

S.A. Builders (P) Ltd. Vs. Delhi Development Authority

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Court : Delhi

Decided On : Jul-27-1990

Reported in : 1990(2)ARBLR318(Delhi); 42(1990)DLT499

Judge : A.B. Saharya, J.

Acts : [Arbitration Act, 1940](#) - Sections 14

Appeal No. : Suit Nos. 2346 of 1987 and 287A of 1988 and Interim Application No. 1675 of 1988

Appellant : S.A. Builders (P) Ltd.

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : Satinder Bansal,; Meenakshi Singh and; A. Salwan, Advs

Judgement :

Arun B. Saharya, J.

(1) Suit No. 2346/67 was registered on filing of an award dated 12th of October 1987 along with arbitration proceedings by the arbitrator Shri S.R. Hingorani. Respondent No. 1 filed objections to the award The same were registered as I.A. 1675/88. In the meanwhile, the petitioner also filed an application under Section 17 of the Arbitration Act, praying that the award filed by the arbitrator (Respondent No.2) may be made rule of Court and a decree may be passed in terms thereof

with interests and costs. This application was registered as suit No. 278-A/88. Since both the suits relate to the same subject matter, they were connected and proceeding have taken place in suit No. 2346/87.

(2) Respondent No. 1 has filed objections to the award, inter alia, on the grounds that the arbitrator has not given any reasons for the award, and that the award suffers from errors apparent on its face. The petitioner has controverted the objections.

(3) On 31st of October 1988, the following issues were framed :-

'1. Is the award liable to be set aside for the reasons stated in the objection petition
2. Relief.' Parties have filed affidavits by way of evidence.

(4) At the hearing, counsel for respondent No. 1 has pressed only one objection, namely, that the arbitrator has not given any reasons in respect of Claim Nos. 1, 2, 6, Counter-claim Nos. 1 to 5 and Additional Claim No. 1.

(5) In order to appreciate the objection of respondent No. 1, it would be appropriate to refer to the award. Relevant portions of the award read as follows:-

'CLAIM No. 1 for Rs. 1,00,000/towards refund of security deposit in shape of bank guarantee The bank guarantee has been encased by D.D.A. on 31.3.1984. This amount should be paid back, subject to adjustment of any amounts that may be awarded to D.D.A. against their counterclaims. Claim No. 2 for Rs. 24 lakhs for work done but not measured and paid for: The value of work done and not paid as per final bill submitted by Respondents (Exbt. R-16) is Rs. 10,66,296.00 . In addition to this, the following amounts are also payable to the claimants. (a) Reconciliation of measurements as confirmed in Annexure 'A' of EE's letter dated 15.4.1987.....Rs. 4,789.00 plus 34.56% =Rs. 6,444.00 (b) Amount on account of over-weight steel. The statement submitted along with E.E.'s letter dated 24.6.1987, shows that the steel supplied was overweight by 2.496 M.T. in case of round bars and by 40.988 M.T. in case of tor-Steel. Contractor should be paid Rs. 1,45,175.00 on this account. (c) Extra for plastering ext. walls of height beyond 10 M =Rs. 15,693.00 (d) Making grooves in D.P.C. =Rs. 4,437.00 (e) Providing bands

