

Ajay Construction Co. Vs. Delhi Development Authority

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Court : Delhi

Decided On : Oct-17-1996

Reported in : 1996VAD(Delhi)425; 1997(1)ARBLR92(Delhi); 64(1996)DLT590; 2003(39)DRJ444

Judge : A.D. Singh, J.

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

Appeal No. : Suit No. 888A of 1989 and Interim Application No. 1840 of 1990

Appellant : Ajay Construction Co.

Respondent : Delhi Development Authority

Advocate for Pet/Ap. : S.K. Mittal and; V.K. Sharma, Advs

Judgement :

Anil Dev Singh, J.

(1) The Arbitrator Mr.G.R. Hingorani made and published the award on February 17, 1989 in the matter of arbitration between the petitioner Ajay Construction Company and respondent-DDA in regard to the work, namely 'Construction of 168 Mig Houses at Bodello Pocket Cg - I'. While the petitioner prays for making the award a rule of the Court, the first respondent has filed an application, being I.A.1840/90, under sections 30 and 33 of the Arbitration Act for setting aside the

same. The facts giving rise to this matter are as follows:-

(2) The petitioner and first respondent entered into a contract with regard to the above said work. Certain disputes arose between the parties whereupon Engineer Member, Dda appointed second respondent to adjudicate the same. The following relevant dates and data are not in dispute:-

1. Date of tender - November 14, 1979. 2. Date of acceptance - February 22, 1980. 3. Date of commencement - March 2, 1980. 4. Period of completion - 12 months. 5. Stipulated date of completion as per agreement - February 2, 1981. 6. Actual date of completion - June 30, 1982.

(3) Learned counsel appearing for the first respondent has assailed some of the findings of the Arbitrator pertaining to claims No.1,2,3,5,6,8,10 and 14 on the ground that the same suffer from lack of reasons. He submitted that the Arbitrator was bound to give reasons as clause 25 of the agreement and the letter of the Engineer Member referring the disputes for adjudication required the Arbitrator to give a reasoned award.

(4) Under these claims the arbitrator has dealt with the following matters relating to -

(1) Penal recoveries of cement, steel and C.I. pipes; (2) Additional measurements recorded after the preparation of the final bill; (3) Overhead tank; (4) Lugs; (5) Clause 10-C of the agreement.

(5) Before I deal with each of the matters it is important to note that in respect of the aforesaid claims the arbitrator has awarded a sum of Rs.2,54,617.00 out of which a sum of Rs.1,34,623.00 is in respect of the amount payable under the final bill with regard to which there is no controversy. The details of Rs.1,34,623.00 are as follows :- Rs.59,29,283.00 value of the work done including 10-C payments minus Rs.57,46,298.00 , amount paid to the contractor, minus Rs.48,902.00 , cost of material due from the contractor. Regarding each of the matters :-

(1) The first respondent had proposed penal recoveries for cement, steel and C.I. pipes from the aforesaid amount as according to it the petitioner used the said

materials in excess of the required quantities. The Arbitrator rejected the claim of the first respondent for the reasons that it had not adduced any documentary evidence and the material being in the joint custody of the contractor and the department, it had to be presumed that all the material was consumed for bonafide use in the work. Learned counsel appearing for the first respondent contended that the Arbitrator has not given any plausible reasons for rejecting the plea of the first respondent. This submission of the learned counsel is not well founded. As already pointed out, the Arbitrator has spelt out the reasons for rejecting the plea of the first respondent and since the above said reasons are relevant, no fault can be found with them. Accordingly, the submission of the learned counsel for the first respondent is rejected. (2) The Arbitrator has awarded a sum of Rs.39,862.00 in favor of petitioner on the ground that after preparation of final bill some additional measurements had been recorded by the department and as per these the value of the work for which the petitioner is required to be paid works out to be Rs.39,862.00 . The award of the Arbitrator on this count has not been contested by learned counsel for the first respondent. (3) The main grievance of the first respondent is with regard to the award of the Arbitrator pertaining to overhead tanks, on which account the Arbitrator has awarded a sum of Rs.55,063.00 . The Arbitrator in regard to this item observed as follows:- 'Rates for R.C.C. overhead tanks and items of brickwork in cement mortar have not been correctly derived from D.S.R. as per clause 12(iii). The additional amount payable to the contractor for these items is Rs.55,063.00 .'

(6) Learned counsel for the first respondent submitted that the Arbitrator had not given any reasons for awarding the said sum of Rs.55,063.00 in favor of the petitioner. On the other hand, learned counsel for the petitioner submitted that the Arbitrator has given sufficient reasons for holding that the petitioner was entitled to the said sum of money.

