

Associated Builders Vs. Dda

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Court : Delhi

Decided On : Feb-23-2006

Reported in : 128(2006)DLT17

Judge : Sanjay Kishan Kaul, J.

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

Appeal No. : IA No 429/1997 and CS(OS) No. 507A/1996

Appellant : Associated Builders

Respondent : Dda

Advocate for Def. : Anusuya Salwan and ; Monica Sharma, Adv.

Advocate for Pet/Ap. : B.K. Dewan, Adv

Judgement :

Sanjay Kishan Kaul, J.

IA No. 429/1997 (u/Sections 30 and 33 of the [Arbitration Act, 1940](#))

1. The petitioner was awarded the contract for construction of SFS houses at Sarita Vihar, Sector I, in pursuance to the agreement No. 14/EE/CPD-5/DDA/84-85. Disputes arose between the parties and in view of Clause 25 being the arbitration clause of the terms and conditions of the contract, the Engineer

Member DDA vide letter dated 25.11.1991 appointed Sh. M.S. Telang, Chief Engineer (Retd.) of CPWD and DDA as the sole arbitrator. The arbitrator made and published his award dated 06.12.1995. The respondent aggrieved by the same has filed the objections under Section 30 and 33 of the [Arbitration Act, 1940](#) (hereinafter referred to as 'the said Act').

2. Learned counsel for the respondent has taken me through the award and the arbitral record. Learned counsel seeks to argue each of the objections on merits, but in my considered view, this is not the jurisdiction of this court. The court does not sit as a court of appeal to scrutinize evidence and facts on record. It is not the jurisdiction of this court to interfere with an award because on the same set of facts and evidence on record, this court may come to a different conclusion. So long as the conclusion arrived at by the arbitrator is a plausible one, it is not for this Court to interfere with the award. It is not the jurisdiction of this court to scrutinize each claim in this behalf. A reference may be made in this behalf to the Division Bench judgment of this court in DDA v. Bhagat Constructuion Co. Pvt. Ltd. 2004 (3) Arb.LR 481 and of the Apex Court in M/s Sudarsan Trading Co. v. Govt of Kerala : [1989]1SCR665 . It is in view thereof that learned counsel for the respondent was asked to point out the specific claims in respect of which scrutiny would be permissible within the parameters of Section 30 of the said Act since until and unless an objection falls within the said parameters, this court is not required to scrutinize the same, as held by the Apex Court in State of UP v. Allied Constructions : (2003)7SCC396 .

3. Learned counsel for the respondent referred to claim No. 6. The said claim has been awarded to the petitioner on consideration of the two conditions being conditions 10 and 11 of the agreement. The arbitrator has construed the two conditions and come to the conclusion of awarding the amount of Rs 1080 which does not call for interference.

4. Learned counsel for the respondent also referred to claim No. 7 and its various clauses to contend that clause 25-B of the conditions of the contract would apply. The arbitrator has found that the said clause was scored out. Since the clause is scored out, it has no application to the contract in question and thus the award

would not call for any interference.

5. Learned counsel for the respondent forcefully contends that the award under claim No. 8 cannot be sustained for the reason that the award is on account of increase in labour and wages rates beyond clause 10CC. It is not disputed that the payments under Clause 10CC for increase in labour and material have already been given to the petitioner. The petitioner, however, wanted a higher rate especially as there was considerable delay in the contract though the contractual period was extended by the respondent. Such delay is attributable to the respondent.

6. Learned counsel for the petitioner, on the other hand, contends that this claim was made on various accounts and not only for increase in material and labour rates.

7. A perusal of the award shows that the claim was made for Rs 19,25,521/- on account of damages due to prolongation of the contract. The claim has been allowed only to the extent of Rs 1,75,940/-. Insofar as this claim is concerned, the arbitrator awards it as I assess the net damages towards the claimants' inputs on construction materials and labour rates alone at Rs 1,75,940/-

8. Thus it is abundantly clear that what has been awarded is only the said category of award which is covered by Clause 10CC.

9. The Division Bench of this court in DDA v. K.C. Goel and Company 2001 AD Delhi 116 has held that in view of clause 10CC no other claim on this account would be permissible. This judgment of the Division Bench has been recently followed by this court in CS(OS)2822/94 titled M/s Bedi Constructions v. DDA and Anr. decided on 10.11.2005. while discussing the aforesaid judgments and other judgments it has been held that once the formula of clause 10CC is provided for and is relied upon by the petitioner, it is that formula alone which should have been applied and no amount other than that formula could have been granted. Award to that extent is, thus, set aside.

