingly and the contractor shall have no claim for any extras or compensation on this account.'

12.2 It is not an error in interpretation of the contract but it amounts to acting beyond the terms of the contract between the parties which amounts to misconduct by arbitrator. When in the specifications and conditions, the escalation is prohibited on account of delay in supply of material, the fact that labour charges and material increased substantially during the prolonged period is certainly not germane and relevant in the circumstances in view of specific prohibition on that account.

13. Learned counsel for the petitioner relied upon P.M. Paul Vs . Union of India, : [1989]1SCR115 , NDR Israni v. DDA, 1989(2) ALR 349, Hyderabad Municipal Corporation Vs . M. Krishnaswami Mudaliar & Anr., : AIR 1985 SC607 , M/s. Vira Construction Co. Vs DDA, 1997 3 AD (Delhi) 761, Shri Mohd. Siddique v. Union of India & Ors., 1996 V AD (Delhi) 273. In all these cases, the question relating to escalation in relation to clause 1 of Specifications and Conditions neither arose nor considered. Consequently, they are of no help to the petitioner. But, so long as compensation for such delays is not specifically prohibited, the repercussions of delay caused by either of the parties in completing the construction and to apportion the responsibility and consequences thereof would be within the jurisdiction of the arbitrator. When it is specifically prohibited, then it has to be presumed that both the parties were expecting delays in certain respects which have been provided for and taken into consideration by entering into the agreement. From that point of view, allowing compensation for such delays would amount to paying twice for such rights are included in the tender amount and paying for them as compensation also. The arbitrator, in view of the said condition, would be acting beyond his jurisdiction and against the contract.

14. On the other hand, the learned counsel for the Objectors relied upon condition 1 of the Specifications and Conditions and Continental Construction Co. Ltd. Vs . State of Madhya Pradesh, : [1988]3SCR103 . There was a clause 3.3.15 similar to the condition 1 of Specifications and Conditions (p. 42) in the case in hand. The Supreme Court considered clause 3.3.15 and observed as under:

'...In view of the specific clauses, the appellant was not legally entitled to claim for extra cost...The Arbitrator is not a conciliator and cannot ignore the law or misapply it in order to do what he thinks is just and reasonable. The arbitrator is a tribunal selected by the parties to decide their disputes according to law and so is bound to follow and apply the law and if he does not, he can be set right by the court provided his error appears on the face of the award. In this case, the contractor having contracted cannot go back to the agreement simply because it did not suit him to abide by it.

8. '...There was a clear finding of the arbitrator the contract was not rendered ineffective in terms of Section 56 of the Act due to abnormal rise in prices of material and labour. This being so and the contractor having completed the work, it was not open to him to claim extra cost towards rise in prices of material and labour. The arbitrator misconducted himself in not deciding this specific objection raised by the State regarding the legality of extra claim of the appellant.'

15. In Government of Kerala & Anr. Vs . V.P. Jolly, : AIR1992 Ker187 , Full Bench of Kerala High Court observed that even non-speaking awards are liable to be set aside if the award is contrary to the basic requirements, obvious feature of the contract or traverse beyond the obvious terms of such contracts and so long as such decisions can be arrived at without interpreting or construing the terms of the contract. The violation must be evident from a mere look at the terms of the contract.

16.1 Following observations were made in Associated Engineering Co. v. Government of Andhra Pradesh, 1991 ALR (2) 180:

'27. An arbitrator who acts in manifest disregard of the contract acts without jurisdiction. His authority is derived from the contract and is governed by the

Arbitration Act which embodies principles derived from a specialised branch of the law of agency (see Mustill and Boyd's Commercial Arbitration, Second Edition, p.641). He commits misconduct if by his award he decides matters excluded by the agreement (see Halsbury's Laws of England, Volume II, Fourth Edition, Para 622). A deliberate departure from contract amounts to not only manifest disregard of his authority or a misconduct on his part, but it may tantamount to a mala fide action. A conscious disregard of the law or the provisions of the contract from which he has derived his authority vitiates the award.

29. If the arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction. But if he wanders outside the contract and deals with matters not allotted to him, he commits a jurisdictional error. Such error giving to his jurisdiction' can be established by looking into material outside the award. Extrinsic evidence is admissible in such cases because the dispute is not something which arises under or in relation to the contract or dependent on the construction of the contract or to be determined within the award. The dispute as to jurisdiction is a matter which is outside the award or outside whatever may be said about it in the award. The ambiguity of the award can, in such cases, be resolved by admitting extrinsic evidence. The rationale of this rule is that the nature of the dispute is something which has to be determined outside and independent of what appears in the award. Such jurisdictional error needs to be proven by evidence extrinsic to the award.

