

Harbans Singh and Sons Vs. Delhi Development Authority

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Court : Delhi

Decided On : Sep-17-1992

Reported in : 1992(24)DRJ527

Judge : D.K. Jain, J.

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

Appeal No. : Suit No. 2076A of 1990 and Leave Application No. 11358 of 1990

Appellant : Harbans Singh and Sons

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : K.B. Soni and; Jayant Bhushan, Advs

Judgement :

D.K. Jain, J.

(1) The work of 'manufacture and supply of machine made doors and window shutters' was awarded by the Delhi Development Authority, (hereinafter referred to as the DDA) to M/s. Harbans Singh & Sons (hereinafter referred to as the Contractors), on the basis of negotiated settlement specified in the agreement, entered into between the parties on 16 August 1984.

(2) Under the said agreement the Contractors had to make supplies of the total value of Rs. 50 lakhs to the Delhi Development Authority from 24 May 1984 to 23 January 1985 at the agreed rates. The Office of the Chief Engineer of the Delhi Development Authority had to make allocations to its different divisions, against, which the-concerned Executive Engineers of the various divisions had to confirm the particular sizes and numbers of the shutters to meet the needs of the relevant housing schemes for which the allocation was made by the Chief Engineer. The Delhi Development Authority made in all nine numbers of. allocations between the period 29 May 1984 to 18 February 1986 with second allocation dated 20 June 1984 had to be cancelled on 11 October 1984. Against the effective eight allocations, the confirmations were effected by the concerned Executive Engineers of the divisions between the, period 16 June 1984 to 12 September 1986. It was on these confirmations that supplies had to be made. The expiry of contract period being 23 January 1985, supplies on confirmations sent on 26 December 1984 and after could not be made within 'the stipulated period expiring on 23 January 1985. Applications for extension of time given by the Contractors were allowed by the Delhi Development Authority Without levy of penalty to cover the actual period of supply. The Contractors claimed that the application for extension of time were. made under threats-it was entitled to enhanced rates for the supplies made after the expiry of the stipulated period of supply i.e. 23 January 1985 and as the delay was on the part of the Delhi Development Authority in furnishing confirmations of sizes by various divisions of the Delhi Development Authority against the stipulated supply, they were not bound to supply at the contract rate but were entitled to the market rate prevailing at the time of supplies made after 23 January 1985. The Delhi Development Authority disputed the claims of the Contractors. The Contractors invoked the Arbitration clause, raising six disputes/claims and moved the persona designate to appoint an Arbitrator, Upon which the Engineer Member Delhi Development Authority vide his Minutes dated 3 February 1999 appointed Shri M.S.Telang,as the Sole Arbitrator, to determine the disputes/claims raised by the Contractors, requiring him to give reasons for the award.

(3) In their claims statement before the Arbitrator, the Contractors raised six claims, all on account of price rise of timber, rise in seasoning costs, fabrication cost and in truck freight, detailed in their claim statement. They also claimed future

interest and costs of arbitration proceedings. All these were resisted by the Delhi Development Authority in their counter statement of facts. The Id. Arbitrator heard the parties, the claims were reduced by the Contractors during the course of hearing, which all, totalling Rs. 7,86,245.08P, were allowed by the Id. Arbitrator, who also awarded future interest @ 12% per annum on the said amount. He also allowed costs of Rs. 5,000.00 to the Contractors.

(4) On the Arbitrator filing the award in this Court, notice was issued to the parties, pursuant where to, the Delhi Development Authority filed objections, being I.A.No. 11358/90, assailing the award on two grounds; (1) misconduct on the part of the Arbitrator and (ii) the award of future interest. It was stated that the agreement contained no clause for enhanced payment in case of delay; the Contractors themselves asked for extension of time by their letter dated 18 September 1985, and there was no ground to award enhancement in rates, It was also stated that the award violates the terms of clause 74 of the agreement between the parties and the reference to him made by the Engineer Member vide his minutes dated 3 February 1989, the award was for certain sums of money without any reasoning as to how such sums were being awarded, or as to what was the basis for awarding them. The Contractors resisted the objections. The following issues were framed:-

1. Is the award liable to be set aside, modified or remitted on any of the objections taken in the objection petition? 2. Relief.

