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Court : Delhi

Decided On : Oct-31-1991

Reported in : 1992(1)ARBLR216(Delhi); 45(1991)DLT584; 1991(21)DRJ327

Judge : Jaspal Singh, J.

Acts : Arbitration Act, 1940 - Sections 14

Appeal No. : Interim Application No. 7464 of 1989 and Suit No. 9494 of 1987

Appellant : Pride Construction Co.

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : B.M. Sehgal and; P. Dewan, Advs

Judgement :

Jaspal Singh, J.

(1) The award has a chequered history. It was first made and published as far back as on April 24, 1987. This was followed by a petition under Section 14 of the Arbitration Act and the objections by the Delhi Development Authority. By her judgment dated May 8, 1989 Sunanda Bhanbdare J. set aside the finding on claim No. 7 and as far as claims No. 2, 3 and 4 were concerned the case was remitted back to the Arbitrator. The reason for the remission was lack of reasons in terms of Section 25 of the agreement entered into between the parties. Consequent

thereupon the arbitrator has resubmitted the award. However, the Delhi Development Authority is still not satisfied and has filed objections leading to the framing, of the following issues.

1. Whether the award dated 24.4.87 read with the reasons given by the arbitrator dated 24.4.89 deserves to be set aside for the objections taken by the D.D.A. OPP

2.Relief:

(2) It was argued on behalf of the Delhi Development Authority that the award was liable to be set aside on the following three grounds:

1.The Arbitrator has relied upon documents which were neither on the record nor directed to be produced.

2.The arbitrator has refused to act on the admissions made by the claimant on grounds which find no support from the record.

3.The award once again is devoid of reasons.

(3) To come down to the specifics, as far as the first objection is concerned, my attention was drawn to two documents Ex. C-15 and C-16. It was argued that the documents were looked into, referred to and relied upon, although the arbitrator could not do so for the reason that the documents finding mention in them were neither before him nor had he taken any steps to get them produced.

(4) With regard to the second objection the centre of controversy was letter. Ex. C-31 admittedly written by the claimant. It was contended and with great vehemence that although the documents Ex. C-31 contained admission by the claimants which cut at they very root of their ease, the same were overlooked on the ground that the admissions were not voluntary and had been obtained under duress.

(5) And, as far as the third objection is concerned the argument, in short was that the so called reasons were, in law, no reasons but only contained a recital of facts and evidence.

(6) Are the objections tenable? That is what calls for an answer.

(7) Before I proceed to deal with the objections, a brief resume of the facts is called for. The claimants had entered into an agreement for the work of construction of some quarters in pocket V, Poorvi at Pitampura. Subsequently disputes and differences arose between the parties and as already noticed above those disputes and differences were referred to the sole arbitration of respondent No. 2. As regards Claim No. 2 admittedly, the claimant had procured 19,53,700 bricks at the site of work against which secured advance to the extent of 75% of the actual costs of the bricks was allowed. It was the case of the claimants that besides the said bricks they had also procured 2 lakhs more' bricks and the respondent had agreed that the bricks over and above 19,53,700 could be lifted by the claimants. However, it so happened that when physical verification was made a shortage of 1,36,648 bricks was found. By letter Ex. C-31 which is dated November 5, 1986, the claimants admitted this shortage. However, I shall be dealing with the letter at a later stage. For the present, I may mention that the finding of claim No. 2 was remitted back as it was nor clear whether that shortage of 1,36,648 bricks was out of bricks numbering 19,53,700 for which secured advance had been made or from the total bricks numbering 21,53,700. The arbitrator has now clarified that the shortage of bricks was from the lot numbering 19,53,700. Claim Nos. 3 & 4 deal with certain shortages in respect of Ms angle from and stones. These claims were partially allowed on the basis that there being a closure of the contract and the watch and ward being the responsibility of the objector authority itself even if the shortage was found the claimants were entitled to the claim. As already noticed above the finding on these claims-was also set aside as the arbitrator had not given reasons for his coming to the conclusion that there was a closure of the contract and that the watch and ward was the responsibility of the Authority.