16.2 He further relied upon Ishwar Singh & Sons v. DDA, 1994 (1) ALR 526. It reads as under:

16. 'The Supreme Court was dealing with a non-speaking award in the Continental Construction Co. Ltd.'s case. Applying the principle laid down in the said case, it is manifestly clear that the arbitrator cannot give award which is contrary to the terms of the contract. Once the petitioner has agreed to have a specific clause like Clause (1) of General Terms and Conditions, he will not be entitled to claim any damages and the arbitrator would be misconducting himself, if contrary to the specific provision of the contract any sum is awarded under that head.'

17. In view of the above legal position, it appears that the finding of the learned arbitrator that the delay in completion of work was due to nonfulfilment of contractual obligations by the respondent mainly in not supplying the stipulated material in time and not giving timely decisions is against the terms and conditions of the agreement. In so far as question of supplying the stipulated material in time is concerned, no extra claim or compensation on this account could be claimed. Since 15% escalation has been allowed mainly on this ground after taking into account a sum of Rs.1,28,552 already awarded against claim No.1(c), I feel that the award of a sum of Rs.2,16,448 in favor of the claim is totally unjustified and the learned Arbitrator misconducted himself by ignoring the terms of the contract contained in clause 1 of Specifications and Conditions.

18. Claim No. 1 (o)

18.1 In this regard, the learned arbitrator appears to be totally justified when he observed that certain establishment and Tools and plants has to be maintained and the deployment of a graduate engineer during the entire period of execution, was a mandatory requirement as per agreement, and thus, it could not be dispensed with. Similarly, deployment of certain supervising and watch and ward staff is also necessary regardless of the speed of work. Thus, the claimants had to incur various expenditure by way of overheads and site establishment, T&P; irrespective of monthly output and considering all these aspects, he assessed the damages/losses against this claim at Rs.1.50 lakhs.

18.2 However, it appears that there is some mistake of duplication appears on the face of the award in relation to awarding amount for extra watch and ward after considering that aspect under this head in clause 1(o). Accordingly, a sum of Rs.1.50 lakhs awarded has to be considered as total sum in respect of both claim Nos. 1(e) and 1(o).

19. Counter Claim No.1.

19.1 In so far as objection relating to counter claim No. 1(iii) - the deduction relating to Income tax recovery of Rs. 78,915 awarded by the arbitrator is concerned, the arbitrator might have been justified in rejecting the counter claim, if

the amount had not been paid to the contractor, he has no option but to reject this claim, in view of the provisions of Income Tax Act. It may be mentioned that Section 194(c) of the Income Tax Act provides as under:

194C. Payments to contractors and sub-contractors._ (1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and

(a) the Central Government or any State Government; or

(b) any local authority; or

(c) any corporation established by or under a Central, State or Provincial Act; or

(d) any company, or

(e) any cooperative society; or

(f) any authority constituted in India by or under any law, engaged either for the purpose of dealing with a satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both; or

(g) any society registered under the Societies Registration act, 1860 or under any law corresponding to that Act in force in any part of India; or

(h) any trust; or

(i) any University established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a University under Section 3 of the University Grants Commission Act, 1956; or

(j) any firm.

shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier deducted an amount equal to

(i) one per cent, in case of advertising,

(ii) in any other case two percent.; of such sum as income-tax on income comprised therein;

(2) Any person (being a contractor and not being an individual or a Hindu undivided family) responsible for paying any sum to any resident (hereafter in this section referred to as the sub-contractor) in pursuance of a contract with the sub-contractor for carrying out, or for the supply of labour for carrying out, the whole or any part of the work undertaken by the contractor or for supplying whether wholly or partly any labour which the contractor has undertaken to supply shall, at the time of credit of such sum to the account of the sub-contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier deduct an amount equal to one per cent, of such sum as income-tax on income comprised therein.

20. It is evident that it is a liability of the disbursing officer to deduct it and it appears that this aspect was not considered by the Arbitrator at all and any deduction in terms of Section 149 of Income Tax Act was justified. Since the payment was to be made by the Disbursing Officer of the DDA, the principal officer of the DDA are not only supposed to deduct but also supposed to deposit the amount within prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs and further that such persons are to be deemed as assessed in default in respect of the tax. This provision makes the award relating to refund of the deducted amount altogether untenable and being against law, award of the refund has to be modified.

21.1 Counter Claim No. IV

21.2 In so far as counter claim No. iv) of Rs.1,95,045.56 as penal rate recovery is concerned, the award is self-explanatory and the recovery being penal in nature and hit by Section 74 of the Indian Contract Act, would not be justified in absence of any actual loss suffered due to non-return of surplus material. There could be two views about the shuttering supplied free of cost. But this court neither supported nor would like to substitute its own view. Accordingly, no interference is

called for in regard to this counter claim.