(5) It was directed that the evidence shall be led by affidavits and the Arbitration proceedings shall be read in evidence.

(6) Both the parties have filed affidavits in support and in resistance to the objections against the award. I have heard Id. counsel for the parties. Issue No. (1):

(7) It is common ground that supplies worth Rs. 50 lakhs were to be effected on the allocation from the office of the Chief Engineer of the Delhi Development Authority against which the 'concerned Executive Engineer of various divisions had to confirm the particular sizes and numbers of shutters to meet the needs of

the- relevant housing schemes for which the allocation was made by the Chief Engineer, some of which were much delayed and in fact made after the expiry of the supply period ending on 23 January 1985. The Supplies continued even thereafter and were actually completed on 5 March 1987. The Contractors Made application for extension of time, purportedly agreeing not to charge higher rates which they claimed to have made under duress. The, Id. Arbitrator found as a fact that the applications for extension of time were made under duress; the delay in completion of supplies was attributable to the DDA; there was rise in price of wood after the completion dates of supply stipulated in the agreement and the Contractors were entitled to receive suitable compensation in respect of the orders where confirmation of sizes were made after the stipulated date of completion in the agreement, or when such confirmation was unduly relayed thereby making it impossible for the contractors to effect the supplies before 23 January 1985 and the Contractors had reserved their right to claim revised rates at the relevant time. The Id. Arbitrator also found that after the Contractors had been issued certificates of satisfactory performance by the concerned Executing Divisions, they had continued to withhold certain amounts deducted from their bills pending issue of such certificates and that the Contractors were entitled to receive back such amounts from the DDA.

(8) The above findings of fact arrived at by the Id. Arbitrator are on the merits of the case, beyond the jurisdiction of this Court to interfere. This is not disputed. The only point seriously urged is that the Id. Arbitrator has awarded sums against each claim without indicating the basis on which' he has arrived at the figure, the award of each claim, therefore, is non-speaking and is in violation of the terms of the arbitration clause 14 as also of the reference to him, which amounts to misconduct on the part of the Arbitrator and the award is liable to be set aside. In support, reliance is placed by Id. counsel for the Delhi Development Authority on a division bench decision of this Court in *College of Vocational Studies V. S.S. Jaitley* Air 1987 Delhi 134.

(9) The findings of fact recorded by the Id. Arbitrator, succinctly stated above, amply indicate the grounds for awarding the; clams for which inferences are drawn and conclusions made by him. There is rational nexus between the findings of fact

and the conclusions drawn by the Id. Arbitrator. He has. given ample reasons for the award of higher rates to the Contractors for the supplies made after, the expiry of the stipulated dates of supply i.e.23 January 1985.

(10) It is true, however, that the Id. Arbitrator has not explicitly stated as to how he had worked out the figure awarded by him against each claim. What is the effect is the question. Whether his not mentioning the elements and basis of quantification per se makes the award bad and liable to be set aside (as urged by Id. counsel for the DDA) or could it also be examined if there was good ground or basis for the quantified amounts. I am of the view that non-recital of elements and basis of quantification of the amounts per se does not render the award bad, liable to be set aside and it is open to the Court to examine if the award is or not arbitrary and whether the arbitrator has applied his mind in coming to the conclusion.

(11) An arbitrator is not bound in law to give reasons for the award unless specifically required to do so. This requirement to record reason in support of the award is meant to prevent unconscious unfairness and arbitrariness in reaching the conclusions. If there be no allegation, or grievance, or some basis to assume, that the arbitrator has not applied his mind, or, his approach has been arbitrary, his decision right or wrong, but based on some evidence on record is binding on the parties. Again, if the conclusion arrived at is plausible, notwithstanding that the award does not in terms set out the details, like how the amount has been quantified, the fact cannot per se render it bad in law, liable to be set aside. It is open to the Court to satisfy if the arbitrator had applied his mind in reaching the conclusion, which is based on some evidence and is not arbitrary.

