

Jaswant Singh Vs. Development of Authority

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Court : Delhi

Decided On : Aug-11-1995

Reported in : 1995IIIAD(Delhi)646; 59(1995)DLT612; 1995(34)DRJ423

Judge : K. Ramamoorthy, J.

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

Appeal No. : Suit No. 62A of 92 and Interim Application No. 2266 of 1993

Appellant : Jaswant Singh

Respondent : Development of Authority

Advocate for Pet/Ap. : D.P. Sharma and; A. Salwan, Advs

Judgement :

K. Ramamoorthy, J.

(1) An award for Rs. 13.674.00 in favor of the claimant is under challenge by the Delhi Development Authority. An agreement was entered into for the construction of work at Block C, Near District Park Vikaspuri between the petitioner and the respondent DDA. 17.9.1988 was the date fixed as the commencement of the work. The work was to be completed within 9 months. The work was not finished within the time. The petitioner had also to maintain the site for sometime owing to the various acts of omission and commission of the respondent. Shri R.C. Malhotra

was pointed as the Arbitrator. On 29.11.1991 the award was passed by the Arbitrator directing the respondent to pay the petitioner the sum of Rs. 13,674.00 with interest at 12% per annum for the period from 14.6.90 to 17.1.91. The counter claim for Rs. 1,82,263.00 was rejected by the Arbitrator. In I.A. 2266/93 the Dda filed its objections. It is stated in the objections that the contractor had committed the breach. He wanted two months time. The respondent wrote in Ext. R.11, R.13 and R.3 directing the contractor to comply with the request made therein but the petitioner did not comply with the demand and, therefore, the work was got done from some other agency. The Arbitrator had indulged in conjectures and surmises in awarding Rs. 13,674.00 in favor of the petitioner. Regarding the counter claim the plea taken by the respondent is as under :-

'BECAUSE the Arbitrator had erred in disallowing the counter claims of the respondent authority for Rs. 1,82,263.00 (Rupees one lac eighty two thousand two hundred and sixty three only). It is reiterated that the Arbitrator has failed to appreciate that it was, in fact, the claimant contractor who has committed the breach and did not start the work in time. For the fault of the claimant, the respondent authority had suffered the huge loss and damage since they had to get the work done through other agency. The contractor-claimant had failed to complete the work and there was no option available with the respondent authority, but, to get the same completed from the other independent agency. Thus, in view of this, the arbitrator ought to have allowed the counter claims of the respondent authority and published the award in their favor.'

IN reply to this, the petitioner submitted as follows :-

of the respondent No. 1, the petitioner submits that the work under the name and style 'Construction of C.S C. at block C near District Park, Vikas Puri, New Delhi' was awarded to the petitioner by the respondent No. 1 on 7.9.88 with 17.9.88 as stipulated date of start. The work was started and was to be completed within the period of 9 months i.e. by 16.6.89. On the award of the work the petitioner made all arrangements for due execution and completion of the work with stipulated period. But all the bonafide and efforts on the part of the petitioner to execute and complete the work within stipulated period were rendered futile, good for nothing

by the respondent No. 1 as the respondent failed to make the site available for starting the work, thereby committing the fundamental breach of the contract. The petitioner submit that the site where work in question was to be executed was under the disputes and thereforee the respondent No. 1 kept on asking and advising the petitioner to bear with them. The petitioner made it known to the respondent No. 1 that the petitioner would execute the work only to the alternate site if arranged and made available to the petitioner up to 13.11.88. However, it was also subject to certain terms and conditions as contained in the letter dated 14.10.88: The respondent No. 1 before 13.11.88 neither made the site available nor agreed to the condition put forth by the petitioner vide letter dated 14.10.88 (C-2). So in order to maintain good business relations with the respondent No. 1 the petitioner agreed to execute the work at the alternate site made available on 19.1.89 subject to the conditions that the date of the start would be 28.1.89 and revised market rates for the bricks beyond deviated quantities would be payable by the department. The respondent No. 1 did not agree to these conditions and thereforee the petitioner was not in a position to start the work at the new site. The petitioner submits that because of the fundamental breach of the contract committed by the respondent No. 1 the work could not be executed by the petitioner. The faults, failures and breaches of the contract committed by the respondent No. 1 resulted into the losses and damages to the petitioner.'

The Arbitrator rejected the counter claim made by the respondent in the following terms:-Counter Claims Counter Claim No. 1 :Respondents claim Rs.73,612.00 recoverable from claimant on a/c of for feature of earnest money (Security deposit) under clause-3(a) of the contract.AWARD:Since, the deptt. failed to hand-over the site to the claimant making it, impossible for him to perform the contract, the claimant cannot, thereforee, be held responsible for not executing the work. The offer of the claimant to execute the work on alternate site was not accepted by the respondent within specified time. Besides, the claimant was not obliged to execute the work on the site other than the site contracted by him unless revised terms and conditions are accepted. Thus, I hold that the counter claim of the deptt. is not justified and the same is, thereforee, rejected.Counter Claim No. 2:Respondents claim Rs. 1,08,651.00 recoverable from the claimant under clause-3 (b) & (c) of the contract agreement in pursuance to the claimant's failure to undertake the

work and thereafter award of the same at the claimant's risk & cost. AWARD: The reasonings as explained above in respect of counter claim no. 1 are applicable in respect of counter claim no. 2 also and, accordingly, the claim is rejected.'

(2) The learned counsel for the Dda confined her arguments only to the counter claim made by the Dda and the award made by the Arbitrator for Rs. 13,674.00 in favor of the petitioner.

(3) Regarding the award for Rs. 13,674.00 the learned counsel for the Dda stated that the Arbitrator mainly relied upon C-4 and the details are given in the C-4 are very vague and they cannot be the basis for any decision for claim of money. She drew my attention to item No. 2 in C-4 'Unskilled labour for lay out cement godown and clearing of site 96 days at Rs. 21.60 per day.' The clearing of the site 96 days is really a mistake and there is one of the instances to show that the Arbitrator had not applied his mind. Learned counsel for the petitioner-contractor explained the position that 96) days, mentioned in item 2 of C-4, is a typographical error and the claim was fully considered by the Arbitrator on the materials placed before him and in C-1 the petitioner had given details about the idle labour etc.

(4) The Arbitrator is an Engineer and, in my view, he had considered the matter in its proper perspective and that cannot be called in question by the DDA.

(5) On the counter claims the argument by the learned counsel for the Dda was that no reasons have been adduced by the arbitrator and the agreement between the parties specifically provides that the arbitrator should give a speaking award.

(6) I have already extracted the decision by the Arbitrator on counter claim. The reasons given by the Arbitrator are correct and I do not find any infirmity in law in the approach made by the Arbitrator.

(7) In my view, the Dda has not made out any case for interference under Section 30 of the Arbitration Act. Accordingly, the award is confirmed and the objector Dda shall pay the sum of Rs. 13,674.00, as directed in the award, and shall pay future interest @ 12% per annum from 21.11.91 up to the date of realisation. The Award is made rule of the Court. There shall be a decree, as referred to above. I.A. is

dismissed. There shall be no order as to costs.

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