

**Satyam Builders Vs. Delhi Development Authority and anr.**

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**Court :** Delhi

**Decided On :** Jul-15-1997

**Reported in :** 1997IVAD(Delhi)789; 1997(2)ARBLR259(Delhi); 67(1997)DLT865

**Judge :** C.M. Nayar, J.

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

**Appeal No. :** Suit No. 3551 of 1992 and Interim Application No. 2806 of 1993

**Appellant :** Satyam Builders

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

**Advocate for Pet/Ap. :** B.M. Sehgal and; A. Salwan, Advs

**Judgement :**

**C.M. Nayar, J.**

(1) The Arbitrator has filed the Award dated 31st July, 1992 Along with the proceedings in this Court. The same were taken on record and notice of filing of the Award was issued to the parties directing them to file their respective objections. Respondent-Delhi Development Authority filed its objections under Sections 30 and 33 of the [Arbitration Act, 1940](#). Reply to these objections was filed by the claimant M/s. Satyam Builders. The Arbitrator allowed the claims of the petitioner and rejected the counter-claim of respondent-DDA by a speaking Award

and by assigning reasons.

(2) The Arbitrator was appointed as Sole Arbitrator by respondent-DDA vide its communication dated 14th July, 1990 to decide the disputes which had arisen between the parties by virtue of powers conferred under the provisions of Clause 25 of the Agreement executed between the parties. Clause 25 of the Agreement stipulated that disputes arising between the parties shall be referred to the Sole Arbitration of the person appointed by the Engineer Member, DDA. It further stated that in all cases where the amount of claim in dispute is Rs. 75,000.00 (Rupees Seventy Five Thousand) and above, the Arbitrator will give reasons for the Award. The claims as dealt with by the Arbitrator may now be examined and referred to as follows:

(3) Claim No. 1: The petitioner claimed a sum of Rs. 5,09,000.00 on account of the work executed but not paid. The Arbitrator examined the evidence on record and awarded a sum of Rs. 2,07,958.84p. (Rs. 1,32,606.84 for the outstanding amount for the work done. Rs. 10,000.00 on account of the amount withheld in earlier bills which was refundable to the claimant. Rs. 65,352.00 towards refund of security). These amounts were awarded against respondent-DDA by consideration of facts and figures which will be indicated from the reading of the Award. The Arbitrator obviously has assigned cogent reasons for awarding these amounts and no material has been placed on record by respondent-DDA to hold otherwise.

(4) Claim No. 2: The petitioner made a claim for a sum of Rs. 75,000.00 on account of escalation due under Clause 10-CC of the Agreement for the work done beyond April, 1989. Herein also the Arbitrator referred to the details furnished by the claimant vide their letter dated 18th July, 1991 and held that the petitioner was entitled only to a sum of Rs. 36,500.00 under this Head which was found admissible.

(5) Claim No. 3 : Similarly claims under this Head were raised for a sum of Rs. 6,17,183.00 on account of idle/extra-pumping of sewage and S.S. water. The only amount which has been awarded is a sum of Rs. 15,850.00 and it has been clearly held by the Arbitrator on facts and appreciation of evidence on record that the claimants are only entitled to this amount and the petitioner has not been able to

substantiate the claim with regard to the remaining amounts.

(6) Claim No. 4: This claim related to Rs. 21,171.00 on account of idle labour and the Arbitrator has rejected the same on the ground that the claim has not been quantified convincingly and substantiated to his satisfaction.

(7) Claim No. 5: The sum of Rs. 10,450.00 was claimed on account of extra payment for hauling and cartage of pipes etc. The Arbitrator allowed a sum of Rs. 10,500.00 in favor of the petitioner by making reference to the evidence on record and by assigning cogent reasons.

(8) Claim No. 6: This claim related to a sum of Rs. 960.00 on account of water testing charges in terms of the Agreement. The sum of Rs. 900.00 was also held due to the petitioner / claimant under this Head.