(8) Having provided the background, it is time to come into grip with the objections raised. As already noticed above with regard to claim No. 2 the learned arbitrator has leaned heavily on two letters. The first is Ex. C-16, It is dated 24th October, 1985. And the second is Ex. C-15 which is a letter dated April 15, 1986. Both are from the objector authority.

(9) C-16 shows that .one Mr. Sirajuddin was the A.E. and on his promotion had handed over his charge to one Sh. Pradeep Chaudhary. There was a handing over charge report and this letter from said Mr. Sirajuddin pertains to the same. It mentions that on October 24, 1985 he had handed over the charge to Mr. Pradeep Chaudhary and that out of the items handed over to him were 19,59,000.00 bricks over and above the bricks which were lying outside the fencing of the site in question. While mentioning this Mr. Sirajuddin has referred to his handing over the charge memo. it also refers to the joint verification made on 15th April, 1986 and to the subsequent report and to the fact that the quantity found lying at the site was 'more than required'. Ex. C-15 is the joint verification report dated 15th April, 1986 which, as already noticed, is referred to in Ex. C- 16. It bears the signatures-of the claimants and so also of M/s. Sirajuddin and C.K. Dhar who were both Astt. Engineers. This joint inspection report refers to instructions that the report given by Pradeep Chaudhary J.E. dated 18th March, 1986 should be verified. Undoubtedly that report of Pradeep Chaudhary is not on the record.

(10) The perusal of both the documents would go to show that Ex. C- 16 refers to handing over of the charge report which was never produced before the arbitrator and C-15, refers to some report given by Mr. Pradeep Chaudhary which too was never brought to light. It is also true that the record shows that the learned arbitrator made no effort to summon those documents. Undoubtedly the Supreme Court has laid down in K.P. Pauline v. State of Kerala, 1975 Sc 1259 that the arbitrator must be taken to have misconducted the proceedings where he ignores material document to arrive at a just decision and to resolve the controversy and that it is it incumbent upon him to get hold of all the relevant documents which are required for the purpose of a just decision. However, in the present case none of the documents referred to in Ex. C-15 and C-16 can be taken to be material or of any significance. Ex. C-16 is independent of the handing over charge report. It is complete in itself and is in no way dependent upon that charge report. In any case, the perusal of the document would go to show that it is not in contradiction to but in reaffirmation of the charge report. Consequently it was not required of the arbitrator to summon the charge report and it cannot under the circumstances, be said that the learned arbitrator has misconducted himself by over looking the charge report or by not calling for the same. Same argument applies to document

Ex. C-15 as it is a report of a joint inspection conduced by two officers of the Delhi Development Authority along with the claimants. It is neither dependent upon nor related to the report allegedly given by Mr. Pradeep Chaudhary on 18th March 1986. It, as already noticed, relates to a joint verification conducted on 15th April, 1986 and as such failure of the arbitrator to summon the report of Mr. Pradeep Chaudhary does not in any way gh who was present in the hospital at the time Mr. G.C. Pillai (Public Witness 17) reached there and it was he who had shown the Mlc it was throughout in his custody. When we consider these two statements together it is obvious that it is S.I. Ishwar Sinint verification report Ex. C-15 was never controverter by the Objector Authority. At no stage it challenged its correctness. This much for the first objection.

