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Bharat Engineering Enterprises Vs. Delhi Development Authority and anr.

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Court : Delhi

Decided On : May-09-2002

Reported in : 2002VIIAD(Delhi)182; 2002(3)ARBLR410(Delhi); 99(2002)DLT48

Judge : J.D. Kapoor, J.

Acts : [Arbitration Act, 1940](#) - Sections 30 and 33

Appeal No. : Suit No. 1922A/1994 and is 892/1995

Appellant : Bharat Engineering Enterprises

Respondent : Delhi Development Authority and anr.

Advocate for Def. : K.K. Buchar, Adv.

Advocate for Pet/Ap. : Sandeep Sharma, Adv

Disposition : Suit decreed

Judgement :

J.D. Kapoor, J.

1. On being noticed as to the filing of award respondent-DDA has filed objections under Sections 30 & 33 of the [Arbitration Act, 1940](#) by way of I.A. 892/1995.

2. Though respondent has assailed each and every claim awarded by the Arbitrator but the substantial objections are mainly with regard to claim No. 1(c), claim No. 2 and claim No. 11 as award in respect of remaining claims is based upon material and evidence produced by the parties and is therefore on factual matrix.

3. It is a settled law that findings on facts returned by the Arbitrator should not be disturbed until and unless the Arbitrator is alleged to have ignored the material document or perversity is writ large and there is an error of fact and law apparent on the face. The court does not sit in appeal and as such should refrain from reassessing or re-appreciating the evidence and the material before the Arbitrator.

4. The scope of challenge to the award is very limited. The award can be set aside if the Arbitrator either traverses beyond the terms of the agreement or gives his own meaning to the terms. Similarly the Arbitrator is not expected to give his findings as to the plea of coercion or pressure put up on the claimant for agreeing to a particular term or condition. Once the parties enter into a written agreement they are bound by the terms thereof and so is the Arbitrator. The Arbitrator is the creature of an agreement and is not over it.

5. In the instant case, the finding of the Arbitrator with regard to claim No. 1(c) is wholly unsound as he was not expected to consider the plea of the claimant that they were being pressurised to reduce the rates for agreement item No. 3(i) and (ii) and despite their unwillingness conveyed in letters dated 11.2.1988 in response to respondent's letter dated 8.1.1988, they were called by Superintending Engineer and forced to give letter dated 15.2.1988 for reduction in rates of excess quantities beyond stipulated in the agreement item Nos. 3(i) and (ii). The Arbitrator was also precluded from observing that they had also informed on 16.3.1988 that they were working under protest on account of reduction in rates after award of work and hence withdrew letter dated 15.2.1988 before work was actually started.

6. The observations of the Arbitrator that circumstances of the case clearly indicate that claimants were persuaded against their will to reduce the rates of agreement item No. 3(i) and 9i) by Rs. 10/- for the quantities in excess of stipulated quantities were uncalled for. Even if the claimants were working under

pressure or protest they were still bound by the terms agreed in writing. Merely because the claimant during negotiations reduced the original rate given by them does not mean that they would be entitled to back out from the agreement in respect of aforesaid items. He was bound by agreed rate may be by way of persuasion Contractor was not bound or expected to commence the work under protest but is barred from relegating itself to pre-agreement position.

7. Agreement itself means agreement between the parties and is therefore a bilateral act and not a unilateral act. The Arbitrator was precluded from looking into the circumstances under which the claimant was persuaded to reduce the rates in aspect of item Nos. 3(i) & (ii) by Rs. 10/-. Once having agreed to reduce rate by Rs. 10/- may at the instance or under pressure of respondent it was no more open to the petitioner/claimant to back out and write letter to the respondent that they were working under protest. Once having agreed to reduce rate, the claimants had their boat for all times to come.

8. The Arbitrator was required to give the award only on the basis of letter which culminated in the agreement between the parties and no other letter sent by the claimant including the letter that they are withdrawing their earlier rate or showing their resistance that they were working under protest or pressure. It is not the function of the Arbitrator to go into the circumstances under which the claimant had agreed to reduced rates. In this regard, Arbitrator has no doubt travelled beyond the terms of the agreement ad entered into the arena which did not belong to him. The award in this regard is unsustainable and is hereby set aside.

9. As regards claim No. 2, the only objection of the respondent is that the Arbitrator did not take into consideration the fact that Clauses 7 & 8 of the agreement required the claimant to submit monthly and final bills which they failed to do so. It was only on submissions of such bills that they were entitled to rebate. The observation of the Arbitrator that it was obligatory for the respondent to have prepared and paid the bills within stipulated time is again a finding of fact which does not suffer from any infirmity as despite repeated directions, the respondent failed to file statement of R/A bills whereas claimant filed details in their Exhibit C-32/2 according to which bills were paid on 31.10.87, 13.6.88, 14.7.88, 12.8.88,

31.12.88 and 7.11.89. The Arbitrator was within his right to give such a finding. The court cannot go into the reasoning of the Arbitrator even if such a reason is based upon conjectures or surmises or is erroneous.

10. The objection in this regard is groundless and is without merit.

11. As regard cost imposed by the Arbitrator para 8 of the First Schedule of [Arbitration Act, 1940](#) empowers the Arbitrator to award cost. Wherever an aggrieved party is compelled to seek arbitration for some genuine claims and incurs expenses, said party is entitled for cost from a guilty party. I do not see any reason to allow this objection.

12. As a consequence, award is made rule of the court in respect of all claims except claim No. 1(c). Suit is decreed for the amount awarded against these claims Along with interest @ 14% p.a.from the date of decree till its realisation.

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