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Court : Delhi

Decided On : Feb-01-1996

Reported in : 1996IAD(Delhi)821; 1996(36)DRJ748

Judge : K. Ramamoorthy, J.

Acts : [Arbitration Act, 1940](#) - Sections 30

Appeal No. : Suit No. 2009 of 1994 and Interim Application No. 2355 of 1995

Appellant : Kochhar Construction Works

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : R. Rajappan and; V.K. Sharma, Advs

Judgement :

K. Ramamoorthy, J.

(1) The arbitrator published the award on 30th of August 1994 awarding a sum of Rs. 10,78,859.95 with simple interest at 12% per annum from the date of the award till actual payment. The Delhi Development Authority had filed objections to the award. In all the arbitrator has considered 16 claims.

(2) Delhi Development Authority has filed the objections I A.2355/95. On claim No. 1 a sum of Rs. 4 lakhs on account of final bill was claimed. The arbitrator having

considered the matter in detail awarded the sum of Rs. 1,14,177.00 In the objection petition, it is stated that on this claim no reasons have been given by the arbitrator and, therefore, it is in violation of clause 25 of the contract and accordingly the award is liable to be set aside.

(3) I do not find any substance at all in the contention. therefore, the objection made by the Delhi Development Authority in regard to claim No. 1 is rejected and the award on this claim is confirmed.

(4) On claim No. 2, a sum of Rs. 1,84,135.00 was claimed on the ground that the amount was withheld unjustifiably by the DDA. The claimant subsequently modified the claim to Rs. 90,135.00 . The arbitrator has considered all the aspects of the matter and has arrived at a conclusion that a sum of Rs. 90,135.00 is payable by the Delhi Development Authority to the claimant.

(5) I have gone through the reasoning given by the arbitrator. I do not find any reason to differ from the view taken by him. Accordingly, the award on claim No. 2 is confirmed.

(6) The claim No. 3 relates to refund of Rs. 1 lakh and it is admitted by the claimant that on 16th of April 1991 it was withdrawn and, therefore, the arbitrator has not given any award on this

(7) On claim No. 4 the claimant claimed Rs. 2 lakhs under clause 10(C) of the agreement. Subsequently, it was modified to Rs. 15,284.46. The arbitrator after considering the matter in detail has come to the conclusion that a sum of Rs. 5,892.65 alone is payable by the Delhi Development Authority to the respondent. Mr. V.K. Sharma, learned counsel for the Delhi Development Authority submitted that under claim No. 1 the arbitrator himself has noted 'the claimant in their rejoinder dated 13.2.92 modified the claim amount to Rs. 2,94,693.87 including payment under clause 10(C)'. therefore, according to the learned counsel a separate claim under clause 10(C) cannot at all be entertained. therefore, the arbitrator had no jurisdiction to award a sum of Rs. 5,892.65.

(8) Learned counsel for the claimant contended that the claimant had given only the details of the payment due from the Delhi Development Authority as Rs. 2,94,693.87 and the claim on this head was modified at Rs. 15,284.46 and the arbitrator after considering all the points has awarded Rs. 5,892.65 and it cannot be said that there is any error apparent on the face of the record or the arbitrator is guilty of misconduct.

(9) I entirely agree with the submission of the learned counsel for the claimant. I affirm the award by arbitrator on this claim.

(10) Claims made by the claimant on claim Nos. 5 and 6 were rejected by the arbitrator and no objections have been filed by the claimant.

(11) On claim No. 7 a sum of Rs. 2 lakhs on account of extra charges towards the construction of 4th storey was claimed. In the objection petition it is stated as under :-

'UNDER claim No. 7, the petitioner claimed Rs. 2.00 lakhs on account of extra charges for constructing the fourth storey. As per details furnished by the claimant, the amount came to Rs. 1,18,241.00 but the claim was put forth for Rs. 2.00 lakhs. The learned Arbitrator has awarded Rs. 54,200.00 as partially justified claim. The learned Arbitrator has only indicated the conclusions reached by him and has failed to give any reasons or the basis for awarding the said amount. This is an error apparent on the face of the award and renders the award liable to be set aside.'

