

**S.S. Jetly Vs. Delhi Development Authority and ors.**

**S.S. Jetly Vs. Delhi Development Authority and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/689373](http://sooperkanoon.com/689373)

**Court :** Delhi

**Decided On :** Jan-18-1994

**Reported in :** 1994IAD(Delhi)365; 1994(1)ARBLR273(Delhi); 53(1994)DLT709

**Judge :** Mohd. Shamim, J.

**Acts :** [Arbitration Act, 1940](#) - Sections 14(2)

**Appeal No. :** Suit No. 2590A of 1988 and Interim Appeal No. 5937 of 1989

**Appellant :** S.S. Jetly

**Respondent :** Delhi Development Authority and ors.

**Advocate for Pet/Ap. :** D.P. Sharma,; Vivekanand,; J.K. Midha and;

**Judgement :**

**Mohd. Sharnim, J.**

(1) This is a petition under Section 14(2) of the Arbitration Act for issue of a direction to respondent No. 3, arbitrator, to file the award and to deal with the same in accordance with law.

(2) The parties to the present proceedings entered into a contract for the construction of 28 Category -II, 14 category -1, houses and 28 scooter garages under self financing scheme near Niti Bagh and executed agreement No.

13/H/D/VIII/ 81-82 in connection therewith. The petitioner herein raised certain disputes and invoked the arbitration clause 25 of the agreement and requested the Engineer Member of the respondent to appoint an arbitrator. The Engineer Member thereupon appointed Shri Banarsi Dass, Superintending Engineer as an arbitrator in the present case. He entered the reference on January 3, 1985.

(3) The arbitrator filed his award on March 29, 1989. Notices of the filing of the award were issued to both the parties. The respondent Dda on receipt of the notice chose to file objections against the award (I.A. No. 5937/89). The petitioner, however, did not file any objection against the impugned award dated September 29, 1988.

(4) The respondent confined their objections to claims No. 8, 10, 12 and 13 to 15.

(5) The submissions on behalf of the Counsel for the respondent are as under: that the impugned award is not a reasoned award. The learned arbitrator for the best reasons known to him has not given out any reason for arriving at his conclusions. The arbitrator was under an obligation vide Clause 25 to give out the reasons for arriving at his conclusion inasmuch as claim awarded was for more than Rs. 50,000.00 . Claim No. 10 has been awarded in violation of cl.42 of the agreement Claim Nos. 13, 14 and 15 have not been dealt with separately. A consolidated amount has been awarded with regard to the said claims without indicating as to how much amount has been awarded separately against each claim. As such. it is not possible to find out the factors/reasons which led to the grant of the said amount.

(6) The petitioner by way of reply have supported the award. It has been urged for and on behalf of the petitioner that the arbitrator is under no obligation to give out detailed reasons for awarding a particular amount. It is sufficient if the Court is in a position to ascertain his thought-process from the impugned award. The objections are false and frivolous and have been filed with a view to delaying the proceedings and are, as such, liable to be dismissed. The following issues were framed:-

1. Whether the award is liable to be set aside for the reasons given in the objection petition?

Relief, any? Issue Nos. 1 & 2.

(7) It is manifest from above that the main weapon of attack in the armoury of the objector is that the impugned award is not a reasoned award. The arbitrator has not given out any reason, whatsoever, for arriving at his conclusions. Thus, the arbitrator has misconducted himself and the proceedings. Thus, there is an error apparent on the face of the award. The award is, as such, liable to be set aside. According to the learned Counsel, the arbitrator was under an obligation vide Clause 25 of the agreement to give out the reasons while making and publishing the award.

(8) The provisions of Clause 25 of the agreement in the circumstances stated above can be adverted to with profit. '.....In all cases where the amount of the claim in dispute is Rs. 50,000.00 ( Rupees fifty thousand ) and above, the arbitrator will give reason for the award'. Seeking inspiration from the above clause, the learned Counsel Mr. Sharma has urged with great zeal and fervour that the arbitrator was under an obligation and a duty was cast on his shoulders to give out reasons for his conclusions. Having failed in his primary duty the arbitrator has misconducted himself and the proceedings, and, as such, there is an error apparent on the face of the award. Hence, it is liable to be set aside. Besides citing Clause 25, the learned Counsel has also quoted in support of his arguments two judgments (i) in Suit No. 2501/87 N.D.R. Israni v. Delhi Development Authority, dated January 28,1992 delivered by a Single Judge of this Court, and(ii) in Suit No.2341-A/1986&I.A.; No. I /87 dated July 13,1989, M/s Anant Raj Agencies v. Delhi Development Authority.

