

Surender Kumar Gupta Vs. Delhi Development Authority and anr.

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Court : Delhi

Decided On : Aug-01-1997

Reported in : 1997(2)ARBLR401(Delhi); 68(1997)DLT189

Judge : Lokeshwar Prasad, J.

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

Appeal No. : Suit No. 2469 of 1993

Appellant : Surender Kumar Gupta

Respondent : Delhi Development Authority and anr.

Advocate for Pet/Ap. : Anurag Kumar and; A. Salwan, Advs

Judgement :

Lokeshwar Prasad, J.

(1) The petitioner, named above, has filed the presser petition under Section 14 of the [Arbitration Act, 1940](#) (hereinafter referred to as 'the Act') with the prayer that Shri S.C. Kaushal (Respondent No. 2) be directed to file the award Along with the proceedings and thereafter further orders in the matter a may be deemed fit and proper in the circumstances of the case be passed.

(2) On petitioner's filing the above petition, it was directed vide order dated 22nd November, 1993 that a notice be issued to Shri S.C. Kaushal (respondent No 2) directing him to file the award Along with the proceedings. In pursuance of notice received from this Court the Sole Arbitrator Shri S.C. Kaushal (respondent No. 2) filed the award Along with the proceedings vide Letter No. F(Retd.)/SE.ARBN.II/DDA/16 which was received in the Registry of this Court on 20.1.1994.

(3) After the receipt of the award dated the 24th September, 1993 Along with the proceedings from the end of the Arbitrator, a statutory notice was issued directing the parties to file objections, if any, within the prescribed time limit. No objections have been filed by the petitioner but the respondent-Delhi Development Authority (hereinafter referred to as 'the Dda ') has filed objections (is 8589/94) within time. Reply to the objections have been filed on behalf of the petitioner.

(4) On the pleadings of the parties, the learned Predecessor of this Court vide order dated 1st May, 1995 has framed the following issues :

1. Whether the Award dated 24.9.1993 is liable to be set aside in view of the objections raised by respondent No. 1-DDA 2. To what relief, if any, the petitioner is entitled to 3. What order

(5) The parties in the present case have adduced evidence in support of their respective pleas by means of affidavits. The Objector-DDA has filed affidavit of its Chief Engineer(WZ) by way of evidence whereas the petitioner Shri Surender Kumar Gupta has filed his own affidavit.

(6) I have heard the learned Counsel for the parties at length and have also carefully gone through the documents/material on record and my findings are under:

Issues 1, 2 & 3 Before going into the merits of the matter I would like to discuss the scope and limit of correction by the Court of an award made by the Arbitrator. The Supreme Court in case Food Corporation of India v. Joginder Pal Mohinder Pal & Another : [1989]1SCR880 have observed that arbitration, as a mode for settlement of disputes between the parties, has a tradition in India. It has a social

purpose to fulfill. It has a great urgency today when there has been an explosion of litigations in the Courts of law established by the sovereign power. It is, therefore, the function of the Courts of law to oversee that the Arbitration Act within the norms of justice. Once they do so and the award is clear, just and fair, the Courts should, as far as possible, give effect to the award of the parties and make the parties compel to adhere to and obey the decision of their chosen adjudicator. The Supreme Court in the above said case have further observed that it is in this perspective that one should view the scope and limit of correction by the Court of an award made by the Arbitrator. In case Raipur Development Authority & Ors. v. Chokhamal Contractors 6- Ors. the Supreme Court observed that the two well recognised principles of natural justice are, (i) that a Judge or an Arbitrator who is entrusted with the duty to decide a dispute should be disinterested and unbiased (*nemo judex in causa sua*); and (ii) that the parties to dispute should be given adequate notice and opportunity to be heard by the Authority (*audi alteram partem*). Giving reasons in support of a decision was not considered to be a rule of natural justice either under the law of arbitration or under administrative law. What applies generally to the settlement of disputes by the authorities governed by public law need not be extended to all cases arising under private law such as those arising under the law of arbitration which is intended for settlement of private disputes.

(7) The Supreme Court in another case Municipal Corporation of Delhi v. M/s. Jagannath Ashok Kumar & Another : [1988]1SCR180 have held in clear cut terms that appraisal of evidence by the Arbitrator is ordinarily never a matter which the Court questions and considers. Section 1 of the Evidence Act, 1872 in its rigor is not intended to apply to proceedings before an Arbitrator. The parties have selected their own forum and the deciding forum must be conceded the power of appraisal of the evidence. The Arbitrator, therefore, is the sole judge of the quality as well as quantity of evidence and it is not for the Court to take upon itself the task of being a judge of the evidence before the Arbitrator. It may be possible that on the same evidence the Court might have arrived at a different conclusion than the one arrived at by the Arbitrator but that by itself is no ground for setting aside the award of an arbitrator. The Supreme Court in the above said decision have further observed :

'It would be unreasonable to expect an exact definition of the word 'reasonable'. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy. But mankind must be satisfied with the reasonableness within reach; and in cases not covered by authority, the verdict of a jury or the decision of a judge sitting as a jury usually determines what is 'reasonable' in each particular case. The word 'reasonable' has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know.'

