

**S.S. Builders Vs. D.D.A.**

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**SooperKanoon Citation :** [sooperkanoon.com/695141](http://sooperkanoon.com/695141)

**Court :** Delhi

**Decided On :** Apr-19-2002

**Reported in :** 2002(2)ARBLR553(Delhi); 98(2002)DLT196; 2002(65)DRJ494

**Judge :** J.D. Kapoor, J.

**Acts :** Arbitration Act - Sections 30 and 33

**Appeal No. :** Suit No. 1779/1994

**Appellant :** S.S. Builders

**Respondent :** D.D.A.

**Advocate for Def. :** Anusuya Salwan, Adv.

**Advocate for Pet/Ap. :** Raman Kapur and; Bhaskar Mishra, Adv

**Disposition :** Suit decreed

**Judgement :**

**J.D. Kapoor, J.**

1. Feeling aggrieved of the rejection of some of the claims of the petitioner by the Arbitrator vide award dated 12.7.1994, objections under Section 30 & 33 of the Arbitration Act have been filed.

2. The Main plank is that the learned Arbitrator by ignoring the letter dated 27.11.1993 sent by respondent-DDA to the petitioner has not only devalued claim no. 1 of the petitioner but has rejected few other claims on the basis of the finding returned by him in respect of claim no. 1 whereas no reasons have been provided while dismissing claim nos. 4 & 7.

3. The relevant facts put briefly are as under:- The petitioner was awarded the contract for construction of 120 MIG Houses in Group-IV and reconstruction of 24 MIG demolished houses along with raft foundation. The time for completion or work was eight months from 10th day of issue of letter of acceptance i.e. 14.11.1991. The petitioners case is that except for minor works amounting to Rs. 1,40,000/- (approx.) the main work could not be started since RCC raft which was not included in the scope of the work of the petitioner was required to be dismantled and the dismantled material including malba were required to be disposed of to start the work of the foundation. The petition requested the respondent to get this work done through some other agency vide letters 16.12.1991, 20.12.1991 or to pay market rate to the petitioner. The respondent themselves observed and worked out the actual cost involved for dismantling of RCC Raft but did not decide the issue. Due to non-decision, stipulated period for completion of work expired. It is also averred that as per the letter dated 22.11.1993, the respondent admitted that 'before calling of the tender, it is directed that for dismantling of the raft foundation fresh tender for these items be called with proper nomenclature of this item at EE/SE level and then should get this raft foundation disposed of.' 4. On the basis of the aforesaid letter which admittedly did not find mention in the finding as to claim no.1, the petition has claimed that the dismantling of RCC and disposal of dismantling material including the Malba was within the scope of the work of the petitioner and thereforee the Arbitrator was in gross error in coming to the conclusion that the petitioner was in breach. By ignoring the above material document, the learned Arbitrator has misconducted himself.

5. It is further contended that no reasons have been furnished by the arbitrator to arrive at the conclusion that the said work did fall within the scope of contracted job and that the arbitrator did not consider Exhibit R-17 which is letter of award of

work of the main building and the estimated cost was raised from Rs. 12,03,008/- to Rs. 12, 46, 917/-. Learned counsel for the petitioner states that reason for increase of estimated cost was due to addition of item of demolition of raft foundation.

6. It is settled law that the Arbitrator misconducts himself if he ignores documents which are material and important for arriving at just and fair decision and go to the root of controversy. Such an award suffers from an error apparent on the face.

7. In *K.P. Poullose v. State of Kerala and Anr.*, : AIR 1975 SC1259 , the supreme court took the view that misconduct is not a connotation of moral lapse. It comprises legal misconduct which is complete if the Arbitrator on the face of the award arrives at an inconsistent conclusion even on his own finding or arrives at a decision by ignoring very material documents which throw abundant light on the controversy to help a just and fair decision. This view was subscribed by Supreme Court in *Dandasi Sahu v. State of Orissa* : 1970 CriLJ1369 .

8. There is no doubt that the Arbitrator is required to adjudicate the disputes between the parties by discussing and dealing with documents and material produced by the parties but it does not mean that he should be expected to refer to each and every document. If reasons provided by the Arbitrator reflect that the substance of documents and the material produced by the parties show that these have been well considered and taken into account while deciding the disputes, the Arbitrator cannot be held guilty of misconduct. The misconduct either on factual and legal matrix is demonstrated if perversity is writ large on the face.

9. Courts do not sit in appeal and therefore are not expected to go into the correctness or otherwise of findings of facts even if erroneous view is taken by the Arbitrator. The award should not be tested on the anvil of the principles for deciding the appeal. The court should always be reluctant to interfere with the findings of the Arbitrator otherwise whole object of concept of alternative dispute resolution will get frustrated, until and unless the Arbitrator ties himself down to such legal proposition which is wholly unsound on incompatible finding of facts.

10. I have perused the findings of the Arbitrator with regard to claim no. 1.

11. Admittedly there is no reference to the letter dated 22.11.1993 wherein respondent-DDA directed that for dismantling of the raft foundation fresh tender for these items be called with proper nomenclature of this item at EE/SE level and then should get this raft foundation disposed of but the observations of the Arbitrator show that he has dealt with all the assertions of the petitioner in this regard. For instance, first assertion was that work done under clause 12 with regard to dismantling of the foundation was outside the purview of the terms and conditions of the agreement and hence are entitled to be paid at market rates. However this contention did not find favor with the Arbitrator who held that direction to do the work in question having been established to be strictly in accordance with the terms & conditions of the agreement, the claimants are entitled to the payment only in accordance with the provisions of the said agreement. It was on account of this that the Arbitrator held that refusal on the part of the petitioner to do the next part of the operation of 'Dismantling RCC raft' at the rates as per the terms of the agreement under the plea that the same were totally unworkable was held to be void.

12. All these findings are findings of facts. The Arbitrator was to remain in the arena of the terms of the agreement. It was only due to the inability of the petitioner to do dismantling RCC raft on the plea that same was totally unworkable that the respondent has to issue letter dated 22.11.1983 calling for fresh tender for these items for dismantling of RCC foundation. Thus to say that the Arbitrator has ignored the letter dated 22.11.1983 is not correct as he has dealt with this aspect of the matter by holding the plea of the petitioner as void. Out of claim of Rs. 1,40,093/- the Arbitrator awarded Rs. 56,439/-. It is not the function of the court to find faults with such findings of the Arbitrator or pick holes.

13. As regards claim nos. 2, 3, & 5, the Arbitrator rejected them because of having held the petitioner guilty of committing the breach of terms of the agreement. I do not find any error in the findings of the Arbitrator as these claims arose and were off shots of the result of the findings of the Arbitrator with regard to claim no. 1. same is the case with remaining claims. All these claims pertain to findings of facts and of factual aspect and are based on material and the evidence before the Arbitrator.

14. Error with regard to counter claim no.1 is manifest in spite of the Arbitrator having observed that amount has been levied by the competent authority though it was an excepted matter and was outside the purview of arbitration clause 25, still awarded Rs. 1, 20, 301 in favor of respondent-DDA. This counter claim is wholly unsustainable and the hereby set aside.

I do not find any fault with regard to remaining claims. Award dated 12.7.1994 is made rule of the court to the above extent. Suit is decreed for Rs. 99952/-(Rs. 1,56,391/- (-) Rs. 56439/-) along with interest @ 12% per annum from the date of filing of award till its realisation.

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