

Architects Bureau Vs. Delhi Agricultural Marketing Board and ors.

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Court : Delhi

Decided On : Jul-04-1995

Reported in : 59(1995)DLT350

Judge : R.C. Lahoti, J.

Acts : Arbitration Act - Sections 14 and 17

Appeal No. : Suit No. 2280 of 1992

Appellant : Architects Bureau

Respondent : Delhi Agricultural Marketing Board and ors.

Advocate for Pet/Ap. : S. Pappu,; S.K. Chandwani,; M.R. Krishnamurthi and;

Judgement :

R.C. Lahoti, J.

(1) These are proceedings under Sections 14 and 17 of the Arbitration Act for making the award a rule of the Court.

(2) The petitioner had entered into a contract with the respondent for preparation of layout and architectural design of grain market, Najafgarh under the agreement dated 28th June, 1982. The contract contained an arbitration clause which provided as under :-

'EXCEPT where otherwise provided in this agreement, any dispute difference or question arising at any time between the parties in respect of this agreement shall be referred to the sole arbitration of the Chairman, Delhi Agricultural Marketing Board, Delhi.'

(3) Disputes arose between the parties. The Chairman Delhi Agricultural Marketing Board vide letter dated 5.9.1991 appointed Mr. V.S. Murty, Former Engineer Member Dda as the Sole Arbitrator. Letter of appointment reads as under:-

'WHEREAS M/s. Architects Bureau have written to me vide their letter No. AB/2/89/25 dated 27.1.1989 and subsequent correspondence ending with letter dated 29.7.91 that certain disputes have arisen between the above noted parties in respect of the above noted work. I, P. Rohming thanga, Chairman, Delhi Agricultural Marketing Board hereby appoint Sh V.S. Murty, Former Engineer Member, Dda as Sole Arbitrator to decide and make his award regarding the claims, disputes by the Consultant/Board and the Counterclaims of Board/Consultant, if any, to be filed before the Arbitrator as shown in the statement enclosed subject always however to their admissibility under the relevant clauses of the aforesaid agreement. The amount of the claim(s) in dispute being above Rs. 75,000.00 the Arbitrator shall give reasons for the award. sd/- (P. ROHMINGTHANGA) CHAIRMAN'

(4) It is not disputed that the above said is the letter of appointment. Pursuant to the above said letter of appointment Mr. V.S. Murty commenced arbitration proceedings. Both the parties submitted to the jurisdiction of the Arbitrator. The Arbitrator gave an award on 8.5.1992. There were six claims made before the Arbitrator. The claims and the award thereon are reproduced hereunder:-

'AFTER going through the papers, arguments, drawings and the affidavits, I award as follows:

CLAIM No. I Claimant claimed Rs. 11,50,062.00 for preparing and furnishing individual building plans, for grains Market Najafgarh after the lay out and development details were approved by Damb in the first instance, followed by Duac, Mcd etc. Claimant furnished the print of more than fifty drawings. The

claimant stated that the main agreement is for preparation of layout services planning and urban design evolution only and not for detailed architectural drawings for individual buildings. Keeping in mind the overlapping work between layout and urban design and detailed Arch. designs, I award that the claimant is entitled for a payment of Rs. 4,18,083.00 (Rupees four lakhs, eighteen thousand and eighty-three only) against this claim.

CLAIMNo. 2. The claim for Rs. 2,05,800.00 is for providing detailed Arch designs for community facility. Center. About 25 drawings showing details were filed. The claimant is entitled for a payment of Rs. 74,791 .00 (Rupees Seven-four thousand seven hundred ninety-one only) for this claim.

CLAIMNo. 3. Claim is for Rs. 1,50,000 / for providing Arch and structural and other details for dormitory block; after examining the details and drawings, I award that the claimant is entitled to a payment of Rs. 42,031.00 (Rupees forty-two thousand and thirty-one only) against this claim.

CLAIMNo. 4. Claim is for Rs. 1,32,500.00 as ___ fee against the total lump sum fee for main agreement related to layout etc of Najafgarh Grain Market. The total fee is Rs. 5,70,000/ It was stated by claimant that Damb released a payment of Rs. 4,87,500 .00 and they, the claimant, are entitled for the balance fee of Rs. 82,500.00 since all approvals were procured before July 83 for further work. I award that the claimant be released the balance fee of Rs. 82,500.00 (Rs Eighty-two thousand and five hundred only).

CLAIMNo. 5 I award that the awarded money as per this award be paid to the claimant within 2 months from this date of award failing which claimant shall be paid interest at 15% per annum on the award amount from the date of this award up to the date of payment or date of decree whichever is earlier.

CLAIMNo. 6. Claimants claimed cost of arbitration.I award that the parties shall bear their respective costs of arbitration.

Signed and issued today dated 8.5.1992. sd/- Sole Arbitrator'

(5) The award having been filed before this Court and the parties having been served with the notice of filing of the award, the petitioner has filed objections to the award being made a rule of the Court. On 28.10.1994, this Court framed the following three issues for hearing and decision :-

' 1. Whether the award is liable to be set aside on the objections raised by the respondent ?

2. Whether the award is liable to be modified, remitted or set aside on the objections raised by the petitioner ?

3. Relief.

(6) On 24.2.1995 the following additional three issues were directed to be framed:

1. Whether the Chairman could have appointed a third person to act as an Arbitrator 2. Whether the authority of an Arbitrator named in the agreement can be delegated 3. Whether the claims for the work done beyond the scope of the contract can be said to be the claims/disputes arising out of the contract. '

(7) Counsel for the parties have been heard on the above said issues.

