

S. Lal and Co. Vs. Delhi Development Authority and anr.

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Court : Delhi

Decided On : Jul-01-1996

Reported in : 1996IIIAD(Delhi)791; AIR1997Delhi26; 63(1996)DLT858

Judge : Lokeshwar Prasad, J.

Acts : [Arbitration Act, 1940](#) - Sections 14

Appeal No. : Suit Appeal No. 380 of 1992

Appellant : S. Lal and Co.

Respondent : Delhi Development Authority and anr.

Advocate for Pet/Ap. : Harish Malhotra and; V.K. Sharma, Advs

Judgement :

Lokeshwar Prasad, J.

(1) The petitioner, named above, filed a petition under Sections 14 & 17 of the [Arbitration Act, 1940](#) (hereinafter referred to as 'the Act') with the prayer that Shri S.C. Gupta (respondent No. 2), the Sole Arbitrator be directed to file the award Along with the proceedings and thereafter the award be made rule of the Court. The Arbitrator Shri S.C. Gupta (respondent No. 2) was directed to file the award Along with the proceedings vide order dated 4.2.1992. In pursuance of the notice issued from this Court the Sole Arbitrator Shri S.C. Gupta (respondent No. 2) filed

the award Along with the proceedings vide letter dated 4.5.92.

(2) After the Arbitrator had filed the award Along with the proceedings, notice of the filing of the award was accepted by the learned Counsel for the petitioner in the Court on 8.2.93. No objections have been filed on behalf of the petitioner. Notice of the filing of the award was also issued to respondent No. 1 Delhi Development Authority (hereinafter referred to as 'the DDA'), directing the said respondent to file objections, if any, within the statutory time limit. In pursuance of the notice served on respondent Dda, the said respondent filed objections (IA 6608/93) under Sections 30 & 33 of the Act. In the objections filed on behalf of respondent/ objector Dda the respondent/objector has assailed the findings of the Arbitrator in respect of claim 1(B), (D), (E), claim No. 3 and claim No. 8. It has been stated in the objections that the Arbitrator has gone beyond the term of reference, has exceeded his jurisdiction thereby misconducting himself and the proceedings. It has been prayed that the objections filed by the respondent/objector Dda be accepted and the award to the extent of objections be set aside.

(3) The petitioner has filed reply to the objections. In the reply filed it has been stated that objections have been filed by the respondent/ objector-DDA for the sake of objection without any substance. It has been further stated in the reply that the Arbitrator has given a reasoned award with full justification and the objections which are not tenable in law be dismissed and the award dated the 27th December, 1991 be made a rule of the Court and a decree in terms thereof be passed in favor of the petitioner together with future interest from the date of the filing of the award and costs of the proceedings.

(4) The respondent/objector Dda filed rejoinder to the reply controverting the contentions raised in the reply and reiterating the averments made in the objection petition (I A No. 6608/93).

(5) On the pleadings of the parties the following issues were framed vide order dated 24.3.94: ' (1) Whether the impugned award is liable to be set aside for the reasons stated in the objections, i.e. is No. 6608/93? (2) Relief, if any?

(6) I have heard the learned Counsel for the parties at length and have also carefully gone through the documents/material on record and my findings are as under:

(7) Issue No. 1 : (a) Before going into the merits of the matter I would like to discuss the scope and limit of correction by the Court of an award made by the Arbitrator. The Supreme Court in case Food Corporation of India v. Joginder Pal Mohinder Pal & Another, : [1989]1SCR880 have observed that arbitration as a mode for settlement of disputes between the parties, has a tradition in India. It has a social purpose to fulfill. It has a great urgency today when there has been an explosion of litigations in the Courts of law established by the sovereign power. It is, therefore, the function of the Courts of law to oversee that the Arbitrators act within the norms of justice. Once they do so and the award is clear, just and fair, the Courts should, as far as possible, give effect to the award of the parties and make the parties compel to adhere to and obey the decision of their chosen adjudicator. The Supreme Court in the above said case have further observed that it is in this perspective that one should view the scope and limit of correction by the Court of an award made by the Arbitrator. In case Raipur Development Authority & Ors. v. Chokhamal Contractors & Ors., the Supreme Court observed that the two well recognised principles of natural justice are (i) that a Judge or an Arbitrator who is entrusted with the duty to decide a dispute should be disinterested and unbiased (*nemo iudex in causa sua*); and (ii) that the parties to dispute should be given adequate notice and opportunity to be heard by the authority (*audi alteram partem*). Giving reasons in support of a decision was not considered to be a rule of natural justice either under the law of arbitration or under administrative law. What applies generally to the settlement of disputes by the authorities governed by public law need not be extended to all cases arising under private law such as those arising under the law of arbitration which is intended for settlement of private disputes.