(9) Learned Counsel for the petitioner Mr. D.P.Sharma in opposition to the arguments advanced by the learned Counsel for the objector has contended that it is false and preposterous that the learned arbitrator has not given out reasons. According to the learned Counsel, the conclusions of the arbitrator are supported by very cogent reasons. The learned Counsel has further argued that an arbitrator is under no obligation to write a detailed judgment. It is sufficient enough if we can find out and ascertain his thought-process after going through the award. The arbitrator is simply required to give out his thought-process. It is manifest from above

that the main polemical issue which this Court is required to adjudicate upon is as to whether the impugned award is a reasoned award within the domain Clause 25 of the arbitration agreement?

(10) A close scrutiny of the objections (vide para 5) preferred by the respondent against the impugned award reveals that this is not the grievance of the objector that the arbitrator did not give out reasons for his conclusions. Their only grievance is that the reasons given by the arbitrator are not at all proper and justified. I am tempted here to cite para 5(1) of the objections in to to to substantiate my point. It is in the following words:-

'That the award is for more than Rs. 50,000.00 and as such is to be reasoned and speaking award as per Clause 25 of the agreement. But the reasons given by the learned Arbitrator are not at all proper and justified and suffer from various legal and factual infirmities on the face of the award...Therefore, the award is not at all sustainable in law.'

(11) We can safely conclude from above that the respondent through their objections have admitted with commendable fairness on their part that the arbitrator has given out the reasons. However, the same are not proper and justified and suffer from various infirmities. If this is so, then this Court is of the view that the respondent are debarred from assailing the award on the said score. It is a well settled principle of law that a Court of law does not sit in judgment over the orders passed by the arbitrator. This Court can interfere with the award in those discerning few cases where the arbitrator has misconducted himself or the proceedings and there is an error apparent on the face of the award. Before embarking upon a detailed discussion it would be just and proper to examine the provisions of Section 30 of the Arbitration Act in order to facilitated the disposal. Section 30 reads as under:-

30.GROUNGSfor setting aside award.-An award shall not be set aside except on one or more of the following grounds,namely - (a) that an arbitrator or umpire has misconducted himself or the proceedings; (b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Section 35; (c) that an award has been

improperly procured or is otherwise invalid.'

(12) While interpreting Section 30 of the Arbitration Act it has been held time and again that 'misconduct' under Section 30(a) has not a connotation of moral lapse. It refers to a legal misconduct. It would be if the arbitrator on the face of the award arrived at an inconsistent conclusion even according to his own finding or when he does not consider the material document while giving his decision. It is abundantly clear from above, that an arbitrator is not required to give out detailed reasons for his conclusions. It is sufficient enough for him to indicate a thought- process of his mind. If the Court is in a position to ascertain the trend of the thought of the arbitrator in a particular case, then there is no justification to set aside the award on the ground that the arbitrator has failed to give out the reasons. The above view was given vent to by their Lordships of the Supreme Court as : [1988]3SCR426 , Indian Oil Corporation Ltd. v. Indian Carbon Ltd. 'Where reasons for giving the award are stated in the award and no error or law could be pointed out in those reasons; there was no error of fact and the view taken by the arbitrator was a possible view to take and the arbitrator has made his mind known on the basis of which he has acted; that is sufficient to meet the requirements even if it be reasons should be stated in the award. The award could not therefore be set aside on the ground that it was not a reasoned award. It is one thing to say that reasons should be stated and another thing to state that a detailed judgment be given in support of an award. Even if it be held that it is obligatory to state the reasons, it is not obligatory to give a detailed judgment. Arbitration procedure should be quick and that quickness of the decision can always be ensured by insisting that short intelligible indications of the grounds should be available to find out the mind of the arbitrator for his action'.

(13) To the same effect are the observations of their Lordships of the Supreme Court as : [1991]3SCR904 , Goa, Daman & Diu Housing Board v. Ramakant V.P. Darvotkar. Their Lordships opined '...In our opinion, it is evident from the four awards made by the Arbitrator that the Arbitrator has considered all the specific issues raised by the parties in the arbitration proceedings and came to his finding after giving cogent reasons. The above awards cannot under any circumstances be considered to be made by the Arbitrator without recording any reasons for the

same. therefore, in such circumstances, it is not proper to hold that the Arbitrator has misconducted himself or in the proceedings in the matter of giving the award'.

(14) after going through the impugned award I find that the learned arbitrator has given out very cogent and precise reasons for arriving at his conclusions. The arbitrator is under no obligation to write a detailed and elaborate judgment as the underlying idea under the Arbitration Act is to quicken the pace of disposal. In case a duty is cast on the shoulders of the arbitrator to write a detailed judgment, in that eventuality, the very purpose of the Arbitration Act would be defeated. Now, I would like to deal claim-wise with the impugned award. Claim NO. 8.