in plaster =Rs. 6,233.00 (f) Providing drip course in chajjas, grooves in drain board and Hand Rail, R.C. Slabs ==Rs. 35,736.00 (g) Cutting holes in walls =Rs, 5,880.00 (h) Extra payment for Red, Chocolate pigment in floors. Rate sanctioned is Rs. 3.31+34.56%. Correct rate based on D.S.R. 74 should be Rs. 7.00 plus 34.56%. Contractor should be paid Rs. 85,507.00 (i) P & F Cp Brass concealed stop cock 15 mm dia. The rate sanctioned is Rs. 28.22.00 . Reasonable rate should be Rs. 57.54. Extra amount payable is Rs. 8,209.00 (j) C.C. finishing for hand rail. Rate sanction Rs. 3.24 & Rs. 3.95 for 20 mm and 25 mm wide hand rail. Reasonable rate should be Rs. 5.11 & Rs. 6.26 respectively. Extra amount payable Rs. 5,948.00 . (k) Penal recoveries for cement, steel, and S.C.I, pipes amounting to Rs. 1,68,052.00 have been proposed in the final bill. This recovery is not Justified, as respondents have not proved that they suffered any loss. (l) Deductions have been proposed for six items amounting to Rs. 15,387.00 . Out of these, the deduction for Rs. 1,884'- against Item No. 6 only is justified. Balance amount Rs. 13,503.00 should be paid to the contractor. (m) Reductions have been proposed for eight items amounting to Rs. 30,855.00 . Out of these, the deduction for items 2, 6 & 8 amounting to Rs. 9,800.00 only is justified. Balance amount of Rs. 21,055.00 should be paid to the contractor. (n) Contractors claim for labour enhancement from 11.6.1980 to 28.5.1982 without making deduction of 10% increase in labour wages is not justified. In absence of any notice given by him to the D.D.A. when the contract period was over, it has to be presumed that he continued to do the work on the same terms and conditions as given in the contract, which provided for 10% deduction, in case of increase in wages. Claim No. 2 is, thereforee. Justified for Rs. 15,88,1691- . Claim No. 6 forpendente lite interest at 24% w.e.f. 23.3.1984. The claimants should be paid simple interest at 18% per annum from 23.3.1984 up to date of payment or decree, whichever is earlier. Counter-Claim No. 1 for Rs. 1,00,000 .00 on account of forfeiture of security deposit. The claim is not justified as there are no orders of the competent authority to forfeit the security deposit. Counter Claim No. 2 for Rs. 1500,000/. on account of rectification of defects under clause 14. The work was completed on 30.5.1982. D.D.A. has not produced evidence to show whether the contractor was issued any notices under Clause 14. They have also not produced any details of the expenditure incurred by them on rectification of defects. Hence the claim is not

justified. Counter-Claim No. 3 for Rs. 16,14,4061- on account of compensation under Clause 2 for delay completion of work. The date of completion as stipulated in the contract was 9.6.1980. The work was actually completed on 30.5.1982. D.D.A. did not issue any notices to the contractor under clause 2 on 9.6.1980 or soon thereafter. In fact, such a notice has been issued by the S. E. only on 16.7.1987, long after the counter claims were referred for arbitration. Issuing of a notice under clause 2 after a lapse of 7 years is meaningless. Hence the claim is not justified. Counter Claim No. 4 for Rs. 16,14,4061- on account of compensation under Clause 14 for failure to rectify the defects. For the reasons already given against counter claim No. 2 this claim is also not justified. Counter Claim No. 5 for Rs. 70,00,0001- on account of loss of revenue. D.D.A. has not produced evidence to show that contractor was responsible for delay in completion of the work. Hence the claim is not justified. Additional Counter Claim No. I for Rs. 3,00,0001- on account of staff engaged on watch & ward since 1983. As the work was completed on 30.5.1982, the contractor was not responsible for watch & ward thereafter. Hence the claim is not justified.'

(6) The arbitration agreement is contained in Clause 25 of the contract. It requires the arbitrator to give reasons for the award as the amount of claims in dispute is above Rs. 50,000.00 . Now, it is well settled by decision of the Supreme Court in *Rajpur Development Authority v. Chokhamal Contractors* 1989(1) AL.R. 430 that an award can neither be remitted nor set aside merely on the ground that it does not contain reasons to support it except where the arbitration agreement or the deed of submission requires him to give reasons. The present case fall within the exception. The arbitrator is, however, not expected to give a detailed judgment as long as the reasons are given. In other words, the arbitrator must state the grounds, support, or justification to indicate his thought process.

(7) Claim No. 1 and counter-claim No. 1 are inter-connected. The award in respect of each of these claims has to be read together. Under claim No. I, the arbitrator has pointed out that the bank guarantee had been encased by D.D.A. on 31st of March 1984. The corresponding counter claim No. 1 on account of forfeiture of security deposit was found to be not justified as 'there are no orders of the Competent Authority to forfeit the security deposit'. Thus, the arbitrator has

indicated the ground on which he has made this part of the award.

(8) Likewise, reasons have been given by the arbitrator for the award made by him in respect of value of work done and not paid for, under claim No. 2, as well as regarding additional items (a), (b), (h), (k) and (n) there under, and for counter-claim Nos. 1 to 5 and the Additional Claim No. 1.