(8) The Supreme Court in another case Municipal Corporation of Delhi v. M/s. Jagannath Ashok Kumar & Another, : [1988]1SCR180 , have held in clear cut terms that appraisal of evidence by the Arbitrator is ordinarily never a matter which the Court questions and considers. Section I of the Evidence Act, 1872 in its

rigour is not intended to apply to proceedings before an Arbitrator. The parties have selected their own forum and the deciding forum must be conceded the power of appraisal of the evidence. The Arbitrator, therefore, is the sole Judge of the quality as well as quantity of evidence and it is not for the Court to take upon itself the task of being a judge of the evidence before the Arbitrator. It may be possible that on the same evidence the Court might have arrived at a different conclusion than the one arrived at by the Arbitrator but that by itself is no ground for setting aside the award of an Arbitrator. The Supreme Court in the above said decision have further observed :

'IT would be unreasonable to expect an exact definition of the word 'reasonable'. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy. But mankind must be satisfied with the reasonableness within reach; and in cases not covered by authority, the verdict of a jury or the decision of a judge sitting as a jury usually determines what is 'reasonable' in each particular case. The word 'reasonable' has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know.'

(9) Thus, an Arbitrator, acting as a judge, has to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life' therefore, where reasons germane and relevant for the Arbitrator to hold in the manner he did, have been indicated it cannot be stated that the reasons were 'unreasonable'.

(B) In the light of the above said legal position I will now consider the objections of the respondent DDA. The respondent/objector, as already stated, has assailed the following findings of the learned Arbitrator : (i) Finding against claim I (B) (from pages 3 to 5 of the award); (ii) Finding against claim 1(D) (from pages 5 & 6 of the award); (iii) Finding against claim 1(E) (from pages 6 to 8 of the award); (iv) Finding against claim (3) (from pages 9 & 10 of the award); and (v) Finding against claim (8) (from pages 12 & 13 of the award).

Regarding (i) above : Claim 1(B) of the award, assailed by the respondent/ objector Dda, relates to payment against the quantity of stone supplied by the petitioner in terms of the contract. The learned Counsel for the respondent / objector Dda during the course of arguments submitted that in terms of the provisions of Clause 25 of the agreement, executed between the parties, the Arbitrator was under an obligation to give reasons for the awarded amount. He further submitted that the learned Arbitrator has given no reasons for awarding an amount of Rs. 88,326.00 to the petitioner against this claim. 'The learned Counsel for the respondent /objector Dda placed reliance on case Minny Enterprises v. G. M., Itdc, reported as 1995 Rlr 14 and case Bharat Furnishing Company v. Delhi Development Authority & Anr., reported as 1992(1) Arb. L.R. 327. The learned Counsel for the petitioner on the other hand submitted that the learned Arbitrator has given reasons. He further submitted that as per settled law the Arbitrator while giving reasons need not give arithmetical calculations, he has simply to indicate his thought process. The learned Counsel for the petitioner placed reliance on decisions in cases Delhi Development Authority v. M/s. Alkaram, New Delhi, : AIR1982 Delhi365 and case College of Vocational Studies v. S.S. Jaitley, Air 1987 Del 134.

(11) After perusing the award in question and the other material on record I am unable to accept the above contention of the learned Counsel for the respondent/ objector Dda that the findings of the learned Arbitrator relating to the above claim are without any reason or are against the material on record. Moreover, it is settled law that insufficiency of the reasons could not be a ground for setting aside the award. No error of law has been pointed out in the conclusion to which the learned Arbitrator had arrived at while allowing the above mentioned amount against this claim. Similarly, there is also no error of fact. If the findings of the learned Arbitrator, relating to the above claim, are read as a whole it would be clear that he has made his thinking known on the basis of which he has acted and that in law is sufficient to meet the requirements of a 'reasoned award'. In the case of Sudershan Trading Co. v. Government of Kerala, : [1989]1SCR665 the following principles have been laid down by the Apex Court:

