

A.R. Khanna and Sons Vs. Delhi Development Authority and anr.

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SooperKanoon Citation : sooperkanoon.com/712379

Court : Delhi

Decided On : Oct-19-2006

Reported in : 134(2006)DLT239

Judge : Rekha Sharma, J.

Acts : [Arbitration Act, 1940](#)

Appeal No. : CS(OS) No. 3260-A of 1988

Appellant : A.R. Khanna and Sons

Respondent : Delhi Development Authority and anr.

Advocate for Def. : Rajesh Kumar, Adv.

Advocate for Pet/Ap. : Raman Kapur, Adv

Judgement :

Rekha Sharma, J.

1. The Delhi Development Authority (in short called DDA) vide Agreement No. 3/EE/CPD.VI/85-86 awarded the work of construction of Local Shopping Centre at Lawrence Road to M/s. A.R. Khanna and Sons (hereinafter called the Contractor). It was stipulated in the agreement that the work was to commence on 26.3.85 and was to be completed by 25.9.85. It was also stipulated that the contractor was to

submit structural drawings within 15 days of the award of the work and the work was to be commenced only after receiving approval of the structural drawings from the Engineer in charge of the work.

2. It is the case of the contractor that the designs were submitted to the DDA on 18.4.85 for approval but no approval of the same was received during the currency of contract. It was only on 13.11.85 after the date of completion of the work had expired that the DDA informed the contractor that approved foundation plans could be collected from its office and directed it to commence the work immediately. The contractor on being so informed intimated to the DDA that the stipulated time for completion of the work had expired on 24.9.85 for which the DDA alone was responsible because of the late approval of the structural designs at its end. The contractor also intimated that during all this period there had been an unprecedented rise in the prices of the material and therefore it was not willing to execute the work at old rates but was prepared to undertake the same at 78% above the previous estimated cost. This was not acceptable to the DDA. It threatened to get the work executed from elsewhere at the risk and cost of the contractor and gave effect to its threat on 24.6.86 by awarding the work to another contractor.

3. Feeling aggrieved by the action of the DDA the contractor raised disputes which were referred to the sole arbitration of Shri O.P.Mittal, Chief Engineer (Retired) CPWD who, vide his award dated 1.8.88, accepted the claims of the contractor and dismissed the counter-claim of the DDA which it had raised against the contractor.

4. The arbitrator before giving his findings against the claim raised by the contractor gave a brief summary of facts which led to the cancellation of the contract. This is what the arbitrator said:

According to the arbitrator the designs were submitted by the contractor on 18.4.85 and the design calculations were received by the DDA on 30.4.85. Originally the work was under DDA Division No. CPD.VI but subsequently orders were issued on 29.4.85 to transfer the work to Housing Division No. v. of DDA. However, the actual transfer took place by about 30.5.85. Due to the fact that the

work was transferred to another division the relevant action to approve the design was dislocated and during the entire period of six months of construction time the approved designs were not given to the contractor. On 13.11.85 the DDA intimated to the contractor that the approved foundation plans could be collected from its office and directed the contractor to commence the work immediately. Before this happened, on 9.11.85, the contractor had intimated to the Executive Engineer that the stipulated time for completion of the work had expired on 24.9.85 and the DDA was guilty of breach of contract in not approving the designs for the work. The contractor also intimated that he would commence dismantling of temporary stores constructed at site, the bore well, the barbed wire fencing and remove other materials from 10.11.85. On 4.12.85 the contractor intimated to the DDA that the stipulated time for completion of work expired on 24.9.85 and it was the DDA which was responsible for breach of the contract. It further intimated that there was an unprecedented rise in the prices of materials and that it was prepared to commence the work at 78% above the estimated cost. On the other hand, the Executive Engineer served notices under clause 3 of the contract and thereby threatened to get the work executed from another person at the risk and cost of the contractor. Ultimately the contract was rescinded on 24.6.86 and the work was awarded to another contractor at 82% above the estimated cost.

Having noticed the above facts, the arbitrator came to the conclusion that the contractor was justified in not completing the work at the agreed rate as breach was committed by the DDA because of its failure to approve the structural designs during the currency of the contract. He also observed that the work was awarded to another contractor after call of open tenders at 82% above the estimated rates, whereas the contractor, was willing to perform the same contract at 39.38% above the estimated cost. Having so observed the arbitrator proceeded to accept the following claims of the contractor.

Claim No. 1. Claimants claim Rs. 10,000/- towards refund of earnest money/security deposit.

An amount of Rs. 10,000/- was deposited by the claimants as earnest money. The respondents have forfeited the above amount since the claimant did not execute

the work. I have already decided that the breach was committed by the respondents and claimant was entitled to claim damages. I decide the forfeiture of the earnest money is not justified. The respondent should refund the amount of Rs. 10,000/- (Rupees ten thousand only) to the claimants.

Claim No. 2. Claimants claim Rs. 5,100/- towards preparation of drawings/details.