(9) Claim No. 7 ; The claimant filed the claim under this Head for a sum of Rs. 9,00,000.00 on account of compensation for loss of profit on unexecuted portion of work. In this regard the Arbitrator tabulated the entitlement for payment on account of loss of profit in the following manner:

'Total cost of the work as per contract = Rs. 52,85,342 Less amount of work already executed = Rs. 8,01,623 Balance = Rs. 44,83,719 Less cost of material stipulated to be issued by the depts. for balance work = Rs. 10,61,190 = Rs. 34,22,529

(10) Normally contractor's profits and overheads on such work are considered as 10%. But in this case the claimant shall not be incurring any expenses on overheads and establishment etc. I feel that reasonable loss of profit is to be taken as 5% and accordingly the amount works out to Rs. 1,17,126.00 only and I award a sum of Rs. 1,71,126.00 in favor of the claimants.'

(11) No fault can be found for the Award under this Head as it is well settled that the claimant shall be entitled for loss of profits as compensation on unexecuted portion of work. The Award in the present case is quite reasonable as the claimant has only been awarded at the rate of 5% in the manner as indicated above. The Supreme Court in the judgment as reported in MIs. A.T. Brij Paul Singh and Bros.

v. State of Gujarat, : AIR 1984 SC1703 clearly held that the claimant is entitled to percentage of the value of the balance of works contracted as damages. Damages under this Head have been clearly accepted by to Supreme Court. The operative portion in para 10 reads as under:

'What would be the measure of profit would depend upon facts and circumstances of each case. But that there shall be a reasonable expectation of profit is implicit in a works contract and its loss has to be compensated by way of damages if the other party to the contract is guilty of breach of contract cannot be gainsaid. In this case we have the additional reason for rejecting the contention that for the same type of work, the work site being in the vicinity of each other and for identical type of work between the same parties, a Division Bench of the same High Court has accepted 15% of the value of the balance of the works contract would not be an unreasonable measure of damages for loss of profit. We are, therefore, of the opinion that the High Court was in error in wholly rejecting the claim this Head.'

(12) Similar view was taken by the Kerala High Court in the case as reported in State of Kerala v. K. Bhaskaran, : AIR1985 Ker49 .

(13) The judgment in the case of M/s. A.T. Brij Paul Singh and Bros. (supra) was followed by this Court by the learned Single Judge as reported in Pishori Lal Maggo v. Delhi Development Authority, : 65(1997)DLT849 which reiterated in paragraph li as follows :

11.The agreement arrived at between the parties lays down that in respect of a work contract, claim of profit by the contractor at 10% of the estimated cost is justified. In this connection reference may be made to a decision of the Supreme Court in M/s. A.T.Brij Paul Singh & Bros. v. State of Gujarat, : AIR 1984 SC1703 , wherein the Supreme Court has held that the contractor is entitled to claim damages for the loss of profit which he is expected to earn by undertaking the work contract. It is further held that where there was breach of contract in respect of works contract for construction of a portion of the road by the State, it could not be said that the contractor, would not be entitled to 15% of the balance price of the works contract as damages when in respect of the breach of works contract for another portion of the same road in the vicinity of the portion in question the High

Court has granted to the same contractor, damages at the same rate. In *M/s. Metro Electric Co. v. Delhi Development Authority*, reported in Air 1980 Delhi 266, it has been held by this Court that the clause regarding payment of 10% extra price was applicable to the facts of the case and the award of damages was proper. In view of the aforesaid decision of this Court and also of the Supreme Court it could be held that the contractor is entitled to claim a profit at 10% of the estimated cost of construction in respect of a work contract. Since there was a loss of expected profit, the petitioner is entitled to be reimbursed atleast to the extent of 10% of the estimated cost in terms of Section 73 of the Contract Act. In that view of the matter, I do not find any illegality in the award of the Arbitrator passed in respect of the aforesaid claim.'