'ONLY in a speaking award the Court can look into the reasoning of the award. It is not open to the Court to probe the mental process of the Arbitrator and speculate, where no reasons are given by the Arbitrator, as to what impelled the Arbitrator to arrive at his conclusion. See the observations of this Court in Hindustan Steel Works Construction Ltd. v. C. Rajashekhar Rao. In the instant case the Arbitrator has merely set out the claims and given the history of the claims and then awarded certain amount. He has not spoken his mind indicating why he has done what he has done; he has narrated only how he came to make the award. In absence of any reasons for making the award, it is not open to the Court to interfere with the award. Furthermore, in any event, reasonableness of the reasons given by the Arbitrator, cannot be challenged. Appraisal of evidence by the Arbitrator is never a matter which the Court questions and considers. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisal of evidence. The Arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the Court to take upon itself the task of being a judge on the evidence before the Arbitrator.'

(12) In a recent decision in the case of State of Rajasthan v. Puri Construction Co. Ltd. 1995 (1) Alr 1 the Apex Court has again taken the same view.

(13) The cases relied upon by the learned Counsel for the respondent/objector Dda in no way help the cause of the objector. In case Minny Enterprises v. G. M., Itdc, reported as 1995 Rlr 14 it has been held that if an agreement says that if claim in dispute is above Rs 50,000.00 then Arbitrator has to give reasons only in respect of those claims which are above Rs 50,000.00 . It has been further held in the above said decision that 'reasons' mean short intelligible indication about the working of the mind of the Arbitrator. From the facts already stated it is apparent that the learned Arbitrator while allowing the claim has given sufficient reasons indicating his thought process by which he arrived at the conclusion contained in this part of the award. The other case Bharat Furnishing Company v. Delhi Development Authority & Anr, reported as 1992(1) Arb. L.R. 327 also lays down the above said law that where the Arbitrator is required to give reasons he need neither proceed to write a detailed judgment nor set out every process of reasoning. However there must be reasons. As already stated the finding of the

learned Arbitrator in respect of the above claim, as allowed by him, contains reasons of his arriving at the conclusion in respect of the above finding.

(14) In view of the above discussion, in my opinion, the above objection taken by the respondent/objector Dda is devoid of the substance.

(15) Regarding (ii) above : Claim 1(D) of the award, relates to the deduction effected by the respondent Dda on account of the deficiency of the quantity of road metal to the extent of 0.07 cu. mtr.. The respondent Dda on account of the above deficiency deducted a sum of Rs. 15,054.00 which is held to be not justified by the learned Arbitrator. The main thrust of the arguments advanced by the learned Counsel for the respondent/objector Dda is that the above finding of the learned Arbitrator lacks reasoning and is apparently contradictory. In view of the position explained, while examining the objection at (i) above I have already dwelt at length this aspect and in my opinion when the Arbitrator has given reasons the Court cannot look into the aspect as to whether the reasons given by the learned Arbitrator were insufficient or were unreasonable. As already stated the Arbitrator is the sole judge of the quality as well as quantity of evidence and it is not for this Court to take upon itself the task of being a judge of the evidence before the Arbitrator. In my opinion, for the foregoing reasons, the above objection, taken by the respondent/ objector Dda is too devoid of substance.

(16) Regarding (iii) above : In so far as the above objection is concerned the contention of the respondent/objector Dda is that though the Superintending Engineer Dda has levied compensation of Rs. 12,889.00 under Clause 2 of the Agreement and the decision of Superintending Engineer in that respect is final, yet the Arbitrator has unjustly dis-allowed the levy of above said compensation. During the course of arguments the learned Counsel for the respondent/objector Dda submitted that the above said compensation was levied strictly in accordance with Clause 2 of the Agreement, executed between the parties, which provided that the Superintending Engineer of the Delhi Development Authority was the final authority to decide the matter in that behalf. It was submitted by him that the learned Arbitrator has completely ignored the provisions of Clause 2 of the Agreement and has exceeded his jurisdiction while disallowing the recovery of

Rs 12,889.00 . The learned Counsel for the petitioner/ claimant on the other hand submitted that in the instant case the dispute/differences between the parties in terms of the provisions contained in Clause 25 of the Agreement were referred to arbitration on 25.10.89 and the Sole Arbitrator Mr. S.C. Gupta entered upon the reference on 3.11.89, the compensation was levied on 10.5.91 i.e. in other words during the pendency of arbitration proceedings. It was submitted by him that after the Arbitrator was seized of the matter it was not within the competence of any officer of the Dda to decide this dispute between the parties and if any officer has done so he has interfered with the process of arbitration which is not permissible by law.