(12) In the backdrop of this legal position. I asked Id. counsel for the Contractors to tell as to how the amount awarded against each of the claims on account of price rise of timber, rise in seasoning cost etc. had been arrived at by the Arbitrator. He explained that this had been done on the basis of the rates on which the Delhi Development Authority had awarded works on or about the dates of supply made by the Contractors. In his context he referred, to the Arbitrator's minutes of proceedings dated 8 November 1989, 9 January 1990 and 1 January 1990 recorded by the arbitral or and the calculation sheets on pages 44 to 50 of the

award file. A perusal of these supports the contention of the Id. counsel. The counsel further maintained that the Contractors, at the stage of arguments, had revised their original claims, reducing the amount of each claim on the basis of the tender rates accepted by the Delhi Development Authority in subsequent agreements relevant to the period of supply by the Contractors herein. It was, thus, urged that the Id. Arbitrator had properly worked out the amounts awarded by him.

(13) LD. counsel for Dda, confronted with the above position, did not dispute the above Explanationn by counsel for the Contractors but simply again stressed that these elements should have been mentioned in .the award itself by the Arbitrator to serve as an explicit basis for the award.

(14) An arbitrator being a chosen. Judge of the parties is a master of facts and law. His award is final both on facts and in law. He is not called upon to give detailed reasons for his award. To avoid arbitrariness, it is sufficient, if he indicates the trend of his thought process. It is well settled that his decision is not to be lightly interfered with or set aside and indeed an effort made to see if it could be maintained.

(15) I have glanced through the minutes of proceedings and have carefully perused the award, I am satisfied that the arbitrator did apply his mind in the matter in issue and concluded on the. basis of evidence on record. The arbitrator has given good reasons for the award of higher rates. An award has to be read reasonably as a whole and it can be set aside only if there is no evidence whatever to support the conclusions. As noted above, the evidence on record on the basis of which the claims awarded were quantified, pointed out by counsel for the Contractors, undisputably exists. The reason or basis for quantification of the amount awarded though not apparent but is latent. The award made by the Arbitrator is indeed plausible.

(16) NON-RECITAL of reasons in the award, at any rate, is not fatal and at best an illegality, requiring an award to be remitted to the Arbitrator U/s 16 of the [Arbitration Act, 1940](#) for recording reasons in support of his award. In the present case it would only be a sheer formality, for there is no point to remit the award to

the Arbitrator just to reproduce/refer to the facts referred in the aforesaid minutes and the calculation sheets, pointed out by counsel for the Contractors to explain in detail the basis for quantification of the amounts awarded on claims Nos.1 to 6 Lack of Such Explanationn as basis for the award, in my view, does not render the award bad in law or tantamount to misconduct on the part of the arbitrator to Strike it down.

(17) The arbitrator has allowed future interest at the rate Of 12% per annum. This he was not competent 'to do. The award to that extent is severable and is set aside.

(18) As such, the award is not liable to be set aside or remitted. Issue No.1 is decided in the negative. I, accordingly, dismiss the objections against the award, except to the extent of award of future interest. I.A.No II358/90 stands disposed of. S.No. 2076-A/90

(19) The objections against the award having been dismissed, the award, except relating to interest, is made Rule Of the Court.

(20) I further direct that on the amount awarded against claims Nos. 1 to 6, the Contractors will be entitled to interest at the rate of 12% per annum from the date of award till payment. A decree sheet be drawn accordingly, but with a proviso that if the award amount of Rs. 7,86,245.08P is paid with interest @ 9% per annum along with the costs awarded by the Arbitrator, within two months from today, the decree shall stand satisfied. There will be no order as to costs in the case.