

Dharam Constructions Vs. Delhi Development Authority

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Court : Delhi

Decided On : Sep-24-2001

Reported in : 2001(60)DRJ711

Judge : Vijender Jain, J.

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

Appeal No. : Suit No. 973/93 and is No. 2049/94

Appellant : Dharam Constructions

Respondent : Delhi Development Authority

Advocate for Def. : Ansuya Salwan, Adv.

Advocate for Pet/Ap. : Girish Aggarwal, Adv

Judgement :

Vijender Jain, J.

1. Aggrieved by the award of the arbitrator, respondents-DDA has filed the objections under Sections 30 and 33 of [Arbitration Act, 1940](#). The award was made by Shri S.C. Kapoor, retired Chief Engineer of C.P.W.D. The arbitrator made the award on 20.3.1993. The award runs into 42 pages.

2. In nutshell Ms. Ansuya Salwan, learned counsel for the petitioner, has contended that arbitrator could not have awarded any amount which was covered under Clause 1 under the head 'Additional specifications and Conditions' of the contract. She has assailed the award of a sum of Rs. 51,750/- by the arbitrator under claim no.2 as well as claim no.3 as damages. In support of her contentions, learned counsel for the respondent-objector has relied upon Ishwar Singh & sons V/s. D.D.A. 1994 (1) A.L.R. 526 as well as Rajasthan State Mines and Minerals Ltd. V/s. Eastern Engineering Enterprises & Anr. 1999 (3) A.L.R. 350 in which it is held:-

'In view of the aforesaid law and the facts stated above, it is apparent that the award passed by the Arbitrator is against the stipulations and prohibitions contained in the contract between the parties. In the present case, there is no question of interpretation of Clauses 17 and 18 as the language of the said clauses is absolutely clear and unambiguous. Even the contractor has admitted in his letter demanding such claims that the contract was signed with clear understanding that the rate under the contract was firm and final and no escalation in rates except in case of diesel would be granted. Hence, by ignoring the same, the Arbitrator has travelled beyond his jurisdiction. It amounts to deliberate departure from the contract. Further, the reference to the Arbitrator is solely based upon the agreement between the parties and the Arbitrator has stated so in his interim award that he was appointed to adjudicate the disputes between the parties arising out of the agreement. No specific issue was referred to the Arbitrator which would confer jurisdiction on the Arbitrator to go beyond the terms of the contract. Hence, the award passed by the Arbitrator is, on the face of it, illegal and excess of his jurisdiction which requires to be quashed and set aside.'

3. To the same effect to butters her arguments, learned counsel for the objector has cited Steel Authority of India V/s. J.C. Budharaja, Government and Mining Contractor 1999 (3) A.L.R. 335. On the basis of aforesaid authorities learned counsel for the objector-respondent has contended that when there is a stipulation in the contract specifically prohibiting or granting damages for the breaches mentioned in the said clauses, it was not open for the arbitrator to ignore the said condition and if the arbitrator has done the same, he has acted beyond the

jurisdiction conferred upon him and, therefore,, the award of the amount as mentioned under claim nos. 2, 3 and 4 be set aside as same amounts to jurisdictional error and misconduct on the part of the arbitrator.

4. On the other hand, learned counsel for the petitioner, Mr. Girish Aggarwal, has contended that Ishwar Singh & sons Vs/. D.D.A. 1994 II A.D. (Delhi) 477 cited by the counsel for the objector is of no help as this Court in a subsequent case Shri Sunder Lal Khatri V/s. DDA 1994 (2) A.L.R. 479 while construing Ishwar Singh & sons (supra) has laid down as to what matter comes within the purview of Clause 1:-

'.....To come within the purview of Clause 1 of General Clauses of specifications and conditions two things have to be specified. First, part of the site is not available that is to say that some part of the site could not be made available on account of certain factors. But can this stipulation be stretched in a case where agreement is not executed, work awarded, but the site where the work has to be executed is not made available and in view of the aforesaid clause latter in the day respondent can turn around taking recourse to aforesaid Clause 1 and say that the contractor cannot be awarded any compensation even though he might have incurred expenditure on mobilisation of man materials and resources. Court cannot give a loose interpretation which is not intended by the terms of the Agreement between the parties. Secondly, with regard to non-supply of materials the words occurring in the Clause is not delay in supply of materials but 'unavoidable delay'. The use of word 'unavoidable' before 'delay' is not without meaning.....'