(14) Adverting back to the first question as to whether the Arbitrator in this case has assigned cogent reasons torn rendering his Award and whether it is open for this Court to interfere in the facts and circumstances of the present case. The law is well settled that the Court cannot go into the thought process of the Arbitrator and has only to consider that sufficient reasons are indicated in the Award. It is not open for the Court to review the same and even if the Arbitrator does not give detailed reasons, the Court can only interfere with the Award when it is not supported by evidence or is based on an erroneous proposition of law. It was so held in the judgment of the Supreme Court as reported in *Indian Oil Corporation Ltd. v. Indian Carbon Ltd.*, 1988 8 A LR 394. Para 10 reads as under:

'10.The purpose of Section 12 of the English Tribunal and enquiries act which required the statutory tribunal to furnish a statement of the reasons if requested to do so before it gave its decision was to enable a person whose property or whose interests were affected to know if the decision was against him what the reasons were Justice R.S. Bachawat in his *Law of Arbitration*, First Edition 1983, pages 320 and 321 states that the provision was read as meaning that proper and adequate reasons must be given. The reasons that are set out must be reasons which will not only be intelligible but also deal with the substantial points that have been raised. When the arbitration clause required the Arbitrator to give a reasons and the Arbitrator does give his reasons in the award, the sufficiency of the reasons depend upon the facts of the particular case. He is not bound to give

detailed reasons. The Court does not sit in appeal over the award and review the reasons. The Court can set aside the award only if it is apparent from the award that there is no evidence to support the conclusions or if the award is based upon any legal proposition which is erroneous.'

(15) It is also not in dispute that even if giving the reason is held to be obligatory, it is not obligatory for the Arbitrator to give detailed judgment. The scope and extent of examination of the Court is referred to in the judgment as reported in Gujarat Water Supply b Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd.& Anr., : [1989]1SCR318 . May be reproduced as under :

'9.The scope and extent of examination by the Court of the award made by an Arbitrator has been laid down in various decisions. It has to be noted that there is a trend in modern times that reasons should be stated in the award though the question whether the reasons are necessary in ordinary arbitration awards between the parties is pending adjudication by the Constitution Bench of this Court. Even, however, if it be held that it is obligatory for the Arbitrator to state reasons, it is not obligatory to give any detailed judgment. An award of Arbitrator should be read reasonably as a whole to find out the implication and the meaning thereof. Short intelligible indications of the grounds should be discernible to find out the mind of the Arbitrator for his action even if it be enjoined that in all cases of award by an Arbitrator reasons have to be stated. The reasons should not only be intelligible but should also deal either expressly or impliedly with the substantial points that have been raised. Even in a case where the Arbitrator has to state reasons, the sufficiency of the reasons depends upon the facts and the circumstances of the case.The Court, however, does not sit in appeal over the award and review the reasons. The Court, can set aside the award only if it is apparent from the award that there is no evidence to support the conclusion or if the award is based upon any legal proposition which is erroneous. See the observations of this Court in Indian Oil Corporation Ltd. v. Indian Carbon Ltd., : [1988]3SCR426 .' .

(16) Similar view was expressed in the judgment as reported in Goa, Daman b Diu Housing Board v. Ramakant V.P. Darvotkar, : [1991]3SCR904 .

(17) The law is, therefore, well settled that this Court will not sit in appeal and examine the correctness of the Award as the Arbitrator will look into the evidence and arrive at a conclusion which he thinks just, fair and equitable. In the present case it is evident that the Arbitrator has carefully considered each and every claim separately as well as the counter-claim of respondent-DDA and arrived at findings which are based on evidence on record and no fault can be found with the same. therefore, it is not possible in the present circumstances to hold that the Arbitrator has misconducted himself or the proceedings and no arguments have been advanced by learned Counsel for respondent to arrive at such conclusions. The objections of respondent-DDA are, accordingly, rejected. The Award is made rule of the Court and decree in terms of the same will follow. The claimant shall also be entitled to interest at the rate of 12% on the awarded amount from the date of decree till realisation. There will be no order as to costs.

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