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H.C. Builders Vs. Union of India

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Court : Delhi

Decided On : Feb-09-2000

Reported in : 2000IIAD(Delhi)765; 84(2000)DLT222; 2000(53)DRJ370

Judge : Manmohan Sarin, J.

Acts : Indian Arbitration Act, 1940 - Sections 30 and 33

Appeal No. : Suit No. 1453/93 and IA. 345/93

Appellant : H.C. Builders

Respondent : Union of India

Advocate for Def. : Mr. A.K. Bhardwaj, Adv.

Advocate for Pet/Ap. : Mr. H.C. Sukhija, Adv

Judgement :
ORDER

Manmohan Sarin, J.

1. By this order, I would be disposing of the suit and the objections preferred by the respondent Union of India by way of IA.345/93 under Sections 30 and 33 of the Indian Arbitration Act, 1940.

2. Petitioner had been awarded the contract for construction of the laboratory building for the Institute of Pathology at the Safdarjung Hospital, New Delhi and Agreement No.7/EE/CD.IX/85-86 was entered into. Clause 25 of the said agreement provided for reference of disputes to the arbitrator. The arbitrator was required to give a reasoned award.

3. Disputes arose between the parties and were referred to the sole arbitration of Shri S.S. Dudeja, nominated by the respondent Union of India in terms of Clause 25 of the Agreement. The learned arbitrator has made and published his Award bearing No. ARB.SST.438 dated 24th of May, 1993.

4. The learned arbitrator filed the Award in Court on 4.4.1994. Notice of the filing of the Award was issued on 17.5.1994. Petitioner accepted notice of the filing of the Award on the said date itself. Respondent Union of India was served with the notice of filing of the Award on 14.7.1994. The objections in question were filed on 3.1.1994.

5. One of the objections taken by the petitioner is that respondents had notice of making and publication of the Award on 24.5.1993 and it was in pursuance of the same that they filed objections on 3.1.1994. These, the petitioner contends, were barred by limitation. Respondent Union of India, on the other hand, arrested that since the respondents were served with the notice of filing of the Award on 14.7.1994, the objections to the Award could be filed within 30 days thereof and, thereforee, the objections filed earlier cannot be disregarded on this account. Learned counsel for the petitioner has not pressed this objection and, accordingly, the objections were taken up for disposal on merits.

6. Learned counsel for the respondent Union of India, during the course of his submissions, has confined his objections to the Award in respect of Claim Nos.1, 5 and 10.

7. The learned arbitrator had directed refund of Rs. 35,000/- to the petitioner out of a total rebate of Rs. 65,377/- recovered by the respondents. It may be noted that petitioner had offered 1% rebate to the respondents in the event of regular monthly payments being made in case the gross amount of work done in the month

exceeded Rs. 25,0000/- . Learned counsel for the respondents contended that payments had been deferred at the request of the petitioner and, thereforee, petitioner was not entitled to any refund of rebate, as directed by the learned arbitrator. Further, it was contended, that the sum of Rs.35,000/- had been fixed without any basis. The learned arbitrator, on consideration of the evidence, has returned the finding that there were defaults in making monthly payments by the respondents and strictly under the agreement clause, the respondents were not entitled to recover any rebate. However, since a certain number of monthly bills had been paid on time, he directed refund of part of the rebate recovered, i.e. Rs. 35,000/- only, which he found to be just and fair, based on the factual position. The arbitrator has indicated his thought process. He is not required to give the exact computation. The finding of fact that there were defaults in monthly payments by the respondents is not assailable in these objections. There is no error apparent on the fact of the record in respect of this claim. The objection to the Award on this account is without merit.

8. Learned counsel for the respondents next assailed the Award in respect of Claim No. 5 for damages for idle shuttering and Claim No.10 on account of loss and damage due to idle labour establishment, T & P due to the prolongation of the contract period. Learned counsel for the respondents submitted that the arbitrator had failed to appreciate the evidence and had erred in ignoring the certificate, R/26, by which petitioner had certified that they had not suffered any loss and which amounted to waiver of their claims. It was urged that petitioner was estopped from claiming any amount on account of the certificate, R/26, especially since the respondents altered their position and granted extension of time without levy of compensation. The Award in respect of both the claims has been perused. The learned arbitrator, after consideration of the evidence before him, has reached the conclusion that though the stipulated date of completion of work was 11.5.1986, the work was prolonged and was finally completed on 27.9.1989 on account of hindrances and breaches by the respondents. Petitioner has filed the details and evidence of the losses suffered by it and duly notified the respondents that due to the delayed laying of the electrical conduits the shuttering fixed remained idle.

9. As regards the certificate, R/26, the learned arbitrator has returned the finding that the said certificate was issued 'without free consent' and as such, could not come in the way of the petitioner being granted compensation for the losses suffered. This again relates to appraisal of evidence and the finding of fact reached, which are exclusively within the domain of the arbitrator and do not warrant interference in the exercise of jurisdiction under Sections 30 & 33 of the Indian Arbitration Act.

10. A perusal of the Award shows that the arbitrator has duly considered the record and evidence produced before him and reached his conclusions and assessed and determined what he found to be just and fair compensation. The arbitrator is a technical man and nominated by the respondents themselves. The objections filed by the respondent Union of India have no merit and are dismissed.

11. The Award dated 24.5.1993 is made Rule of the Court. Decree in terms of the Award shall follow.

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