(17) From a perusal of the award dated the 27th December, 1991 it is apparent that the learned Arbitrator has dis-allowed the compensation levied by the Superintending Engineer vide order dated 10.5.91 under Clause 2 of the Agreement amounting to Rs. 12,889.00 . There is no dispute between the parties on the point that the compensation levied by the Superintending Engineer vide his order dated 10.5.91 amounting to Rs. 12,889.00 (dis-allowed by the learned Arbitrator) was under Clause 2 of the Agreement, executed between the parties. The short question requiring consideration is whether the amount of compensation determined under Clause 2 of the Agreement is excluded from .the scope of arbitration under Clause 25 of the Agreement. The above question, came up for consideration before the Supreme Court in case Vishwanath Sood v. Union of India & Anr., : [1989]1SCR288 , where the agreement contained identical clauses, as in the present case, and the Supreme Court have held :

'CLAUSE25 which is the arbitration clause starts with an opening phrase excluding certain matters and disputes from arbitration and these are matters or disputes in respect of which provision has been made elsewhere or otherwise in the contract. These words in our opinion can have reference only to provisions such as the one in parenthes is in Clause 2 by which certain types of determinations are left to the administrative authorities concerned. If that be not so, the words 'except where otherwise provided in the contract' would become meaningless. We are therefore inclined to hold that the opening part of Clause 25 clearly excludes matters like those mentioned in Clause 2 in respect of which any dispute is left to be decided

by a higher official of the Department. Our conclusion, therefore, is that the question of awarding compensation under Clause 2 is outside the purview of the Arbitrator and that the compensation, determined under Clause 2 either by the Engineer in charge or on further reference by the Superintending Engineer will not be capable of being called in question before the Arbitrator.'

(18) In view of the above decision of the Supreme Court the above finding of the learned Arbitrator, in my opinion, cannot sustain the test of judicial scrutiny and accordingly the same is set aside.

(19) Regarding (iv) above: Against the claim of Rs: 50,000.00 under Clause 10C of the Agreement relating to statutory escalation the Arbitrator has awarded a sum of Rs 16,132.00 to the petitioner/claimant. The learned Arbitrator has held that delay in the work was on account of failure on the part of the respondent/objector Dda for not making available the site, the road roller and bitumen at the required time. He has further held that it was the responsibility of the respondent for making available the site and the material in time which obligation was not fulfilled by the respondent/objector DDA. In my opinion no fault can be found with the above finding of the learned Arbitrator. The objection taken by the respondent/objector Dda in this behalf is devoid of substance and the same is, therefore, rejected.

(20) Regarding (v) above : In so far as the above objection is concerned it was submitted by the learned Counsel for the respondent/objector that the learned Arbitrator was not competent to award pre-suit interest as has been done by him. The above question of grant of interest by the Arbitrator can be easily disposed of as the same is covered by a recent decision of the Supreme Court in case Hindustan Construction Company Limited v. State of Jammu & Kashmir, : AIR 1992 SC2192 wherein while referring to an earlier decision of Five Judge Bench of the Supreme Court in case Secretary, Irrigation Department of Orissa v. G.C. Roy, : [1991]3SCR417 , their lordships of the Supreme Court have held that the Arbitrator is competent to award interest for the period commencing with the date of award to the date of decree or date of realisation whichever is earlier. In view of the above decision of the Apex Court the above objection taken by the respondent virtually becomes redundant and has to be rejected. Accordingly, the same is

rejected being devoid of merit.

(21) In view of the above discussion, the objections (IA 6608/93) preferred by the respondent/objector Dda are partly allowed to the extent the same relate to disallowing the recovery of the amount of compensation levied by the Superintending Engineer on the petitioner/claimant amounting to Rs. 12,889.00 under Clause 2 of the Agreement and the modified award, modified to the extent as indicated above, given by the Arbitrator Shri S.C. Gupta, is made a rule of the Court and a decree in terms thereof is passed. The respondent-DDA shall make payment of the decretal amount to the petitioner/claimant within eight weeks from the date of the communication of this order otherwise the decretal amount shall carry interest @ 12 % per annum from the date of the decree till payment. No interest will, however, be payable in case the decretal amount is paid by the respondent Dda within the above said period of eight weeks. It is further clarified that up to the date of the decree the respondent-DDA shall pay the interest to the petitioner as awarded by the Arbitrator in the award. In the facts and circumstances of the case no order as to cos to. Decree sheet be drawn up accordingly and thereafter the file be consigned to Record Room.

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