

Chander Kant and Co. Vs. Delhi Development Authority

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Court : Delhi

Decided On : Nov-11-2009

Reported in : 164(2009)DLT657

Judge : Valmiki J. Mehta, J.

Acts : [Arbitration Act, 1940](#) - Sections 16, 30 and 33

Appeal No. : C.S. (OS) No. 1380A/1997

Appellant : Chander Kant and Co.

Respondent : Delhi Development Authority

Advocate for Def. : Anusuya Salwa and ; Neha Mittal, Adv.

Advocate for Pet/Ap. : R. Rajappan, Adv

Judgement :

Valmiki J. Mehta, J.

I.A. No. 10234/1997 in CS(OS) No. 1380A/1997

1. These are objections filed by the respondent/DDA under Sections 30 and 33 of the [Arbitration Act, 1940](#) against the Award dated 31.1.1995 made and published by the sole Arbitrator.

2. The principal contention of the objector is with respect to the claims which are allowed, namely, claim Nos. 1, 3, 4 and 6 to 9. The Award is a non-speaking Award inasmuch as the Arbitrator has either given his conclusion or the reasons which are given are not intelligible reasons that can be said to have nexus with the claims which have been awarded. I do not propose to burden this judgment with detailed findings on each of the claims because a reference to the Award is sufficient to show that the reasons which are given are not such reasons which can be called as reasons in law. Ms. Anusuya Salwan, Counsel for the objector has relied upon a recent Division Bench judgment of this Court reported as Delhi Development Authority v. Sunder Lal Khatri and Sons : 157 (2009) DLT 555 wherein all earlier judgments have been referred to including the Division Bench judgment of this Court of College of Vocational Studies v. S.S. Jaitley AIR 1987 Delhi 134. After analyzing all the judgments, the Division Bench has approved the ratio as given in the judgment of the Calcutta High Court reported as Union of India v. Royal Construction (2002)1 CHN 13 and which ratio is as under:

20. The law as it appears from the above authorities and especially the two last ones referred to above is as follows-

(1) To make a reasoned award the arbitrator has to make his mind known on the basis which he has acted.

(2) Statement of reasons is not the same thing as the giving of a detailed judgment.

(3) Reasons are short and intelligible indications of the Arbitrator's mind, no more.

(4) The reasons must have such connection with the conclusions reached by the Arbitrator as to show that the arbitrator has not acted irrelevantly, unreasonably or capriciously.

(5) The reasons should deal with the substantial points raised in the reference.

3. Accordingly, in accordance with the ratio of the aforesaid judgments, it is clear that the reasons which are given must be intelligible reasons and must be reasons in law. Any and every observation cannot be taken as reasons required in law. The

reasons must have nexus with the finding so arrived at. No doubt, the reasons may not be all that elaborate, however, the reasons should deal with substantial points which have been raised because a speaking Award would mean that the contentions of the parties are noted and answered by means of the Award vide *S.N. Mukherjee v. Union of India* : AIR 1990 SC 1984.

4. Accordingly, I remit this matter back to the Arbitrator under Section 16 of the [Arbitration Act, 1940](#) for passing a fresh Award which should be a reasoned and speaking Award. I may note that the Arbitrator in this case has awarded interest @ 15% per annum. I may refer to the recent Supreme Court judgments, namely, *Rajendra Construction Co. v. Maharashtra Housing & Area Development Authority and Ors.* : 2005 (6) scc 678, *McDermott International Inc. v. Burn Standard Co. Ltd. and Ors.* : 2006 (11) SCC 181, *Rajasthan State Road Transport Corporation v. Indag Rubber Ltd.* : (2006) 7 SCC 700 and *Krishna Bhagya Jala Nigam Ltd. v. G. Harischandra* : 2007 (2) SCC 720 wherein it has been held that on account of the changed economic scenario and the falling rates of interest, it is necessary for the adjudicating authorities to take into account this fact and accordingly award suitable reduction in the rates of interest. The Arbitrator should keep in mind the ratio of the aforesaid judgments while awarding the interest.

5. Accordingly, with the above observations, the objection petition is disposed of. The arbitration record which has been filed in this Court be sent back to the Arbitrator by a special messenger.

6. At this stage, I am informed that the Arbitrator who dealt with this matter is no more. Accordingly, a fresh Arbitrator has to be appointed. Accordingly, with the consent of the parties I appoint Sh. J.K. Garg S.E. Arbitration, resident of Block-B2 DDA Office Complex, Janakpuri, Delhi, Mobile No. 9810880789 9810880789 , Phone No. 25548223 who is a Superintending Engineer of the objector and who is one of the persons as per the agreed arbitration Clause who is entitled to decide the disputes and differences which have arisen between the parties under the present contract. Accordingly, record of the arbitration be sent by a special messenger to Sh. J.K. Garg, Arbitrator in the present case.

7. With these observations, the objection petition is disposed of.

8. Dasti.

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