5. Counsel for the petitioner has also cited M/s Sudershan Trading Co. V/s. The Govt. of Kerala & anr. : [1989]1SCR665 in which it is held:-

'Once there is no dispute as to the contract, what is the interpretation of that contract, is a matter for the arbitrator and on which court cannot substitute its own decision. If no a view taken of a contract, the decision of the arbitrator on certain amounts awarded, is a possible view though perhaps not the only correct view, the awarded cannot be examined by the court. therefore, the High Court had no jurisdiction to examine the different items awarded clause by clause by the

arbitrator and to hold that under the contract these were not sustainable in the facts found by the arbitrator....The court had no jurisdiction to do, namely, substitution of its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. Whether a particular amount was liable to be paid or damages liable to be sustained, was a decision within the competency of the arbitrator. By purporting to construe the contract the court could not take upon itself the burden of saying that this was contrary to the contract and, as such, beyond jurisdiction.....'

6. It was further contended by Mr. Aggarwal that, as a matter of fact, in view of the conflicting decision in *M/s. Sudershan Trading Co.'s case (supra)* and *Associates Engineering Co. V/s. Govt. of Andhra Pradesh : [1991]2SCR924* the Supreme Court referred the matter to a Bench of three Judges and the three Judges Bench in the matter of *K.R. Raveendranathan V/s. State of Kerala & anr. : (1998)9SCC410* decided the reference in favor of the law laid down in *M/s. Sudershan Trading Co. 's case (supra)* and, therefore, other authorities cited by the learned counsel for the respondent-objector in so far as it has not taken *K.R. Raveendranathan's case (supra)* into consideration, does not reflect the correct legal position.

7. I have given my careful consideration to the arguments advanced by the learned counsel appearing for both the parties. From the perusal of Clause 1 under the head 'Additional specifications and Conditions' of the contract, I fail to understand as to how this Clause helps the arguments advanced before me by the learned counsel for the objector. The Clause in question only deals with that if a part of the site is not available for any reason or there is any unavoidable delay in the supply of material stipulated by the Department, the programme of contract shall be modified and contractor shall not have any claim or compensation on that account. In the instant case the damages which have been awarded by the arbitrator, was neither awarded in relation to material which has been supplied belatedly or on account of handing over the part of the site belatedly, the arbitrator has awarded under claim no.2 a sum of Rs. 51,750/- although the claimant made a claim of Rs. 1,06,200/-. While discussing in the award the arbitrator has observed that it was obligatory on the part of the contractors to keep supervisory

Engineer, watch and ward as per agreement. There is finding of fact that the objector has not produced any letter denying the fact of deployment of supervisory staff and on the basis of that conclusion arbitrator allowed the salary of the Engineer, Head Mistry, two Supervisors, four Chowkidars, one Foreman, one office clerk and a sum of Rs. 1,000/- towards conveyance and miscellaneous office expenses @ Rs. 1500/- per month for nine months the arbitrator awarded an amount of Rs. 51,750/-. The said award is based on the amount spent by the contractor on account of prolongation of the contract. By no stretch of imagination it can be said that award of the aforesaid amount was in excess of the jurisdiction by the arbitrator. In any event of the matter, I need not go into the authorities cited by the learned counsel for the parties as I am of the considered opinion that the award of the arbitrator under claim nos.2, 3 and 4 was not in any way prohibited under Clause 1 of the contract. Before concluding, I must refer to the decision of three Judges Bench of the Supreme Court in K.R. Raveendranathan's case (supra). As a matter of fact, initially the matter was listed before a Bench comprising of two Judges of Supreme Court which took into account conflicting decisions of M/s Sudershan Trading Co. 's case (supra) and Associates Engineering Co. 's case (supra) and that is how the matter was referred to a three Judges Bench for a decision. A three Judges Bench of the Supreme Court was constituted which upheld the validity of the ratio of M/s. Sudershan Trading Co. 's case (supra). It seems that decision of three Judges Bench was not brought to the notice of the Supreme Court while deciding the Steel Authority of India's case (supra) and Rajasthan State Mines and Minerals Ltd. 's case (supra). In any event of the matter I am not relying upon any of these cases for the purpose of disposing of the objections. I need not dwell much on the subject. There is no merit in the objections, same are dismissed. Award is made rule of the Court. A decree in terms thereof is passed. Petitioner shall be entitled to interest @ 15% p.a. from the date of decree till its realisation.

8. Suit stands disposed of accordingly.