10. Learned counsel for the respondent next referred to claim 10 on account of execution of work under foul conditions. The award is only 32,702/- against the claim of 6,05,348/-. This claim has been awarded on account of the fact that the execution of the work took place in conditions when the area used to be flooded by sewerage as a result of breach in the adjoining canal tributary carrying sewage. The petitioner through various communications brought that to notice of the respondent. Learned counsel for the respondent urges that it was term of the contract that the petitioner should make himself familiar with the site. In my considered view, that would be no defense since it is certainly not part of the terms and conditions that the area would be flooded with sewerage water. The working condition of the petitioner was affected by such sewerage and the arbitrator on consideration of the material has made the award which does not call for any interference.

11. Learned counsel for the respondent also referred to claim No. 25 which is on account of overhead expenses. The claim has been awarded since the respondent has been found to be at fault for the delay. That being the position, it can hardly be disputed that the petitioner would be entitled to the amounts on account of such overhead expenses. The claim under clause 10CC is distinct from the claim for such overhead expenses or loss of profit as held in *Narain Das R. Israni v. DDA* 2005 VIII AD 556. Thus the contention of the respondent cannot be accepted.

12. Learned counsel for the respondent referred to claim No. 26 on account of damages due to abnormal reduction in the quantities of the agreement. Learned counsel for the respondent contends that clause 12A sets forth the procedure required to be followed in case of such claim. The said clause is as under:

CLAUSE 12A. In the case of contract substituted items or additional items which result in exceeding the limits laid down in sub-clause (vi) of clause 12 except the items relating to foundation work, which the contractor is required to do under Clause 12 above, the contractor shall, within 7 days from the receipt of order, claim revision of the rates supported by proper analysis in respect of such items for quantities in excess of the deviation limit, notwithstanding the fact that the rates for such items exist in the tender for the main work or can be derived in

accordance with the provisions of sub clause (ii) of Clause 12 and the Engineer-in-Charge may receive their rates, having regard to the prevailing market rates and the contractor shall be paid in accordance with the rates so fixed. The Engineer in Charge shall, however, be at liberty to cancel his order to carry out such increased quantities of work by giving notice in writing to the contractor and arrange to carry it out in such a manner as he may consider advisable, but under no circumstances the contractor shall suspend the work on the plea of non settlement of rates of items falling under this Clause.

All the provisions of the preceding paragraph shall equally apply to the decrease in the rates of items or quantities in excess of the deviation limit, notwithstanding the fact that the rates for such item exist in the tender for the main work or can be derived in accordance with the provisions of sub clause (ii) of the preceding Clause 12, and the Engineer in Charge may revise such rates having regard to the prevailing market rates.

13. The Division Bench of this court in DDA v. Jagan Nath Ashok Kumar 89 (2001) DLT 668 held that the procedure prescribed therein was mandatory and this judgment has been followed in Narain Das Israni's Case (Supra).

14. Learned counsel for the petitioner has referred to the document C-41 dated 18.02.1996 which shows that the respondent was notified about the deviation in question. Learned counsel for the respondent submits that the arbitrator ought to have gone into the issue to determine as to what would be the cut off date for the notice.

15. The arbitrator in the present case is a technical person who is well conversant with the nature of the trade. Such an arbitrator is not required to write a judgment in the form as written by a Judge. The award and the documents on record show consideration of this material. This view is re-inforced by the judgment of the Division Bench in DDA v. Bhagat Construction Co. (P) Ltd. and Anr. 2004 (3) Arb.LR 548.

16. In view of the aforesaid, it cannot be said that the procedure under Clause 12A has not been followed.

17. The last issue raised by learned counsel for the respondent is in respect of claim No. 28 on account of interest. The arbitrator has granted pendente lite interest at the rate of 12 per cent, future interest from the date of the award till date of the decree or date of payment at the rate of 16 per cent per annum and that too on both the principal and the interest amount. After some hearing, learned counsel for the petitioner confines his claim of interest to interest @ 12 per cent on the principal amount alone. This is also the rate of interest which has been awarded by this court for the relevant period of time keeping in mind the then prevailing commercial rates of interest.

18. The objections stand disposed of.

CS(OS) 507A/1996

In view of the objections having been disposed of, the award of the sole arbitrator Mr. M.S. Telang dated 25.11.1991 is made rule of the court with the modification that the award under the claim 8 stands disallowed and the petitioner is held entitled to simple interest at 12 per cent per annum for pendente lite period as well as till date of decree. It is thus clarified that the interest awarded would only be on the principal amounts of the claims awarded and not on the pendente lite interest component. The petitioner shall also be entitled to future interest from date of decree till date of realisation at 9 per cent simple interest. In case the respondent makes the payment of the decreetal amount within 60 days, the respondent shall not be liable to pay future interest.

Parties are left to bear their own costs.

Decree sheet be drawn up accordingly.

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