

Surinder Kumar Gupta Vs. Delhi Development Authority and anr.

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Court : Delhi

Decided On : Mar-10-1998

Reported in : 1998IIAD(Delhi)769; AIR1998Delhi356; 72(1998)DLT398; 1998(45)DRJ206; 1998(2)RLR88

Judge : C.M. Nayar, J.

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

Appeal No. : Suit No. 2129A/95 & I.A.No. 2758/96

Appellant : Surinder Kumar Gupta

Respondent : Delhi Development Authority and anr.

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

Advocate for Pet/Ap. : Mr. Girish Aggarwal, Adv

Judgement :

ORDER

C.M. Nayar, J.

1. The present judgment will dispose of the objections filed by the respondent-D.D.A. under Sections 30 and 33 of the Indian [Arbitration Act, 1940](#) to the Award dated 1st September, 1995. The respondent awarded work of 'Development of

Land in CBD area at Shahdara SH:Construction of Roads and Paths'. The disputes arose between the parties and in term of clause 25 of the Agreement dated 22nd January, 1982 executed between the parties, Engineer Member Delhi Development Authority vide his letter No.EM2(17)91/Arbn./5139-43 dated 9th April, 1991 referred the same to the sole arbitration of Shri A.P.Paracer. Clause 25 of the Agreement may be reproduced as follows:-

'CLAUSE 25.

Settlement of disputes by Arbitration

Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, designs drawings and instruction herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other questions claim, right matter or thing whatsoever, in any way arising out of or relating to the contract designs drawings, specifications, estimates, instruction, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the person appointed by the Engineer Member, Delhi Development Authority at the time of dispute. It will be no objection to any such appointment that the arbitrator so appointed is a Delhi Development Authority employee that he had to deal with the matters to which the contract relates and that in the course of his duties as Delhi Development Authority employees he had expressed view on all or any of the matters in dispute of difference. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason, such Engineer Member Delhi Development Authority as aforesaid at the time of such transfer, vacation of office or inability to act shall appoint another person to act as arbitrator in accordance with the terms of the contract. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor it is also a term of this contract that no person other than a person appointed by such Engineer Member, Delhi Development Authority as aforesaid should act as arbitrator and, if for any reason that is not possible, the matter is not to be referred to arbitration at all. In all cases

where the amount of the claim in dispute is Rs. 50,000/-(Rupees Fifty Thousand) and above, the arbitrator will give reason for the award.

Subject as aforesaid the provisions of the [Arbitration Act, 1940](#) or any statutory modification or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause. It is a term of the contract that the party invoking arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amount or amounts claimed in respect of each such dispute.

It is also a term of the contract that if the contractor(s) does/do not make any demand for arbitration in respect of any claim(s) in writing within 90 days of receiving the intimation from the Engineer-in-Charge that the bill is ready for payment, the claim(s) of the contractor(s) will be deemed to have been waived and absolutely barred and the Delhi Development Authority shall be discharged and released of all liabilities under the contract in respect of those claims.'

2. The respondent-DDA raised preliminary objections which are referred to in the Award and read as follows:-

i. The Claims were barred by limitation since the claims have been preferred 8-1/2 years after the completion of work as admitted by the Claimants.

ii. The Claims were never submitted by the Claimants and repudiated by the Respondents and consequently no dispute existed for decision by the Arbitrator in terms of clause 25 of the Agreement.

iii. Since the claims were never submitted by the Claimants within the period of limitation, these stood waived by the Claimants by their own conduct and therefore, they were estopped from raising these claims long after the period of limitation was over.

iv. Claims no.5 to 9 were not covered by the terms of the contract and hence were outside the jurisdiction of the Arbitrator.

v. Clause 7 of the Agreement makes a mandatory provision that the contractor 'shall' submit the Final Bill within one month of the completion of work. The Claimants in this case never submitted their final bill including the claims which they are now seeking to agitate.'

The arbitrator rejected the objections. The operative portion of the award reads as follows:

'Clause 25 clearly lays down that in case the contractor does not demand arbitration in respect of any claims within 90 days of the intimation from the Engineer-in-charge that the (final) bill is ready for payment, the contractor will be deemed to have waived the claims. Since the bill was never ready and no intimation was ever given to the Claimants the limitation of 90 days would not apply here. Acceptance of Respondents' contentions would amount to giving them undue benefit for their own lapses which cannot be allowed.'