(12) The arbitrator who was Chief Engineer, C.P.W.D, whose competency to consider the matter has not been disputed. After referring to the relevant aspects of the matter, arbitrator held that the claim to the extent of Rs. 54,200.00 is justified. The argument by Mr. Sharma is that no reasons have been given by the arbitrator to arrive at the figure Rs. 54,200.00 . This argument overlooks what is stated by the arbitrator in arriving at the figure. The arbitrator has applied his mind to the relevant practice and he has come to the decision that the claimant would be entitled to Rs. 54,200.00 .

(13) I am not able to appreciate what other reasons the law obliges the arbitrator to give in this behalf. I do not find any justification to accept the submission of the learned counsel Mr. V.K. Sharma. The award against this claim is confirmed.

(14) On claim No. 8, the claimant claims damages due to prolongation period. The arbitrator on the basis of the submissions made and the pleadings had asked himself the question whether one or two methods, referred to by him, could be adopted, as submitted by the claimant in Ex. C-79. On method No. 1, the claimant had calculated on the basis of tender rates of similar works during the extended period of contract and adding other relevant elements. Method No. 2 is on the basis of comparison and approved building cost index from time to time. If method No. 1 is adopted, the claim would come to Rs. 19,92,834.00 . If method No. 2 is adopted the amount will come to Rs. 22,89,805.00 . The arbitrator has noticed the work which was to be completed in 9 months was extended by a period of more than three years. Mr. V.K. Sharma, learned counsel for Delhi Development Authority brought to ray notice the following observations of the arbitrator :-

'SHORTAGE of labour, execution of sub standard work, diverting part of the labour force for removal of defects on the part of the claimants also added to the delay to some extent in the completion of the project. The slow progress was brought to notice of claimant from time to time. Major part of the delay was due to the reasons attributable to the respondents.'

ACCORDING to the learned counsel Mr. V.K. Sharma hang found that the claimant was also responsible for the delay, the arbitrator was not justified in awarding a sum of Rs. 4,81,650.00 to the claimant.

(15) In the reply to the objection on this claim, the claimant has stated 'The accepted hindrances even without considering the delay due to non-availability of site and departmental stores is for a period of 1284 days against the required period of 1136 days (i.e. up to final date of completion).' The learned counsel referred to the hindrance register maintained by the respondent. Having regard to the conspectus of the events noticed by the arbitrator, I do not find any reason to disbelieve from him by awarding on this claim to the extent of Rs. 4,81,650.00 it cannot be said that the arbitrator has misconducted himself or his award is based

on no evidence. Accordingly, I confirm the award on this claim.

(16) On claim No. 9 interest @ 24% presuit, pendentelite and future interest is claimed, the arbitrator has awarded simple interest @ 12% per annum amounting to Rs. 2,63,083.00 from 16.5.86 up to the date of the making of the award in respect of the amounts awarded on claims 1,2,4 and 7. Simple 12% rate of interest is very reasonable and, therefore, I confirm the award on this claim. The arbitrator has awarded future interest also @ 12% per annum. That is also perfectly reasonable.

(17) On claim No. 10, as against the claim of Rs. 25,000.00 towards cost of the proceedings, the arbitrator has awarded Rs. 5,000.00 . I don't think anything could be said against the amount awarded by the arbitrator on this claim. therefore, it is also confirmed.

(18) On additional claim No. 1 (Claim No. 11), a sum of Rs. 11,921.87 is claimed on the ground of unjustifiably deductions were made on monthly rebate, the arbitrator has awarded Rs. 4,891.00 after considering all the facts. No ground has been made out to interfere with the same. therefore, it is confirmed.

(19) Additional claim No. 2 (Claim No. 12), on this a sum of Rs. 46,059.00 is claimed on account of extra recovery of steel. This is rejected by the arbitrator.

