

J.S. Construction Vs. Delhi Development Authority

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Court : Delhi

Decided On : Nov-09-2001

Reported in : 95(2002)DLT390

Judge : V.S. Aggarwal, J.

Appeal No. : Suit No. 84/95 and is 2558/95

Appellant : J.S. Construction

Respondent : Delhi Development Authority

Advocate for Def. : S. Garg, Adv.

Advocate for Pet/Ap. : M.S. Vinayak, Adv

Disposition : Application dismissed

Judgement :

V.S. Aggarwal, J.

1. Work of construction of houses in Trilok Puri had been assigned. The agreement between the parties contained a clause for arbitration to refer the disputes. When disputes had arisen Shri R.J. Bakhru had been appointed as the sole arbitrator. the arbitrator had published his award on 29th December, 1994 and filed it in court. Notices were issued to the parties. In pursuance thereto the

Delhi Development Authority, hereinafter described as the objector, has filed the objections. The applicant/petitioner (J S Constructions) had contested the various grounds taken by the objector for setting aside of the award. By the present judgment the objections filed by the said objector/DDA are being disposed.

2. The main argument advanced was that the arbitrator has travelled beyond the agreement between the parties and once the arbitrator has so travelled beyond the agreement between the parties, it must be taken that he has misconducted himself.

3. This proposition of law in fact has not been disputed at the bar. Arbitrator is appointed as a result of a contract between the parties. It is the contract and the terms of the contract which binds the parties. They cannot travel beyond the same. The arbitrator draws all its powers from the said contract. If the contract prohibits the arbitrator from doing any particular act in that event the parties necessarily would be bound by the same.

4. With this being the admitted position one can travel to different objections filed by the objector.

5. With respect to claim No. 1 it has been alleged by the objector that the arbitrator had ignored the contentions of the objector. As per the agreement between the parties measurements recorded in the measurement books were final. The petitioner was required to raise objections in writing in case he had any grievance in the measurement book. Since the contractor/petitioner failed to object to the recording of the measurement at the relevant time the objections could not be entertained. Furthermore, it is alleged that the arbitrator has allowed extra payment with respect to certain items without they being fully substantially by the contractor. There was no justification for claiming extra cost on account of items of straightening of steel bars, plastering above 10 mtr height and for groove in plasters. Various recoveries proposed by the objector even were considered. There were defects which were not removed by the contractor and therefore certain recoveries as such had been proposed.

6. The General rules and Directions forming part of the contract were not in controversy. Clause No. 3.15 is being reproduced below for the sake of convenience.

'Rates quoted by the contractor shall hold for work at all heights and depths. The contractor shall not be paid any thing extra for maintaining in good condition all the work executed till completion of the entire work; not on account of damage to the works caused by rains or other natural phenomena during the execution of works.'

7. Similarly under the contract, the abstracts of the cost and work had been noticed centring and shuttering including strutting, propping, column, pillars, posts and struts, shelves were forming part of the same contract.

7. Perusal of the award reveals that the arbitrator awarded Rs. 31808.25 for cutting, straightening steel bars and Rs. 4,969.88 as the extra cost of the plaster above 10 metre height and Rs. 8093.77 for groove in plaster. In all on this count Rs. 44,872/- has been allowed to the petitioner.

8. As noticed above this was a part of the contract between the parties. As already reproduced above extra cost for plaster at any height or grooves in plaster would not be payable. So far as straightening steel bars etc. is concerned it was a part of the contract. As per the contract no extra cost in this regard could be claimed. Consequently it must follow that amount of Rs. 44,872/- must be held to have misconducted himself.

9. So far as claim No. 2 is concerned, the objector asserts that the contractor had committed various breaches of agreement between the parties. The work could not be completed within time, delay was caused by the petitioner. The arbitrator is alleged to have failed to appreciate that contractor was at liberty not to execute the work and to treat the work as closed. The arbitrator allowed 32% increase which could not be held to be reasonable. Reliance on behalf of the objector was placed on the General Specifications and Conditions, relevant portion of which is to the following effect.

'1. 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 site is not available for any reason or there is some unavoidable delay in supply of materials stipulated by the Department, the programme of construction shall be modified accordingly and the contractor shall have no claim for any extras or compensation on this account.

2. Works are shall be the area shown in the sketch Plan attached.'

The above quoted portion reveals that it was two conditions which does not permit the petitioner to have any claim for compensation. First is if the part of the site is not available for any reason and secondly if there is unavoidable delay in supply of the material. In the present case both these conditions are not applicable, as would be noticed hereinafter.

10. Perusal of the award passed by the arbitrator reveals that the petitioner had claimed Rs. 2,90,000/- on account of rise in price of the material and labour for the period of work done/executed from 1.11.1989 to 31.8.1990. The arbitrator had awarded Rs. 2,56,018.56. The reason for doing so were that it was held that there were lapses on the part of the objectors resulting in frequent dislocation. The drawing were not issued in time. They were delayed up till 19th February, 1988. The entire are around the site of the work was water logged and in May 1991 the objector decided to delete portion of 200 units. Keeping in view of these assertions the arbitrator had found that the work of electrical portion and water supply line was awarded to the petitioner only on 10.12.1998. This affected the progress of the civil work. Regarding 200 units decision was only taken in May 1991. The petitioner again was kept in animated suspension regarding 200 units which form major portion of the work. Delay thus occurred which is attributed to the objector and petitioner was held entitled to compensation for extra avoidable expenditure for material and labour in this regard. So far as this particular item is concerned it was not covered by the agreement and thereforee since it is a finding of fact, there is no ground to interfere.

11. The only other dispute raised at the bar was with respect to claim No. 5. The objector asserts that the arbitrator had failed to appreciate that the work in question was deleted due to various breaches committed by the contractor. They are for payment to staff and for T&P; and machinery. The claim was laid for Rs. 2,36,400/-. The arbitrator has awarded Rs. 60,000/-. It was held that prolongation of work was beyond stipulated date due to the objector. Thus the petitioner/applicant was entitled to compensation for expenditure on site establishment, machinery etc. This covered wages of one graduate engineer, one store keeper, two chowkidars, which was considered as the minimum besides expenditure on machinery and T&P.;

12. Since the objector has been held responsible for causing the delay, which has been noted above indeed the petitioner would be entitled to the amount of compensation for idle machinery, T&P;, machinery, establishment and overhead charges. Thus there is no scope in this regard to hold that the arbitrator has gone astray. There is no ground to interfere.

13. The only other claim laid was that the arbitrator should not have awarded the interest. It has already been held that it was the objector which was responsible for causing the delay. In that view of the matter the arbitrator was justified in awarding the interest which has already been awarded as simple interest. It has become awarded only from 22.12.1992 till the date of the decree or the payment whichever is earlier. The discretion so exercised is reasonable requiring little interference.

14. Accordingly the award is made a rule of the court except the amount of Rs. 44,872/- as held above and decree for the balance amount in terms of the award is passed. From the date of the decree the petitioner would be entitled to interest at 12% p.a. on the principal amount till the payment is made.