As per terms of the contract the claimants got the foundation and structural drawings prepared for the work from a structural Engineer. The expenditure became infructuous because the work was not executed. I decide the claim of the claimant is justified. I assess the justified amount to be Rs. 4,000/-. The respondents should pay an amount of Rs. 4,000/- (Rupees four thousand only) to the claimants against the above claim. Claim No. 3. Claimants claim Rs. 2,780/- towards dismantling of 80 ft. boring / depreciation of the pipes.

For the execution of the work and obtaining construction water a bore well was provided by the claimant. This also became infructuous. I assess the claim is justified for Rs. 2,300/- only. I award the respondent should pay an amount of Rs. 2,300/- (Rupees two thousand three hundred only) to the claimants.

Claim No. 4. Claimants claim Rs. 5,600/- towards dismantling of store/depreciation of the sheets/bricks etc.

For storing cement and for a temporary office at the site, temporary buildings were constructed by the claimants. The roof was provided in AC sheets. Since the work could not be executed the expenditure became infructuous. I assess the claim is justified for Rs. 3,550/-. I award the respondent should pay an amount of Rs. 3,550/- (Rupees three thousand five hundred fifty only) to the claimants.

Claim No. 5. Claimants claim Rs. 2,650/- towards dismantling of barbed wire fencing depreciation of barbed wire.

The place where the shopping centre was to be constructed was occupied by the vegetable sellers. The claimant was advised by the Executive Engineer to provide barbed wire fencing so that the construction may not be interrupted by the vegetable sellers. Since the work was not executed the barbed wire fencing was

dismantled and removed. The expenditure is justifiably claimed by the claimants. I assess and award that the respondents should pay an amount of Rs. 2,650/- (Rupees two thousand six hundred fifty only) to the claimants.

Claim No. 6 Claimants claim Rs. 11,335/- towards cost of 83,000 bricks taken over back and 15,000 bricks because of wastage and theft.

The claimant arranged about 1 lac bricks for the execution of the work. When the work could not be commenced, 83,460 bricks were carted to another work by the claimant. About 15,000 bricks were wasted. It is normal that when the bricks are obtained and stacked at site and later when these have to be again removed to another site about 15% bricks get broken into brick bats and are lost. I decide that the claimant is entitled to cartage of 83,460 bricks and the loss due to wastage of 15,000 bricks. I assess and decide that the claim is admissible for Rs. 10,340/- after allowing deduction for the residual value of brick bats. The respondents should pay an amount of Rs. 10,340/- (Rupees ten thousand three hundred forty only) to the claimants.

Claim No. 7 Claimants claim Rs. 9000/- towards charges paid for Munshi and Chowkidar.

The claim for employing Chowkidars and Munshi is justified. But the claimant should have economized on the cost due to Munshi when the work did not commence. I assess the claim is justified for Rs. 4800/- only. I award the respondent should pay an amount of Rs. 4800/- (Rupees four thousand eight hundred only) to the claimants.

Claim No. 8 : Claimants claim pendent elite interest.

As per the latest decision of the Supreme Court the arbitrators are not competent to award pendent elite interest, when the case is referred not through the court of law.

5. This is an award which has been made under the [Arbitration Act, 1940](#). It is well settled by a catena of judgments of the Supreme Court as well as by this Court that unless an error apparent on the face of the award is discernable from the

award itself the courts would be loath to interfere in the same. It has also been held that if the award is a speaking award and the arbitrator has given his reasons for awarding what he has awarded the courts will not go into the sufficiency of the reasons or even into the validity and legality of the reasons unless they are so perverse that no reasonable person would have arrived at the findings at which the arbitrator had arrived . I may in this context refer to the following paragraph from the judgment of the Apex Court reported in State of UP v. Allied Constructions : (2003)7SCC396 :

The arbitrator is a judge chosen by the parties and his decision is final. The court is precluded from reappraising the evidence. Even in a case where the award contains reasons, the interference therewith would still be not available within the jurisdiction of the court unless, of course, the reasons are totally perverse or the judgment is based on a wrong proposition of law. An error apparent on the face of the records would not imply closer scrutiny of the merits of documents and material on record. Once it is found that the view of the arbitrator is a plausible one, the court will refrain itself from interfering .

6. Here, is a case where the arbitrator has given two reasons for awarding the claims in favor of the contractor. Firstly, that it was because of the delay on the part of the DDA in not approving the designs that the contracted work could not be commenced during the currency of the contract period. And secondly, that the contractor nevertheless was prepared to undertake the work at 78% over and above the original rates to which the DDA did not agree but when it actually awarded the contract to another contractor it was at a higher rate than at which the contractor was prepared to execute the contract.

7. I find no infirmity in the reasoning and consequently no error in the award. The award is thus made a rule of the Court. The contractor shall be entitled to interest on the awarded amount @6% per annum from the date of the award till realization. Decree be drawn accordingly.