

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Anurodh Constructions Vs. Delhi Development Authority and anr.

Anurodh Constructions Vs. Delhi Development Authority and anr.

SooperKanoon Citation : sooperkanoon.com/703385

Court : Delhi

Decided On : Aug-18-2005

Reported in : 2005(84)DRJ314

Judge : B.C. Patel, C.J. and; Sanjay Kishan Kaul, J.

Acts : [Arbitration Act, 1940](#) - Sections 30 and 33; Contract Act - Sections 73

Appeal No. : CS (OS) No. 693A/1995

Appellant : Anurodh Constructions

Respondent : Delhi Development Authority and anr.

Advocate for Def. : Monica Sharma, Adv.

Advocate for Pet/Ap. : Sandeep Sharma, Adv

Disposition : Application dismissed

Judgement :

Sanjay Kishan Kaul, J.

IA No. 3236/1998 IN CS (OS) No. 693A/1995

This is an application for issuance of notice for filing of the Award, which has also become infructuous and is, thus, disposed of.

1. These objections are filed by DDA under Sections 30 and 33 of the Indian [Arbitration Act, 1940](#) in respect to the Award made and published on 19.02.1995 by Shir S. Nagarajan, Sole Arbitrator. The disputes relate to the Agreement bearing No. 37/EE/UVDI/85-86 in respect of the construction of EWS Housing of Category I at M.B. Road near Village Lado Sarai. In terms of the Agreement, the stipulated date for starting the work was 26.09.1985 and for completion of work was 25.03.1986. Thus, the period of six months was provided for the completion of work. The actual date of completion of work is 21.06.1987.

2. The disputes arose between the parties arising from the claims made by the petitioner / claimant and the Engineering Member of DDA appointed the Sole Arbitrator on 30.04.1991, who entered upon reference on 19.08.1991 and made the Award on 19.02.1995. The appointment was made in terms of the arbitration clause No. 25.

3. The claimant has been held entitled to various amounts under the different claims, but it is not necessary to deal with all the claimants since the respondent / objector has filed objections in respect of four claims ?' claims No. 1, 4, 6 and 14.

4. Claim No. 1 was made by the petitioner / claimant for an amount of Rs.9,50,000/- on account of increase of cost of execution and escalation in material and transportation during the prolongation of contract. This claim was made with reference to clause 10(c) / clause 10(cc). According to the claimant, there was a provision for increase in terms of clause 10(c) by reason of statutory increase in wages issued by the Delhi Administration. There was a further plea that the work had got delayed undoubtedly beyond the contract period due to the default of the respondent and an increase of 60% over the agreement rates was asked for in terms of the letter dated 02.04.1986 of the petitioner (Exhibit C-7A). This claim was denied by the respondent on the ground that there was no such contractual obligation to pay the amount and only the period for execution of the contract would be extended. It was further alleged that even notices had been issued to the petitioner for non-completion of the work.

5. The Arbitrator has considered this claim in two parts. The first part arises from clause 10(c) for the work done during the contract period due to statutory increase in minimum labour wages ordered by the Delhi Administration, while the second part arises on account of increase in cost of work executed in prolonged period of 15 months against the original envisaged period of 6 months.

6. The respondent has alleged that the Arbitrator misconducted himself as no notice was taken of the judgment in the case of Ishwar Singh & Sons v. DDA 1994 II AD (Delhi) 477 as also by reason of the fact that there was no provision of clause 10 of the Act for compensation of delay.

7. In respect of the aforesaid, learned counsel for the petitioner has drawn attention of the Court to a subsequent judgment of learned Single Judge of this Court in Shri Sunder Lal Khatri v. Delhi Development Authority 1994 (2) Arb.LR 479. Incidentally, this judgment is also by the same learned Judge, who passed the judgment in Ishwar Singh & Sons's supra (case). The terms and conditions of the contract are similar and General Clause'1 of the Agreement and its effect was considered since a similar plea was raised in the said matter also about there being no right to get any amount on account of such delay. The relevant clause is as under :-

'The contractor must get acquainted with the proposed site for the works and study specifications and conditions carefully before tendering. The work shall be executed as per programme approved by the Engineer-in-charge. If part of the site is not available for any reason or there is some unavoidable delay in supply of materials stipulated by the Departments, the programme of construction shall be modified accordingly and the contractor shall have no claim for any extras or compensation on this account.'

8. The arguments of DDA were negated in para 6 of the judgment where a similar plea was raised that if the site was not available or there was some delay in supply of materials stipulated by the Department, the contractor shall have no claim for extras / compensation on this account. Learned Judge took note of the judgment in Ishwar Singh & Sons's supra (case) and distinguished the same. Learned Judge held that the Arbitrator had awarded damages on account of the loss suffered by

the contractor on account of non-completion of the project as the delay was attributable to DDA. Since the sum was awarded on account of the fact that the duration of work was prolonged because of non-fulfillment of the obligations on the part of DDA, it was held that the learned Arbitrator had rightly taken into account the letter written by the Executive Engineer of DDA inter alia mentioning the reasons for delay not attributable to the contractor. Ishwar Singh & Sons's supra (case) was distinguished on the ground that all that had been observed was that once the parties agree to a specific clause in the contract that they will not claim any damages and the damages are awarded by the Arbitrator, then the Arbitrator would be misconducting the proceedings and the Award made, if any, would be without jurisdiction.