22.1 Additional Claim No. 1 and counter claim No.2:

22.2 Interest at the rate of 18% per annum has been claimed by both the parties on the claims and counter claims. According to the objectors, the interest at the rate of 14% per annum on the net amount of the award excluding the amount awarded against claim No. 1(n) and 1(o) and after adjusting the amount awarded against counter claims of the department for the period 26th June 1990 till the date of the award, was totally unjustified. I think this submission has got no force for the arbitrator is competent to award interest for the period commencing from the date of the commencement of arbitration proceedings i.e., the moment the Arbitrator indicates his willingness to act as such. (See The Secretary to the Govt. of Orissa & anr. Vs . Sarbeswar Rout, : AIR 1989 SC2259) till the date of the award under Section 3(1)(b) of Interest Act, 1978 and till the date of decree or date of award, whichever is earlier. As has been held in Hindustan Construction Co. Ltd. v. State of Jammu and Kashmir, AIR 1992 SC 2193, Secretary Irrigation, Department of Orissa v. G.C. Roy, : [1991]3SCR417 and Shri Mohd. Siddique v. Union of India & Ors., since the award stands modified in regard to claim No.1(n) and to a limited extent 1(o), the petitioner is entitled to 14% interest on net amount now payable after adjusting the amount awarded against counterclaims of the department for the period starting from 26th June 1990 till the date of the award. The petitioners are also entitled to interest on total amount now payable under the award after adjusting the amount awarded in favor of the respondents from the date of award till the date of decree as well as till realisation.

23. Accordingly, the petitioner/claimant is entitled to following amounts:

S.No. Claim Award

1 (a) Rs.1,00,000 towards refund of *Rs.1,00,000.00

security deposit (Payable

subject to filing of

certificate

under Clause 46)

1 (b) Rs.2,61,688 amount retained Rs.2,52,944.35

in part rates up to 17th

running account bill dated

7.11.1988

1 (c) Rs.1,75,400 payment to be Rs.1,28,552.00

reimbursed under clause 10(c)

of the contract agreement

due to increase in labour

wages.

1(d) Rs.29,252.98 amount wrongfully Rs. 26,632.81

recovered for rebate which was

conditional one.

1(e) Rs.66,000 being watch and ward Not payable

expenditure against houses separately

remaining unallotted by the (covered in

respondents. clause 1(o)

1(o) Rs.6,00,000 on account of Rs. 1,50,000.00

infructuous expenditure and

damages due to breaches

committed by the respondents.

1(g) i) On account of under- Rs. 65,542.92

measurements

ii) For making good the Rs. 1,50,000.00

deficiencies left over

by the previous agency

iii) For value of items allowed Nil

1(i) Rs.10,000 wrongfully withheld Rs. 10,000.00

by the respondents on account

of alleged rectification of

defects.

1(j) Amount of full test check Rs. 2,500.00

withheld

&(k)Penal rate recovery on account

of materials withheld Rs. 15,000.00

1(l) Amount withheld on account of Rs. 2,000.00

non-submission of labour

reports

1(n) Difference of reasonable price

and price paid (15% increase
awarded) Nil

TOTAL Rs. 7,88,419.34

Counter Respondents claim Rs.

Claim 4,11,731.08 on account on

No.1. account of reduced rate item,

penal rate recovery of

stipulated material,

income-tax recovery etc. as

per the final bill. The break

up of this claim is as under:

i)Rs. 69,593 for work done since Nil

previous bill (Not awarded)

ii) Rs. 15,577 as recovery of Rs.15,570.49

stipulated material issued by

iii) Rs.78,915 as Income-tax

recovery. Rs.78,915.00

iv) Rs. 1,95,045.56 as penal rate

recovery Nil

v) Rs.2,600 for non-submission

of labour reports. Nil

vi) Rs.50,000 as amount withheld

on account of non-settlement Nil

of quality control paras.

TOTAL Rs. 94,485.49

Counter Future interest at 18% p.a.

Claim on counter claim No.1.

No.2.

Total amount of Award Rs. 8,88,419.34

Minus Award No. 1(a) payable on Rs. 1,00,000.00

filing certificate

Balance Rs.7,88,419.34

Total amount of counter claim Rs.94,485.49

Balance Rs.6,93,933.85

Addl. Claimants claim pendente lite Simple interest

Cl. interest at 18% per annum from at 14% p.a. on

No.1 the date of the notice to the the net amount of

date of its decree or award as

realisation calculated above

for the period

26.6.1990 till
the date of this
award i.e.
29.4.73 and from
the date of the
award till today,
and till
realisation.

24. Since the petitioner is not entitled to refund of Rs.1,00,000/-, interest cannot be awarded thereon till the date of filing of the clearance certificate from the Labour Officer.

25. Subject to above modifications, the award is made rule of the court. The parties are left to bear their own costs.

26. Decree sheet be prepared accordingly.