(11) Coming to letter Ex. C-31, it is dated 5th November, 1986 and is addressed to the Executive Engineer of the Objector Authority and is from the claimants. It was argued, and as already referred to above, that as the letter contained admissions about the shortage of material, thereforee, the learned arbitrator was not justified in not relying upon them. However the more serous objection was that there was no justification for the learned arbitrator to hold that the admissions contained in the said letter were not voluntary but made under duress. Of course, the said letter does admit the shortages to the advantage of the Objector Authority. The letter also goes to show that the material 'now measured be treated as handed over to the department.' It was argued that from the letter it was clear that the shortage of bricks was not from bricks numbering 19,53,700, that there was a difference of 155 Kg. of steel and that the material had not been handed over to the department till 5th November, 1986. The arbitrator has however refused to accept and rely upon the admissions. Accepting the contentions raised by the claimants, the arbitrator has held that the admissions were not voluntary, that the letter was written as the claimants were hard pressed for money and were keen to get the payments. The arbitrator has given his reasons for arriving at the conclusion. It need hardly be mentioned that appraisement of evidence by the arbitrator is never a matter which the Court questions and considers. He remains the sole judge of the quality as well as quantity of the evidence by the arbitrator is never a matter which the Court questions and considers. He remains the sole judge of the quality as well as quantity of the evidence and it will not be and should never be for the

Court to take upon itself the task of being a judge on the evidence before the arbitrator [See Hindustan Steel Works Construction Ltd. v C. Rajasekhar Rao : [1987]3SCR653 ; Municipal Corporation of Delhi v Jagannath Ashok Kumar : [1988]1SCR180 ; M/s Alppl Prasad & Sons Ltd. v. The Union of India, : [1960]2SCR793]. It is not misconduct on the part of the arbitrator to come to even an erroneous decision (See Halsbury's Law of England 24th Ed; Russel 20th Ed.) Food Corporation of India v. Joginder Pal Mahinder Pal, 1989 Sc 1263 I would thus not sit on the judgment, at least not and never as an appellate Court, for, that would be an approach not sanctioned by law. In any case the perusal of the letter does got to show that it was not an unequivocal admission. The letter shows that the Executive Engineer had made clear to the claimants that the balance payment would be made only after the material was handed over. It clearly asserts that the material had already been handed over to the Dda staff 'long back' and that earlier payments were made ' only after receiving the material'. After taking this stand the claimants mention that they were 'very badly' in need of money and as such had 'no objection to say that the material now measured be treated as handed over to the department' but added in the very next breach, 'We, however, submit that this is without prejudice to our earlier submissions made before your goodself. 'And undoubtedly the earlier submission was that there was no shortage and that the material already stood handed over. It cannot thus be said the reasons for not accepting admissions contained in Ex. 31 as-advanced by. the arbitrator were not plausible. Thus fills the second objection too.

(12) Coming to the third and the last objections, the submission that the arbitrator has again failed to give reasons, is equally devoid of force. I have gone through the reasons advanced by the-arbitrator. The same need not be reproduced. But they do bear an intelligible indication of the grounds and provide sufficient reflection of the mind of the arbitrator for his action. It is not a case where mere consequences and verdicts are given.

(13) The Court is entitled to set aside the award: (i) If the arbitrator misconducted himself in the proceedings, or (ii) when the award has been made after the issue of an order by the Court superseding the proceedings, or (iij) if the arbitration proceedings have become invalid under Section 35; or (iv) where an award has

been improperly procured or is otherwise invalid under Section 30 of the Arbitration Act. It may be also set aside on the ground of error on the face of the award. But the award is not invalid merely because by a process of inference and arguments it may be demonstrative that the arbitrator has-committed some mistake in arriving at his conclusion (See) (Jivaralbhal Ujamshi Sheth v. Chintamanrao Balaji,1965 Sc 214 In the present case the reasons advanced and the conclusions arrived at do not suffer from any blemish.

(14) For what has been recorded by me above and as no other objection was taken, I make the award with regard to claims No. 2,3 and 4 as rule of the Court, pass a decree in terms thereof. However before concluding, a word or two on the point of interest as well. It was submitted by the learned Council for the claimants that it being a commercial transaction and the claimant having suffered since long, they deserved to be allowed interest. I find myself in complete agreement and relying upon Union of India v. M/s Swadeshi Karyalya, : AIR1991 Delhi53 , I told that the claimants shall be entitled to interest at the rate of 6% p.a. on the amount awarded from the date the award was first made and published till realisation.

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