(7) I .have considered the submission of learned counsel for the parties. In Raipur Development Authority etc. v. M/s. Chokhamal Contractors etc., , the Supreme Court, inter alia, held that when the arbitration agreement or the reference or the deed of submission or an order made by court such as the one under section 20 or section 21 or section 34, or the statute governing the arbitration provides for giving

of reasons, the arbitrator is required to give reasons. In the instant case it is admitted by both sides that the arbitration clause as well as the reference to the arbitrator required the arbitrator to give reasons. This being the position, the arbitrator was bound to give reasons for the award. But it seems to me that the Arbitrator has failed to give any discernable reason for arriving at the conclusion that the petitioner would be entitled to receive the said amount of Rs.55,063.00 from the first respondent. While it is true that the Arbitrator is not required to give detailed reasons and is not expected to write judgments as are rendered by Courts of law, but at the same time the Arbitrator must mention the basis on which he reached his conclusion. How he acted and why he acted in the manner in which he did, should appear from the award. When the Arbitrator is required to give reasons, his award should be self explanatory and should not keep the Court guessing for reasons. Reasons provide link between the conclusion and the evidence. That vital link is a safeguard against arbitrariness, passion, prejudice and humour. Reason is a manifestation of the mind of the arbitrator. It is a tool for judging the award with reference to sections 30 and 33 of the [Arbitration Act, 1940](#) . It gives an opportunity to the court to see whether or not the arbitrator proceeded on relevant material. In *Bharat Furnishing Co. v. Delhi Development Authority* and another 1992(1) A L R 327, Jaspal Singh, J. emphasised the need for a reasoned award where the reference or the arbitration clause requires the arbitrator to spell out the reasons. In this regard his Lordship observed as follows :-

'WHERE reason is required to be given, it becomes the very life of the award, for when the reasons ceases, the award itself ceases. What then, is meant by reason? The Kantian use of reason (See Vermont and Verstand) need not be looked into and so also the technical distinctions of reason. For our purposes, it would mean a rational ground or motive. It is any sufficient ground of Explanationn. Colerid gen calls it 'rationalized understanding'. The emphasis necessarily is thus on the ground or motive or understanding being rational or sufficient. And, if that be so, who will examine the rationality or sufficiency The court, of course. And while examining this, the court will insist not on a detailed judgment but 'short intelliible indication of the grounds...to find out the mind of the arbitrator for his action' (*Indian Oil Corporation Limited v. Indian Carbon Limited*, : [1988]3SCR426 .')

(8) Learned counsel for the petitioner relied upon the following judgments to contend that the aforesaid portion of the award extracted at page 4 does not suffer from lack of reasons :-

i) Salwan Construction Co. vs. U.O.I. 41(1990) Del L T 474; ii) M/s Atree Associates vs. Delhi Development Authority 1996 I Ad (Del) 769; iii) Kochhar Construction Works vs. Delhi Development Authority 1996 I Ad 821; and iv) Indian Oil Corporation Ltd. vs. Indian Carbon Ltd., : [1988]3SCR426 .

In these cases the court found discernible reasons for the conclusion reached by the arbitrator. In the present case, the above said conclusion reached by the arbitrator is not supported by reasons. It seems to me that due to lack of reasons the award in regard to the aforesaid items is liable to be set aside. In that view of the matter, the award of the arbitrator pertaining to this item is set aside. (4) Learned counsel for the first respondent has not challenged deduction of Rs.10,729.00 made for non-provision of lugs. thereforee, there is no need to comment upon the award of the Arbitrator in regard to the said item. (5) The only other part of the award with which the learned counsel for the first respondent has found fault with is the one that pertains to claim under clause 10-C limited to the work done up to March 31, 1981. It is pointed out by learned counsel for the first respondent that claim No.8 which was also under clause 10-C has been rejected by the Arbitrator. He consequently submitted that tills being so the Arbitrator has contradicted himself by awarding a sum of Rs.14,340.00 in favor of the petitioner on account of claim under 10- C restricted to the work done up to March 31, 1981. I have considered the submission of the learned counsel for the respondent. While claim No.8 pertains to increase in labour wages from March 1, 1982, the instant claim pertains to period up to March 31, 1981. Thus it is clear that the periods mentioned in the two claims are different. It is not disputed by the learned counsel for the first respondent that there were two statutory increases in regard to labour wages, one in March 1980 and the other in the year 1982. thereforee, the submission of the learned counsel on this count is without any justification.

(9) In view of the aforesaid discussion, the award is made a rule of the Court except a sum of Rs.55,063.00 pertaining to overhead tanks. Accordingly, a decree

is hereby passed for the remaining amount. The said item pertaining to overhead tank for which the Arbitrator awarded a sum of Rs.55,063.00 is remitted to the Arbitrator for fresh determination.

(10) In case the decretal amount is not paid within a period of four weeks, the petitioner will be entitled to future interest at the rate of 12% per annum from the date of decree till recovery.

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