(15) The arbitrator under this claim allowed a sum of Rs-14,198.24 in favor of the petitioner and against the objector. The petitioner claimed a sum of Rs. 14,918.24 on account of wrongful deduction. According to the petitioner, the defects pointed out had been removed and after full satisfaction the respondent refunded 90% security amount in April, 1983. The deduction was made for the first time in the final bill. Whereas the respondent had been paying to the petitioner up to the last running account bill at full rates. The learned arbitrator has further observed that the work was completed on August 10,1982 but the bill was finalised by the respondent on October 29,1983 i.e. after about 15 months. Thus, according to the learned arbitrator, if any amount was to be deducted then it should have been deducted from the earlier bills put forward by the petitioner, why the objector waited till the last final bill when even the security amount had been refunded. Furthermore, there is no assertion on the part of the objector that a notice was given to the petitioner as required under Clause 14 of the agreement pointing out the defects in the works. Thus, I find that the finding as given by the arbitrator is fully justified and correct in the circumstances of the present case. Claim NO. 10.

(16) The petitioner under this claim claimed a sum of Rs. 3,570.20 towards the refund of the penal recoveries. The learned arbitrator while awarding the said amount has observed that the respondent have not proved any loss incurred by them on the said score. Hence, they would not be entitled to make penal recoveries from the respondent. There is no allegation of pilferage, theft or loss. Furthermore, according to him, this recovery has been effected from the final bill.

Thus, it is abundantly clear from above that according to the learned arbitrator unless and until a party shows and proves the loss claimed to have been incurred by them on account of lapses on the part of the contractor, the penal recoveries can not be effected. The above view is also supported by the judgment of a Single Judge of this Court as reported in 41(1990) Dlt 474, Salwan Construction Co. v. Union of India & Ors. It was held in the said case that the arbitrator had rightly held that in the absence of loss, having been suffered, or the proof of actual loss, if suffered, respondent No.1 was not entitled, having already recovered, to recover double the issue rate. As such, no legal misconduct was found on the part of the arbitrator in awarding the aforesaid amount to the claimant. Claim NO. 12.

(17) The petitioner was awarded a sum of Rs. 17,622.97 alleged to have been wrongly recovered from the final bill.

(A)FOR Work At Risk & COST: A sum of Rs. 2175.97 was claimed by the petitioner as the same was recovered from him on account of the alleged defects found in his work. The arbitrator allowed the refund of the said amount on the ground that the petitioner was never served with a notice under Clause 14 of the agreement at any stage of the period ' during which the work was completed.

(B)KEPT By Department For Approval Of Recovery STATEMENT: Rs. 2000.00 .

(C)FOR Income TAX: Rs.711.00 .

(D)FOR Material Not RETURNED: Rs. 3566.00 All the above three claims were not disputed. As such, I need not dwell upon them.

(E)FOR Non Submission Of Labour Reports : According to the claimant he submitted all the labour reports. Hence, his 17th running account bill was paid after the completion of work. No such deduction was made from the running account bills. Further, he was not served with any notice required under Clause 19(D) of the agreement. According to the Arbitrator, thus the recovery of Rs. 200.00 was unjustified and he allowed the said claim, and, I feel, rightly so.

(F)REBATE For Final BILL:

(18) According to the claimant the final bill was paid after 14 1/2 months from the actual date of completion of the work. Thus, the respondent were held entitled to no rebate and a sum of Rs. 6,935.00 was allowed to the petitioner. The Arbitrator while allowing the said claim relied on one of the terms of the agreement according to which the rebate can be claimed only when the payment of bill is made within six months from the date of completion of the work. (g) Non Return Of Empty Cement BAGS:

(19) The arbitrator allowed the claim on the ground that the respondent failed to show on record loss, if any, suffered by them on this account. Hence, the recovery of the above amount for the non-return of the empty bags was held to be unjustified.

(H)NON Submission Of Clearance Certificate From Labour OFFICER: Rs. 1,000.00

(20) The above said recovery was effected by the respondent as per Clause 46 of the agreement. The arbitrator held the said recovery to be unjustified and not in accordance with Clause 46 of the agreement inasmuch as no notice was issued in accordance with Clause 19(D) and there was no complaint on this score. Claims NOS. 13,14 & 15.

