

Dharam Construction Vs. Delhi Development Authority

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Court : Delhi

Decided On : Nov-06-1997

Reported in : 1998IAD(Delhi)572; 1998(44)DRJ478

Judge : Vijender Jain, J.

Appeal No. : IA No. 1557/94 in Suit No. 2140 of 1993

Appellant : Dharam Construction

Respondent : Delhi Development Authority

Advocate for Def. : Ms. Ansuya Salwan, Adv.

Advocate for Pet/Ap. : Mr. G.N. Aggarwal, Adv

Judgement :

ORDER

Vijender Jain, J.

1. Objections have been filed by the respondent/DDA to the award dated 12.4.1994 passed by the Arbitrator. Ms.Ansuya Salwan, learned counsel for the DDA has contended that award suffers from various infirmities. She has contended that the Arbitrator has acted contrary to the terms and conditions of the agreement between the parties. She has also contended that no reasons have been given by the Arbitrator to arrive at the findings on different claims.

2. She has contended that finding of the Arbitrator in so far as claim no.3 is concerned, the said award is contrary to the conditions of the contract. She has contended that the Arbitrator has awarded escalation under Clause 10 cc of the Agreement without considering that no escalation under Clause 10 cc ought to have been awarded in favor of the petitioner, if contract has not been validly extended under Clause 5 and action under Clause 2 of the agreement has been taken. In support of her objection she has cited 1992 (2) ALR 498, Bharat Furnishing Co. v. DDA 1992 (1). ALR 327 and Sudhir Brothers v. DDA. 1995 (2) ALR 437. She has contended. that once the Superintending Engineer has levied compensation on the petitioner for delay in execution of the work, the Arbitrator was not entitled to award the amount under the said claim and no reason whatsoever has been given by the Arbitrator for awarding a sum of Rs.2,70,000/- under this claim.

3. On the other hand, Mr.G.N. Aggarwal, learned counsel appearing for the petitioner has contended that the authorities cited by the learned counsel for the respondent is of no help to her as the compensation levied under clause 2 by the Superintending Engineer does not oust clause 10 cc of the agreement. He has further contended that the Arbitrator has given a definite finding that the work was delayed on account of the breaches on the part of the respondent. He has further contended that the authority cited by counsel for the respondent pertains to clause 10 c which deals with the work during the stipulated period of contract whereas clause 10 cc deals with the extended period of time. He has contended that once the Arbitrator has given a definite finding that the delay was caused on account of the breaches which was the obligation of the respondent contractor would be entitled for compensation under clause 10 cc.

4. I have heard the arguments advanced by learned counsel for the parties on this objection. The Arbitrator has given a definite finding under claim no.3 that work was delayed due to the lapse attributable to the respondent who failed to fulfill their reciprocal promises and, therefore, the Arbitrator came to a finding that the claimant was entitled for reimbursement of the escalation in prices of labour and material under clause 10 cc of the agreement. The Arbitrator relied upon the details which were filed before him at C 51 and C 53. The Arbitrator has also given

a finding that the work could not be completed on account of the lapses on the part of the respondent as they have committed a breach of contract by rescinding the contract. Learned counsel for the respondent could not show any precedent where it has been held that once clause 2 of the contract has been invoked undercompensation has been levied under the said clause by Superintending Engineer, it ousted clause cc of the agreement. therefore, the authorities cited by her are of no help.

5. I do not find any infirmity in the award under claim no.3. The objection in this regard of the respondent are misconceived.

6. The next claim which has been vehemently objected to is claim no.5. This claim was for sum of Rs.10 lakhs. The Arbitrator has awarded the sum of Rs.48,000/- for prolonged establishment etc. at site. Ms.Salwan has contended that the award is contrary to his own finding and, therefore, it deserves to be set aside. Ms.Salwan has contended that once the Arbitrator has made a categorical finding that the claimant did not submit any authenticated proof of the expenditure but still he has awarded a sum of Rs.48,000/-. She has further contended that no reason whatsoever has been given for the award of Rs.48,000/- under this head.

7. I have perused through the award. The claim was on account of expenditure on prolonged establishment, hire charges of centering, shuttering material and tools and plants etc. due to its under-utilisation, idle labour due to non-availability of site/structural drawings, dewatering of sullage water, rectification of work damaged by bulldozer engaged by the respondent and shifting of material from site to site due to change of specifications of some of the drains by the respondent. The Arbitrator further gave a finding that the work was not completed on account of the breach of contract and lapses of the respondent up to 1st of June, 1989 when it was rescinded by the respondent. The Arbitrator further, in detail, discussed and held that the claimants were entitled to the damages under Section 73 of the Indian Contract Act and then discussed as no compensation was payable to the claimant under Clause 10 c for the delay in supply of stipulated material up to six months of stipulated date of completion and came to a conclusion that only a sum of Rs.48,000/- was payable under this head to be awarded instead of a sum of

Rs.10 lakhs which was claimed by the claimant. Thus a total amount of Rs.88,000/- under various heads was awarded to the petitioner.

8. I do not find any infirmity in the award regarding this objection. The objections regarding other claims are also misconceived and same are dismissed. In view of the judgment rendered in *Sudhir Brothers v. DDA*, 1995 (2) ALR 437 (supra), the Arbitrator has no jurisdiction to adjudicate on the counter claim of the respondent. That part of the award is severable from the rest of the award and the same is set aside. Objections of the respondent are dismissed.

9. Award is made rule of the Court. A decree in terms of the award is passed accordingly. The claimant shall be entitled to interest at the rate of 15% per annum from the date of decree till realisation.

10. Petition stands disposed of.

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