9. Learned counsel for the respondent / DDA also referred to the judgment of learned Single Judge of this Court in M/s. Narain Das R. Israni v. Delhi Development Authority 1996 (1) Arb.LR 602, which dealt with the similar issue. In the contract in question, the completion period was 6 months and clause 10(cc) was considered. In para 3 of the judgment, the issue arising from clause 10(c) and clause 10(cc) was considered whereby clause 10(c) provided for an increase in wages of labour as the result of a notification issued by the Delhi Administration, while clause 10(cc) related to escalation not only for labour but also due to increase in price of building material. However, what is relevant is that the Arbitrator was held to be well within his rights to award the damages even de hors clause 10(cc) since such amounts could be awarded under Section 73 of the Contract Act. Clause 10(cc) was used by the Arbitrator merely to help him in working out the amount of damages. The position is no different in the present case where the contention raised by the objector / respondent is that clause 10(cc) would not be applicable and yet the basis has been used for calculation of the damages. The damages are liable to be awarded once it is found that it is the respondent who is responsible for the delay and such damages can be awarded under Section 73 of the Contract Act. Use of clause 10(cc), which is utilised in other contracts by DDA itself, can be said to be a good parameter and methodology to calculate such damages and the same cannot be faulted.

10. The aforesaid clauses have also been discussed in the Division Bench judgment of this Court in M.L. Mahajan v. Delhi Development Authority and Anr., : 99(2002)DLT512 (DB). This case also dealt with the factual position where the arbitration clause 25 was present as also clause 10(c). Clause 10(cc) was not incorporated in the standard form of contract as in the present case. Suffice to say that the Division Bench found that clause 10(c) was not an absolute bar on the claim put forward by the contractor. It was held that clause 10 deals with only stores supplied by the DDA as is evident from the caption of the clause and the contractor cannot insist that the entire supply must be completed before commencing its obligations under the contract. It was held on reading of the said clause that it reflected the understanding between the parties limited to the period indicated and once the maximum period had lapsed, the obligation under the clause would not remain operative and these factors would be relevant while construing clause 10(c). Clause 10(c) was held not to exclude or prohibit claims from increase in prices of material, wages or labour after the stipulated period within which the work is to be completed as otherwise the opening words 'if during the progress of the works ...' would be rendered otiose. Thus, clause 10(c) was held not to bar the claim for escalation in prices once the contract is stretched beyond the stipulated period of time.

11. In view of these authoritative pronouncements, the objections to claim No. 1 of the objector / respondent can hardly be sustained and are rejected and the amounts awarded by the Arbitrator under the two heads of Rs.26,976/- and Rs.2,63,110/- is upheld.

12. Claim No. 4 is for Rs.4,25,000/- for expenditure involved on overheads / establishments beyond stipulated time and, if so, the extent of the same. The claim is on the expenses incurred for supervisor, watchman, etc., which was an additional burden not provided for in the tender. The petitioner alleged that the work was not taken over even after completion of work and the process of handing over took almost 3 1/2 years till which time they had to maintain the establishments. The claim was resisted by the respondent on the ground that it was hypothetical and that the claimants did not complete the work within time. Once the Arbitrator found that the delay in work arose on account of the lapses

and defaults on the part of the respondent as in the case of claim No. 1, the amount in respect of this was quantified at Rs.2,08,800/-.

13. It has to be kept in mind that this Court in respect of the objections does not sit as an appellate authority, but only sees whether there is any misconduct on the part of the Arbitrator. In view of this, learned counsel for the respondent sought to contend that there was no material before the Arbitrator and the claim was based on assumptions. However, learned counsel for the petitioner referred to the material produced before the Arbitrator where a large number of vouchers in support of this claim are available. Thus, the contention of the respondent is to be rejected on the face of it.

14. Claim No. 6 is for Rs.2,16,324/- on account of amounts withheld, reduction of rates, etc. without any valid reason. The claim has been awarded by the Arbitrator on the ground that the respondent should have properly issued notices under the Agreement to the contractor asking them to rectify the defects and it is only in case of their failure could the defects be got rectified through other agencies at their cost after issuing proper notice. Mere withholding of the amount would not be proper. A specific query was posed to learned counsel for the respondent as to whether any such notice was issued. Learned counsel for the respondent fairly states that no such notice has been brought on record. In view thereof, there is no substance in the objections to this claim.

15. The last claim objected to is claim No. 14 in respect of the grant of interest. Learned counsel for the respondent has rightly referred to the Division Bench of this Court in *EM & EM Associates v. Delhi Development Authority and Anr.* : AIR2003 Delhi128 where it was held that it was not proper for the Court to modify the rate of interest which the Arbitrator has granted in exercise of discretion vested in him. Rate of interest @ 18% per annum had been granted in that case. In the present case, interest @ 12% per annum only has been granted and, thus, there is hardly any occasion to interfere with the Award of interest.

16. It may, however, be noticed that the interest has been granted for past, pendente lite and till date of decree and the future interest is to be considered by this Court. The objections to this claim also, thus, must fail.

17. In view of the aforesaid, the application is without any merits and the same is dismissed.

CS (OS) No. 693A/95

The Award is made Rule of the Court in view of dismissal of objections of respondent / DDA. The plaintiff shall be entitled to future interest from the date of decree till the date of payment @ 9% per annum subject to the condition that the amount is paid within a period of three months from the date of decree and interest shall be 12% for the period beyond the period of three months. Decree-sheet be drawn up accordingly.

Suit stands disposed of.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com