(9) The award for Rs. 10,66,296.00 under claim No. 2 has been made for the reason that work was done but not paid for. This is based upon final (not 'first' as wrongly typed) bill submitted by D.D.A. (Ex. R-16). A perusal of this document shows that the awarded amount has been reached on the basis of various running bills. It shows total value of work done, less the amount already paid and less the deductions claimed by D.D.A. Thus, Ex. R-16, produced by D.D.A. itself, shows the amount due, for the work done but not paid for, as awarded by the arbitrator.

(10) Under additional item (a), the arbitrator has, on reconciliation of measurements, awarded an amount of Rs. 6,444.00 . This is based upon Annexure 'A of Executive Engineer's letter dated 15th of April 1987 plus 34.56%. The said letter of D.D.A.'s Executive Engineer is the justification for this award. To this he has added 34.56% which is the negotiated percentage above the estimated cost put to tender, commonly known as the 'Contractor's enhancement' under the contract.

(11) A sum of Rs. 1,45,175.00 is awarded under item (b). This is based upon the statement submitted along with Executive Engineer's letter dated 24th of June 1987 which shows that the steel supplied was over-weight by 2.496 Mt in case of round bars and by 40.988 Mt in case of turn steel.

(12) For the award of the amount of Rs. 1,68,052.00 under item (k), the arbitrator has found that this recovery is not justified as D.D.A. have not proved that they suffered any loss. This is the reason for it.

(13) Likewise, the reason for the award under item (n) is expressly stated to be the absence of any notice by the D.D.A. when the contract period was over, due, to which it has been presumed that the petitioner continued to do the work on the

same terms and conditions as given in the contract, which provided for 10% deduction, in case of increase in wages.

(14) Similarly, a bare perusal of the above extracted portions of the award shows that the arbitrator has given reasons with regard to Counterclaim No. 2 and counter-claim No. 3. Counter-claim No. 4 was rejected for the reasons given against counter-claim No. 2. Counter-claim No. 2 was found not justified because D.D.A. had not produced evidence to show that the contractor was responsible for delay in completion of the work.

(15) Additional counter-claim No. 1 was rejected on the ground that the work was completed on 30th of May 1982 and that the contractor was not responsible for watch and ward thereafter.

(16) Thus, it appears that the award in respect of the above mentioned claims is based upon evidence on record. It gives short intelligible indications of the grounds on which the arbitrator's mind has worked. In the facts and circumstances of this case, I find that the arbitrator has given sufficient reasons. It is not open to the Court to sit in appeal over the award and review the reasons.

(17) The award, however, in respect of additional items (c) to (g), (i) (j), (1) and (m) under claim No. 2 is entirely without reasons. The arbitrator has merely noted the head of these claims and has quantified the sum awarded against each of them. No reasons at all for awarding the said sums have been stated. This is clear from a bare perusal of the award. It requires no further discussion.

(18) The award Of interest under claim No. 6 is also bad. In Food Corporation of India. M[s. Surendra,Devendra and Mahendra Transport Co. : [1988]2SCR329 , though the award was a speaking award, yet the Court set it aside as it was not made clear on what basis the interest was awarded. In the instant case also, the basis on which the specified rate of interest has been awarded, has not been stated. Further, in view of the decisions of the Supreme Court in Executive Engineer, Irrigation, Gahmala and others v. Abnaduta Jena, : [1988]1SCR253 , State of Orissa and others V. Construction India, : [1988]2SCR145 and Union of India V. Hind Builders 1990(1) A.L.R 349, the arbitrator is not a Court within the

meaning of Section 34 of the Code of Civil Procedure and he has no power to award interest for the period after entering upon the reference.

(19) The bad parts of the award are severable from the good ones. thereforee, bad portions of the award in respect of additional items (c) to (g), (i), (j), (1) and (m) of claim No. 2 and claim No. 6, are hereby remitted to the arbitrator for reconsideration and to make an award in respect thereof with reasons within four months. With regard to interest under claim No. 6, it is clarified that the arbitrator would reconsider award of interest only for the period prior to the date when he entered upon the reference.

(20) The award in respect of the other claims, namely, claim No. 1, claim No. 2, additional item Nos. (a), (b), (h), (k) and (n) under claim No. 2, counter-claim Nos. 1 to 5 and additional counter-claim No. 1 is hereby made rule of Court and a decree is passed in terms thereof.

(21) Suit No. 2346/87, I.A. 1675/88 and Suit No. 287-A of 1988 are, accordingly, disposed of. No. costs.