(20) Additional claim No. 3 (Claim No. 13) towards cost of charges of locks, the objector claims Rs. 4,903.30 and deducted from the amount payable to the claimant.

(21) The arbitrator has observed that if the cost of locks were to be charged, the same should have been intimated to the claimant at that time and the locks should have been returned to the claimant after handing over the flats and, therefore, according to the arbitrator the deduction made by the respondent was not justified.

(22) I do not think that the arbitrator has committed any error in his reasoning. therefore, I confirm the award on this claim.

(23) Additional claim No. 4 (Claim No. 14), the claimant claims Rs. 6 lakhs on account of money spent extra on watch and ward after the date of completion. Learned counsel Mr. V.K. Sharma submitted that the arbitrator awarded Rs. 55,000.00 and no reasons are given by him. The arbitrator has said -

'AFTER recording completion certificate by the respondent it is the responsibility of the claimant to attend to rectification of defects which come to notice for a period of 6 months. The completion certificate recorded by the respondent on 15.11.85, in reality, was not a reflection of completion of the work in all respects. It was conditional and pointed out various items left incomplete and defects existing even at the time of recording the completion certificate. As such it was the responsibility of the claimant to attend to all the points mentioned therein. Various letters exhibited by the respondent in the counter statement of facts also indicate that the respondent was constantly reminding the claimant till end of March 1986 to remove the defects and complete the left over items.

THE claimant submitted details of expenses in which he had included the salaries of supervisor, chowkidars, masons, labour, conveyance charges, head office accounts, materials such as Badarpur sand etc. The claimant could not produce any record of vouchers to prove the actual expenditure incurred such labour force for such a long time. It was the responsibility of the claimants to attend to the defects and incomplete items which were pointed out in the completion certificate as well as in the notices issued by respondent during the defect liability period for which purpose it is understandable that there was necessity for engaging supervisor, masons, labour, conveyance, head office expenses, materials etc. There is no justification for engaging such a labour force for a period of 5 years. Moreover it was the liability of the claimant to engage such categories of labour force and materials for attending to the defects and incomplete items and the respondent has no liability on this account. Since the handing over of flats to the occupants was delayed and continued till December 1990, as claimed by the claimant the only justification in favor of the claimant is for engaging 2 chowkidars at the rate of Rs. 50.00 per month for the period from May 1986 to December 1990, towards watch and ward, which amount works out to $55 \times 2 \times 500 + 55,000.00$. Accordingly, I award, the respondents will pay Rs. 55,000.00 to the

claimant.'

(24) I feel that the objector is trying to challenge the award just for the sake of it. The objection by the Delhi Development Authority is rejected. The reasoning given by the arbitrator is in accordance with law. thereforee, the award on this claim is upheld.

(25) Additional claim No. 5 (Claim No. 15), the claimant claims 24% interest on the amount withheld and the bank guarantee. This was rejected by the arbitrator.

(26) Additional claim No. 6 (Claim No. 16), a sum of Rs. 2 lakhs is claimed on account of clause 12 A and that was rejected by the arbitrator and that is confirmed.

(27) The arbitrator finally passed the following award :-

'NOW, thereforee on consideration of the claims and additional claims of the claimant, I do hereby make this award that the respondent will pay to claimant a sum of Rs. 10,78,859.95 (Rupees ten lacs seventy eight thousand eight hundred fifty nine and paise ninety five only) plus future simple interest of 12% per annum with effect from the making and publishing of the Award, till the actual payment thereof, or till the date of Award being made a rule of competent court, whichever is earlier.'

(28) The arbitrator has directed the payment of 12% interest even on the sum of Rs. 2,63,083.00, which was awarded on claim No. 9 relating to the pre-period prior to the passing of the award. There can be no Interest on interest. thereforee, the award is made rule of the Court with this modification and there shall be a decree directing the objector/respondent to pay the petitioner a sum of Rs. 10,78,859.95 with future interest @ 12% per annum from the date of the decree up to the date of payment on the sum of Rs 8,15,776.95. There shall be no order as to costs.

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