(8) In the case of *Sudershan Trading Co. v. Government of Kerala* : [1989]1SCR665 the following principles have been laid down by the Apex Court :

'Only in a speaking award the Court can look into the reasoning of the award. It is not open to the Court to probe the mental process of the Arbitrator and speculate, where no reasons are given by the Arbitrator, as to what impelled the Arbitrator to arrive at his conclusion. See the observations of this Court in *Hindustan Steel Works Construction Ltd. v. C. Rajashekhar Rao*. In the instant case the Arbitrator has merely set out the claims and given the history of the claims and then awarded certain amount. He has not spoken his mind indicating why he has done what he has done; he has narrated only how he came to make the award. In absence of any reasons for making the award, it is not open to the Court to interfere with the award. Furthermore, in any event, reasonableness of the reasons given by the Arbitrator, cannot be challenged. Appraisement of evidence by the Arbitrator is never a matter which the Court questions and considers. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisement of evidence. The Arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the Court to take upon itself the task of being a judge on the evidence before the Arbitrator.'

(9) In a recent decision in the case of *State of Rajasthan v. Puri Construction Co. Ltd.* (1995 (1) Alr 1 the Apex Court has again taken the same view.

(10) Thus, an Arbitrator, acting as a Judge, has to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to

the primordial necessity of order in the social life'. therefore, where reasons germane and relevant for the Arbitrator to hold in the manner he did, have been indicated it cannot be stated that the reasons were 'unreasonable'.

(11) In the light of the legal position explained above I will now consider the objections of the respondent-DDA. The respondent /objector-DDA in its objections has assailed the following findings of the learned arbitrator :

(i) Findings in respect of claim No. 3 (ii) Findings in respect of claim No. 5 (iii) Findings in respect of claim No. 8 (iv) Findings in respect of claim No. 11

Regarding (i) above : Claim No. 3 relates to refund to the amount of rebate deducted/availed of by the respondent-DDA. The petitioner/claimant had claimed a sum of Rs. 4855.00 on the ground that the rebate has been availed of by the respondent-DDA without discharging its obligation under the agreed terms of contract. It has been held by the learned Arbitrator that the respondent-DDA has availed of the rebate without fulfilling the accepted terms of contract. It has been held by him that as such the respondent-DDA is not entitled to avail of the rebate. Against the claim of the petitioner/claimant amounting to Rs. 4,855.00 the Arbitrator has allowed a sum of Rs. 3777.00 . In my opinion, the Arbitrator has given sufficient reasons and no fault can be found with the above findings of the learned Arbitrator. Regarding (ii) above:

The petitioner/claimant had claimed a sum of Rs. 2,000.00 on account of the amount withheld from the final bill by the respondent-DDA. From a perusal of the award, it is apparent that the learned Arbitrator has held that though the respondent-DDA in the final bill Ex. R-11 has withheld an amount of Rs. 2000.00 for quality control paras but could not place sufficient evidence to justify its action. It has been held by the learned Arbitrator that there is no reason for keeping this amount with the respondent-DDA after the finalisation of the accounts of the petitioner/ claimant. The Arbitrator has allowed the above claim and has awarded a sum of Rs. 2000.00 in respect of this claim. In my opinion, the above finding of the learned Arbitrator suffers from no legal infirmity and calls for no inference by this Court. Regarding (iii) above: The petitioner/claimant had claimed an amount of Rs. 95,620.00 on account of loss of profit and profitability. Against the above claim

the learned Arbitrator has allowed only a sum of Rs. 15850.00 . In my opinion, the learned Arbitrator has given cogent reasons for arriving at a above figure of Rs. 15,850.00 which he has allowed and no fault can be found with the above said findings of the learned Arbitrator in the present proceedings. Regarding (iv) above: The petitioner/claimant had claimed an amount of Rs. 11,000.00 as costs of the proceedings. The Arbitrator has awarded a sum of Rs. 2,000/- against this claim towards the costs of the proceedings. As per settled law where the arbitration agreement is silent as to costs, the Arbitrator has the discretion to award the costs. No doubt such a discretion has to be exercised judiciously. The Arbitrator while exercising such a discretion must not act capriciously but reasonably. Again law is well settled that the Court will not interfere merely because the Court would have exercised such a discretion differently. The Court will also not enter into presence or absence of reasons given by the Arbitrator for determining the costs. The petitioner/claimant, as ready stated, had claimed an amount of Rs. 11.000.00 towards the costs of the proceedings. Against the above claim, the learned Arbitrator has allowed only a paltry sum of Rs. 2,000.00 which can not be stated as exorbitant or unreasonable by any standards. In my opinion, the above findings of the learned Arbitrator also calls for no interference by this Court.

(12) In view of the above discussion, the objections (is 8589/94), preferred by the respondent/objector-DDA, are disallowed and the award dated the 24th September, 1993, given by the Arbitrator Shri S.C. Kaushal is made a rule of the Court and a decree in terms thereof is passed. The award (Ex. A-1) shall form part of the decree sheet. The respondent-DDA shall make payment of the decretal amount to the petitioner/claimant within 8 weeks from the date of the communication of this order otherwise the decretal amount shall carry interest @ 12 per cent per annum from the date of the decree till payment. It is clarified that no interest shall, however, be payable in case the decretal amount is paid by the respondent-DDA to the petitioner/claimant within the above said period of 8 weeks. Decree sheet be drawn up accordingly and thereafter the file be consigned to record room.