(8) For the purpose of the present order it would suffice to deal with only one of the objections raised on behalf of the respondent. It is submitted that the Arbitrator was obliged to give reasons for the award which having not been given, there is an error on the face of the award and the award is vitiated on the ground of legal misconduct of the Arbitrator for his failure to give reasons for the award. The learned Counsel for the petitioner has submitted that the arbitration clause as contained in the agreement between the parties does not require the Arbitrator to give any reasons and one of the parties could not have without the consent of the other party imposed upon the Arbitrator the obligation to assign reasons.

(9) The learned Counsel for the petitioner has placed reliance on *Express Engineering Construction Company v. Mcd* 1982 R L R 88, *laswant Singh v. Food Corporation of India* 1985 Rlr 44 and *C.Lyall & Co v. Dda*, 93 (1) A L R 91 in support of her contention.

(10) It is true that under the Indian law an Arbitrator is not required to record reasons for giving the award. It is also true that if the arbitration agreement between the parties does not require the award to be a reasoned one, one of the parties cannot by its unilateral act request, command or dictate the Arbitrator to give a reasoned award. However, the facts of this case are different rendering the decisions relied on by the learned Counsel for the petitioner distinguishable as will be shortly noticed hereinafter.

(11) As per arbitration clause the reference had to be to the sole arbitration of the Chairman Delhi Agricultural Marketing Board, Delhi. Admittedly, that was not done. It is well settled that an Arbitrator cannot delegate his functions. However in the case at hand the Chairman of the Board did not enter upon the arbitration. On a demand for reference to arbitration made by the petitioner the Chairman appointed a third person to act as an Arbitrator which appointment was not contemplated by the arbitration agreement. It is submitted by the Counsel for the [petitioner that such an appointment having been agreed upon by both the parties and both the parties having submitted to the jurisdiction of the Arbitrator and having participated in the proceedings without any demur throughout the proceedings, neither of them can be heard to complain about the jurisdiction or the authority of the Arbitrator. If that be true then the award for its legality or validity must either sink or swim fated by terms of the letter of reference dated 5.9.91.. None of the parties can be heard to say that the letter of appointment dated 5.9.1991 may be held valid in so far as the appointment is concerned but the same be held invalid in so far as the condition accompanying the appointment is concerned. In short, the appointment letter dated 5.9.91 has to be accepted as a whole or to be rejected as a whole.

(12) It is noteworthy that the copies of letter of appointment dated 5.5.91 were sent to both the parties and none of them ever raised any objection to the contents of the letter. In the statement of claims submitted on behalf of the claimant (the petitioner herein) before the Arbitrator, vide para 2 the claimant has stated :-

'2.Pursuant to the letter of the claimant, the Chairman Damb had appointed R.K. Sundram on 31.7.91 and followed by Sh V.S. Murty as the Sole Arbitrator vide letter No. F.17(17)/82-DAMB/Engg./4771 dt-5.9.91. In the said letter dated 5.9.91

the Chairman Damb has recorded that since the claims and disputes raised by the claimant exceed Rs. 75,000.00 therefore the Arbitrator shall give reasons for the award.

(13) The above quoted contents of the petitioner-claimant's own statement of claims filed before the Arbitrator at the threshold of arbitration proceedings clearly show that not only he was aware of the appointment of the Arbitrator coupled with the condition of the Arbitrator giving a reasoned award, he was also agreeable to the appointment and the condition.

(14) An Arbitrator is bound to give reasons for the award in three situations; (i) if required by any law; (ii) if it is so postulated by agreement between the parties; and (iii) if the Arbitrator is required to give reasons by the terms of the reference. The Arbitrator Mr. Murthy drew authority to arbitrate only by letter dated 5.5.91 and the terms contained therein obliged him to give reasons for the award. He was bound to make a reasoned award. None of the cases relied on by the learned Counsel for the petitioner contemplate a situation like the one at hand. Here the named Arbitrator has delegated his authority to arbitrate to someone else. This delegation is accompanied by an obligation cast on delegate to give a reasoned award. Validity of the authority of the Arbitrator is found in theory of submission without demur. It cannot be urged that the authority of the Arbitrator was submitted to or acquiesced in but not the rider accompanying the appointment.

(15) The learned Counsel for the petitioner submitted in the alternative that the award satisfies the requirement of giving reasons as well. Even if the Arbitrator is required to give a reasoned award it is not necessary that the Arbitrator must write a judgment; it is sufficient if the reasons are indicated in inquiry brief and are discernible; submitted the learned Counsel for the petitioner.

(16) In *The College of Vocational Studies v. S.S. Jaitley* Air 1987 Delhi 134, a Division Bench of this Court has held :-

'REASONS are the links on the material, documentary or oral evidence, adduced before the Arbitrator, on which certain inferences are drawn and conclusions are made. There must be some rational nexus between the two indicated in the award.

The Arbitrator may not set out every process of reasoning or may not deal with every point raised but must when he is called upon to give reasons, to tell the 'reason' why he came to the particular conclusion.'

(17) In R.B. Jodhamal Pvt Ltd v. Dda, : 58(1995)DLT315 , it has been held :

'ANY expression or statement contained in an award which provides a brief but intelligible indication of what was working in the mind of the Arbitrator while adjudicating upon a dispute satisfies the requirement of giving reasons'.

(18) The relevant part of the award has been extracted and reproduced here in a bove. The Arbitrator has stated the claims and recorded his findings. He has not given his reasons. It is difficult to agree with the contention of the learned Counsel for the petitioner that the award satisfies the requirement of giving reasons.

(19) As the terms of reference require the Arbitrator to give a reasoned award which the Arbitrator has failed to do the Arbitrator would be deemed to have committed a misconduct. The award is liable to be set aside and is hereby set aside and directed to be remitted to the Arbitrator for giving a fresh award, indeed a reasoned award, as required by the terms of reference.

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