3. The learned counsel for the respondent has not not been able to cite any cogent grounds to substantiate that the arbitrator has wrongly rejected the preliminary objections. The learned arbitrator examined the pleas of the parties and clearly held that clause 25 of the agreement does not require repudiation of a claim before it is recognised. The very fact of non payment of the amount due gives rise to a claim and the claimant cannot be barred on the basis of the preliminary objections which have been raised by the respondent Authority. It is further noticed that the respondent Authority failed to declare the work to be completed at the prior time and did not finalise the claimant's bill. therefore, the plea of limitation is of no consequence. There is no infirmity and illegality in the detailed findings recorded by the learned arbitrator while rejecting the preliminary objections. The same are, accordingly, upheld. The following claims were then examined by the arbitrator and they may be reproduced as below:-

'CLAIM NO.1: Claimants claim Rs.2,45,000.00 on account of final bill for the up-to-date work done.

CLAIM NO.2: Claimants claim Rs.52,500.00 on account of security deposit.

CLAIM NO.3: Claimants claim Rs.40,000.00 on account of reimbursement under clause 10(C) of the Agreement.

CLAIM NO.4: Claimants claim Rs.4400 up to Jan.1991 and, there after, Rs.550.00 per year for keeping the bank guarantee alive after it was due for release until actually released.

CLAIM NO.5: Claimants claim Rs.9000.00 on account of damages for executing the work in the extended period.

CLAIM NO.6: Claimants claim Rs.2,81,200.00 on account of loss of profit due to the blockade of huge amount.

CLAIM NO.7: Claimants claim pendentelite and future interest on the amounts with held @ 24.60% per annum.

CLAIM NO.8: Claimants claim Rs.7,500.00 on account of cost of proceedings.

4. In respect of Claim No.1 the learned arbitrator referred to the evidence and documents on record and on appreciation of the same arrived at the conclusion that the claimant was entitled to a sum of Rs.2,23,036/- on account of the final bill for the work executed by the claimant.

5. Claim No.2 related to the refund of Rs.52,500/- on account of security deposit. During the hearing the learned counsel for the respondent Authority has contended that this amount was released to the claimant on 12th January, 1982. The same is not seriously contested by learned counsel for the claimant except to the extent that the respondent Authority may be directed to release the bank guarantee for the amount. The respondents shall release the bank guarantee but the award for a sum of Rs.52,441/- is set aside as the amount has already been released in favor of the claim-ant.

6. Similarly, no fault can be found with the findings recorded by the arbitrator in respect of Claim Nos. 3 and 5. No amounts were awarded in respect of Claim Nos. 4 and 6 by the learned arbitrator.

7. The learned counsel for the respondent Authority, however, has vehemently contended that the arbitrator was not within his jurisdiction to award pre-reference interest with effect from 1st May, 1983. Reference is made to the provisions of Section 3 of the Interest Act, 1978. The relevant portion reads as under:-

'3. Power of Court to allow interest.-

(1) Any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say,-

(a)

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings.'

8. The petitioner-claimant in this case, it is argued, did not claim any pre-reference interest nor sent any written notice. The arbitrator was, therefore, not empowered to grant the same. Reliance is placed on the judgment of the Supreme Court as reported in Secretary, Irrigation Department, Government of Orissa and others v. G.C.Roy : [1991]3SCR417 . Paragraph 45 has been referred which reads as follows:-

'45. Where the agreement between the parties does not prohibit grant of interest and where a party claims interest and that dispute (along with the claim for principal amount or independently) is referred to the arbitrator, he shall have the power to award interest pendente lite. This is for the reason that in such a case it must be presumed that interest was an implied term of the agreement between the parties and therefore when the parties refer all their disputes or refer the dispute as to interest as such to the arbitrator, he shall have the power to award interest.

This does not mean that in every case the arbitrator should necessarily award interest pendente lite. It is a matter within his discretion to be exercised in the light of all the facts and circumstances of the case, keeping the ends of justice in view.'

9. The law is well settled in the case as reported in *State of Orissa v. B.N. Agarwalla* : [1997]1SCR704 , that the arbitrator is entitled to grant pre-reference, pendente lite and future interest. In the present case, however, the claimant did not claim any pre-reference interest in proceedings before the learned arbitrator and only claimed pendente lite and future interest on the amounts. therefore, the arbitrator in the present facts and circumstances could not have granted interest with effect from 1st May, 1983. The claimant shall, however, be entitled to interest from the date the arbitrator entered upon the reference by sending notice to the claimant and respondent on 26th April, 1991 to the date of Award at the rate of 15% p.a. on the amounts awarded which will exclude the amount of Rs.52,441/- awarded in respect of Claim No.2 which is set aside as this amount has already been disbursed to the claimant.

10. For the aforesaid reasons the objections of the respondent-Authority are dismissed except that the claimant shall not be entitled to any amounts awarded under Claim No.2 and the respondent- Authority shall release the bank guarantee within four weeks. Save and except to the modification as above, the Award dated 1st September, 1995 is made Rule of the Court and decree in terms thereof is passed. The claimant shall also be entitled to further interest at the rate of 15% p.a. from the date of decree till realisation. There will be no order as to costs.

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