

Oriental Construction Co. Vs. Union of India and ors.

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Court : Delhi

Decided On : Nov-09-2001

Reported in : 95(2002)DLT531

Judge : V.S. Aggarwal, J.

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

Appeal No. : Suit No. 54/91

Appellant : Oriental Construction Co.

Respondent : Union of India and ors.

Advocate for Def. : V. Shankra, Adv.

Advocate for Pet/Ap. : M. Dutta, Adv

Disposition : Application allowed

Judgement :

V.S. Aggarwal, J.

1. This is a petition filed by M/s. Oriental Construction Company (hereinafter described as the petitioner) under Section 14 read with Section 17 of the [Arbitration Act, 1940](#).

2. The facts alleged are that the petitioner entered into an agreement with the respondents 1 and 2 for construction of Guru Teg Bahadur Medical College and Hospital Project, Shahdara under the sub-head External Sewerage. Certain disputes had arisen between the parties regarding the finality of the account and the matter was moved for arbitration under Clause 25 of the agreement. It was referred to respondent No. 3 as the sole arbitrator and the said arbitrator had pronounced the award. It is prayed that the award should be made a rule of the court besides future interest as claimed at the rate of 14% p.a.

3. In pursuance of the notice having been issued the Union of India has preferred the objections against the award so pronounced. On different claims that have been raised the objections have been filed particularly with respect to claim No. 1, 3, 8 and 11. In the reply filed by the petitioner all the assertions of the objector have been controverted which are the questions to be taken into hereinafter.

4. On 16th April, 1993 this court had framed the followings from the pleadings of the parties.

1. Whether the award is liable to be set aside in view of the objections taken by the respondent?

2. Relief.

5. As is apparent from the nature of the issues framed the sole question that comes up for consideration is as to whether the award is liable to be set aside keeping in view the objections of the arbitrator. The same can be taken up for consideration with respect to each of the claim that has been so raised and is under controversy.

6. Claim No. 1: So far as claim No. 1 is concerned the objector asserts that the arbitrator has ignored the material evidence on the record. According to the objector double rate recovery of eight cement bags resulting in additional recovery of Rs. 235.60 was made because the petitioner broke the lock of the cement godown, removed the cement and used the same in the sewer line work over which even the earth work was not complete. The claimants were informed of the

breach of the contract and notice was issued. The arbitrator has found that the double rate recovery was not justified as cement was consumed for bona fide use. The finding is assailed primarily claiming that cement was taken by the claimant contractor after breaking the lock and it amounts to pilferage and secondly the cement was used unauthorisedly for unwarranted work at that point of time since the earth work was not complete. This wrongful act or removal of eight bags in fact stood admitted.

7. One hardly needs reference to settled principles of law that in normal circumstances the arbitrator is the final court with respect to the facts. When the material evidence is available and considered the court would restrict itself unless the finding is totally erroneous or that no other view could be taken. Even if another view was possible the court would not set aside the award on that count. In the present case in hand the arbitrator had categorically come to the conclusion that the amount claimed was due and this court would therefore not re-appraise material evidence on the record even if it felt that it could come to a conclusion contrary to that of the arbitrator because the arbitrator found that the cement was consumed for bona fide use of the work of the objectors and that there was no loss or pilferage of the same. Thus there is no scope for interference.

8. Claim No. 2 : This claim was not disputed during the course of arguments and therefore no findings need be recorded in this regard.

9. Claim No. 3 : The main dispute was pertaining to Claim No. 3. The petitioner had claimed Rs. 28,000/- on account of deviation in execution of the agreement items of the manholes. It was asserted by the petitioner that the manhole work was to be carried out as per the CPWD specification 1967 Volume II. The petitioner had averred that he had executed the item of manhole as per bye-laws of Delhi Municipal Corporation and in that there was extra expense of Rs. 28,000/- had to be incurred. The arbitrator had agreed with this claim. As per the objector the arbitrator did not appreciate that although the general work was to be executed as per CPWD specification the manhole had to conform to local municipal bye-laws. The nomenclature and dimensions of the agreement items and analysis of rates with estimate conformed to the Municipal Corporation of Delhi design, the

agreement item was stated to be different from standard item in Delhi Schedule. In the alternative it has further been alleged that work under agreement were started on 30.3.1982 and completed on 27.3.1987. By the time the petitioner had been paid all the running bill and claim must be taken to be an after thought.