(21) The above said three claims were dealt with together and disposed of by a common finding by the learned arbitrator. Learned Counsel for the respondent contended that the arbitrator has misconducted himself inasmuch as he did not deal with the above said claims separately. According to him, a consolidated amount has been awarded without indicating as to how much amount was awarded under each claim. Thus, we are unable to ascertain as to what were the reasons which led to the grant of the said amount. Mr. D.P. Sharma, on the other hand, has contended that all the three claims related to the escalation charges claimed by the petitioner. Thus, the said claims were inter-connected and could have been disposed of by a common finding. Thus, no fault can be found with the findings of the arbitrator on the said score. I find myself in perfect agreement with the learned Counsel for the petitioner. Claim NO. 13.

(22) The petitioner claimed a sum of Rs. 1,09,674.35 as the petitioner was compelled and impelled to work after April 5, 1982 because the work was prolonged on account of the lapses, defaults on the part of the department. Claim NO. 14.

(23) This is a claim to the tune of Rs. 30,490.74 on account of the rise in the wages of the labour and a sum of Rs. 15,170.00 for increase in the rate of bricks consequent upon the Government notification in May, 1982. Claim NO. 15.

(24) The petitioner claimed a sum of Rs. 15,750 / - on account of rise in the prices of grit, construction material, steel and wooden manufactured items, cartage etc. which underwent a hike on account of increase in labour wages. Claims NO. 13,14 & 15.

(25) According to the learned Counsel for the petitioner, Mr. D.P.Sharma, the petitioner began the work in the present case with effect from April 6,1981. The stipulated date for the completion of the work was January 5,1982. However, the petitioner could complete the work finally on August 10,1982 as per the completion certificate issued by the respondent on account of the lapses and defaults on the part of the respondents. However, the petitioner claimed a higher rate with effect from April 5,1982 only, vide Ex. C-8. He demanded the contractor's percentage at 85 % of the estimate cost from the above said date i.e. a rise of 23 % of the above rate which was allowed to him. Thus, the petitioner claimed for the escalation charges from April 5,1982 to August 10,1982 only. The petitioner executed the work to the tune of Rs. 4,76,843.00 during the period from April 5,1982 to August 10,1982 without any enhancement, out of which the secured advance paid to him in full was Rs. 1,33,083.00 . In this way, the net work done was to the tune of Rs. 3,43,762.00 . The petitioner's percentage was calculated at the rate of 62% of the estimated cost as is evident from the letter dated March 27,1991 addressed to the petitioner namely, M/s. S.S.Jetley. According to the learned Counsel for the petitioner there was delay in the completion of work on account of the lapses on the part of the respondent which led to the escalation charges as the petitioner was compelled to pay more for the construction material and more to the labour by way of wages. The petitioner has further placed on record two letters ( C-22 & C-

23) issued to M/s. K.K. Rathi & M/s. S.S. Jetley by the respondent. The said letters are dated June 10,1982 and July 7,1982 wherein the negotiated rates accepted are 87.3% and 90% of the estimated cost. Thus, the petitioner was held entitled to the escalation charges at the rate of 23% on the above amount i.e. Rs. 3,43,762.00 . In this way, the petitioner was held entitled to a sum of Rs. 62,986.00 on account of Claims Nos. 13, 14 and 15.

(26) Grant of escalation charges is simply a finding of fact and this Court feels that the same cannot be challenged through the present objections. It thus can be safely concluded from above that the arbitrator gave reasons for arriving at his conclusions and the same is apparent from the award. What reasons are sufficient in a particular case must depend upon the facts of the said case. The Courts cannot go into the reasons which led the arbitrator to arrive at a particular conclusion inasmuch as they do not sit in judgment over the award. I am tempted here to cite a few lines in support of my above view from an authority of this Court reported as AR 1982 DELH1363, Delhi Development Authority v.M/sAlkaram, New Delhi, '....When an arbitrator gives a reasoned award he is not required to write a detailed judgment setting out each logical step of his reasoning but it is sufficient if he indicates the trend of his thought-process, so that errors can be eliminated and arbitrariness avoided. But the Court's function remains restricted. It does not permit review ability of the reason; nor a combing through as an appellate forum would be advised to do, as this would amount to an 'impeachment' of the award which is not permissible; the purpose of arbitration being speedy, cheapness and certainty a necessary requirement for commercial conduct of business'.

(27) In the circumstances stated above, I do not see any force in the present objections. The same are hereby dismissed. Consequently, the petition is allowed. The award ( now marked as Ex.YZ ) is hereby made a rule of the Court and a decree is hereby passed in favor of the petitioner against the respondent Dda in terms of the award Ex.YZ which shall form a part of the decree. The petitioner would be entitled to interest at the rate of 12% per annum from the date of the decree till the date of realisation of the decretal amount. The petitioner shall also be entitled to costs.

