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Court : Delhi

Decided On : Oct-29-2004

Reported in : 115(2004)DLT157

Judge : Manmohan Sarin, J.

Acts : [Arbitration Act, 1940](#) - Sections 14, 17, 29, 30 and 33

Appeal No. : CS(OS) 1010/1994

Appellant : Bedi Construction Co.

Respondent : Delhi Development Authority

Advocate for Def. : Anusuya Salwan, Adv.

Advocate for Pet/Ap. : Raman Kapur, Adv

Disposition : Petition dismissed

Judgement :

Manmohan Sarin, J.

1. Petitioner M/s Bedi Construction Co. filed the above petition under sections 14 and 17 of the [Arbitration Act, 1940](#) which was registered as CS(OS) 1010/1994. Petitioner sought a direction for filing of the award dated 19.4.1994, by the Arbitrator and for making the same rule of the court. Interest @ 18% p.a on the

awarded amount till the date of decree is also sought. Objections to the award were filed vide I.A 10358/1994 under Section 30 of the [Arbitration Act, 1940](#).

2. By this judgment objections and suit are being decided. Respondent by the objections filed under Section 30 and 33 of the Act assailed the award made in respect of claim nos. 1,2,3,6,7 and 16. Learned counsel for the respondent during the course of arguments laid emphasis on claim nos. 7 and 16, while for the rest of claims, it was requested that objections as filed, may be considered.

3. The impugned award dated 19.4.1994 was in respect of construction of 480 MIG, 480 LIG Houses at Trilok Puri, Pocket-4 SH: Construction of 96 MIG, 96 LIG Houses at Trilok Puri, Pocket-4 and Pocket-5. Award has been made by Shri R.J.Bakhru, Retd. Chief Engineer, CPWD who was appointed as the sole Arbitrator by the Engineer Member, DDA in terms of clause 25.

4. The award in question has been perused. Arbitral record has also been seen. By the said award, the Arbitrator directed the respondent to pay to the claimants/petitioner a sum of Rs. 4,23,953/-. In addition, he directed respondent to pay simple interest @ 14% per annum on Rs. 4,08,953/- w.e.f 1.10.1984 to the date of decree or payment whichever is earlier.

5. Ms.Anusuya Salwan in opposing claim No. 7 submitted that the Arbitrator had failed to notice that claim for escalation under Clause 10(c), had not been made in accordance with provisions of the agreement clause. Petitioner it was alleged had failed to maintain books of accounts showing the payment of increased amount. It was the petitioner's obligation to get these inspected by Engineer in charge. It was alleged that petitioner did not at the time of invocation of arbitration raise the dispute with regard to its claim of statutory increase in the labour rates. Hence the claim could not be verified. It was urged that the Arbitrator had without any basis or verification from the record, awarded a sum of Rs. 32,404/- on this account. Ms.Sawan urged that the perusal of the award would show that respondent-DDA had already paid a sum of Rs. 1,22,886.79 on account of statutory increase under clause 10(c) for the work done during the stipulated period of completion of work. Besides, she submitted that there is a separate claim for escalation in price of material during the extended period i.e claim No. 16.

6. The objection of the respondent in this regard is without merit. The award of Claim No. 7 concerns statutory escalation in labour rates during the extended period which would not be covered by claim 10(c) for the work done during the stipulated period. The Arbitrator has rightly rejected the contention of the respondent that the claim was raised not during the process of work, but only during arbitration. The Arbitrator had noted that the claim had been raised vide letters dated 26.3.1982, 27.9.982 and 11.11.1982 which were prior to invocation of arbitration. Perusal of the arbitral award and the record shows that the petitioner had computed its claim for statutory increase in wages of skilled labour and non technical supervisory staff in terms of the notification. The claim amount was computed by taking labour component on the quantum of work as per claim during the extended period. In my view, the Arbitrator was well within his jurisdiction being an expert and a technical person to assess the amount of claim payable under clause 10(c) by taking into account the statutory increase in rates as per notification and calculating the labour component as per standard norms for quantum of work done during the extended period. The award in respect of claim No. 7 does not suffer from any error apparent on the face of the record or any infirmity which could constitute a ground under section 30 and 33 of the Act.

7. Coming now to Claim No. 17, learned counsel submitted that said claim was towards loss suffered due to increase in price of materials after stipulated date of completion. The date of start was 28.3.1981 with stipulated date of completion of work was 27.3.1982 i.e one year period. However, work was completed on 5.3.1984. The Arbitrator relying on the hindrance register as maintained by respondent reached the finding that delay in completion of work was on account of various defaults, lapses o part of respondent. These inter alias were delay in issue of drawings, delay in providing electric connection, delay in issue of shutters, irregular supply of cement etc. The Arbitrator awarded a sum of Rs. 1,50,000/-. The operative part of the awarding the basis and rationale for the same is as under:-

' The value of work done during extended period i.e 28.3.82 to 5.3.84 was Rs. 18,56,786/- (Net, after deducting cost of materials issued by respondents_. The average cost index for Delhi (as circulated by Chief Engineer, New Delhi) rose

from 200 to an average of 247 during extended period - an increase of 23.50%. Thus, extra expenditure due to increase in labour and material is assessed as Rs. 4,36,345. After adjusting an amount of Rs. 32,104/- already awarded for increase in cost of labour under Claim No. 7 above, extra cost due to rise in price of materials comes to Rs. 4,04,241. I award Rs. 1,50,000/- (restricted to amount of the claim) in favor of the claimants.'

8. It would be seen from the foregoing that the Arbitrator had applied the cost index and computed the damages based on the cost index as approved by this court in *Salwan Construction Co. v. UOI* UOI 2nd (DELHI) (2) 748. Reference may be made usefully in support of the awarded amounts as per claim:-

(i) *C. Lal Gupta v. DDA* 1999 (3) ALR 268;

(ii) *A.T. Brij Pal Singh Vs . State of Gujarat* : AIR 1984 SC1703

(iii) *Himachal Pradesh State Electricity Board v. R.J.Shah and Co.* 1999(2) ALR 316 (SC)

(iv) *Sunder Lal Khatri v. D.D.A* (54) 1994 DLT 21

(v) *Rawla Construction Co. v. UOI* 1982 (1) Delhi 44

(vi) *Shiv Kumar Wasal v. DDA* 1990 (1) ALR 101

9. It would be noticed that the Arbitrator had taken into account the payment made under the said claim and made appropriate adjustments. The Arbitrator had also restricted to amount of the claim i.e Rs. 1,50,000/- as against cost due to rise in price of material coming to Rs. 4,04,241/-. The award is reasonable and does not suffer from any error apparent on the face of the record or infirmity.

10. In respect of other claims namely Claim Nos. 1,2,3,6, 9, 11, 14 and 19, the respondent has raised general objections of award being contrary to the agreement conditions, ignoring crucial documents in respect of claim No. 3 and Claim No. 6. In case of delayed handing over of site, agreement provided for readjustment of programme, but no compensation in terms of Clause 42. The Arbitrator being the Master of Law and facts has duly indicated the reasons and

basis for the award of damages. The Arbitrator has found the respondent admittedly to be in breach of important and fundamental conditions and obligations under the agreement. The award of the Arbitrator is duly supported with reasons and the interpretation given to the agreement clauses is a plausible one and cannot be said to be suffering from any apparent error. The objections have no merit and I.A 10358/1994 is dismissed.

11. Award dated 19.4.1994 is made rule of the court. The petitioner is also awarded interest on the principal amount of the award in terms of Section 29 of the [Arbitration Act, 1940](#) from the date of decree till realization @ 9% per annum which is a reasonable rate on the current market conditions.

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