10. The arbitrator in this regard had gone into the facts and found that as per the contract the work had to be carried out as per the design in CPWD specification. The design of manhole as per the bye-laws of Delhi Municipal Corporation was different. The claimant had to execute the item of manhole as per this design which involved extra expenses in the execution and keeping in view the extra amount involved the claim had been allowed. Reasoning given in this regard must be taken to be not valid to prompt the court to interfere. This was a dispute which has been adjudicated. It is based on material and on consideration and therefore there is little scope for interference.

11. Furthermore during the course of submissions a dispute was raised with respect to claim No. 8. The petitioner had claimed a sum of Rs. 50,000/- under Clause 10 C of the agreement on account of alleged increase in labour wages. The arbitrator had allowed the claim to the tune of Rs. 31,500/-.

12. The objections of the objector in this regard are that as per Clause 10C of the agreement if during the progress of the work there is any increase the same has to be increased as per the agreement and not otherwise. The minimum wages had increased on 1st March, 1982 and the tender had been accepted later. Thus it is claimed that this clause had no application and therefore the arbitrator must be taken to have misconducted himself.

13. At the outset it must be stated that in case the arbitrator travels beyond the scope of the agreement between the parties then it can be taken to be a misconduct by the arbitrator.

14. In this regard relevant portion of Clause 10C of the agreement can be looked into:-

'CLAUSE 10C. If during the progress of the works, the prices of any material incorporated in the works (not being a material supplied from the Engineer-in-Charge's stores in accordance with Clause 10 hereof) and/or wages of labour increases as a direct result of the coming into force of any fresh law, or statutory rule or order (but not due to any changes in sales tax) any such increase exceeds ten per cent of the price and/or wages prevailing at the time of acceptance of the tender for the work, and the contractor thereupon necessarily and properly pays in respect of that material (incorporated in the works) such increased price and/or in respect of labour engaged on the execution of the work such/increased wages, then the amount of the contract shall accordingly be varied, provided always that any increase so payable is not, in the opinion of the Chief Engineer (whose decision shall be final and binding) attributable to delay in the execution of the contract within the control of the contractor.'

15. It is abundantly clear that Clause 10C of the agreement would come into play if during the progress of the work the price of any material incorporated in the work not being a material supplied by the Engineer in charge (Store) increased can be taken in accordance with what has been agreed. In the present case in hand the increase in minimum wages had taken place sometime on 1st March, 1982. The petitioner had clarified through letter on 12th March, 1982 about the reimbursement of the increase in the minimum wages because he pointed out that he had quoted in the tender the minimum wages prevailing at the time when the tender form was filled. This demand had been reiterated by the petitioner in the subsequent letter of 8.4.1982. The objector as in apparent from the letters on the record had agreed to process the matter under Clause 10C and had written to the petitioner in this regard pointing out that contractor is at liberty to make any alternatives in the offer before the same is accepted by the employer. In case of these letters the contract had been awarded to the petitioner. In other words before work commenced the petitioner had laid the claim for the increase in the labour wages. In face of this fact the arbitrator must be held to be justified in allowing the claim referred to above. It cannot be termed thereforee that the arbitrator had gone beyond the agreement between the parties. The objection in this regard must fail.

16. The only other dispute raised was with respect to claim No. 11. The petitioner had claimed Rs. 1,50,000/- and the arbitrator held that delay had been caused by various breaches committed by the objector and had in fact awarded Rs. 78,500/-.

17. It was alleged that the petitioner had given in writing that they have not suffered any loss and will not claim any other amount. Indeed that was so but the arbitrator had found that this was a writing extricated under coercion. The finding is based on the fact that otherwise the amounts would not have been paid. The said finding cannot be termed to be erroneous and once such a finding has been arrived at based on the facts, there is no scope for interference.

18. In that view, it was urged that the claimant did not produce any evidence of expenses incurred. The arbitrator had gone into this controversy also and held that the objector was bound to give necessary drawings, decisions, instructions to the petitioner in time so as to enable it to complete the work within the stipulated time. It was not done. therefore, to that extent the claim had been allowed. It hardly needs reiteration that this once again is a finding on appreciation of facts which requires no interference.

19. No other argument in this regard had been raised and therefore it must be held that award is not liable to be set aside on basis of the objections.

20. Relief : For these reasons award is made a rule of the court and decree in terms of the award is passed. The learned arbitrator had awarded interest at the rate of 14% p.a. from the passing of the award till the date of the decree or actual payment is made. There is no ground to interfere on that count.