

G.D. Tiwari and Co. Vs. Delhi Development Authority and anr.

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Court : Delhi

Decided On : May-19-2006

Reported in : 130(2006)DLT675; 2006(90)DRJ562

Judge : Manju Goel, J.

Acts : [Arbitration Act, 1940](#) - Sections 14, 30 and 33

Appeal No. : CS(OS) No. 767-A/1996

Appellant : G.D. Tiwari and Co.

Respondent : Delhi Development Authority and anr.

Advocate for Def. : Amiet Andley and ; Arun Sharma, Advs.

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

Judgement :

Manju Goel, J.

1. The petitioner M/s G.D. Tiwari and Company filed the petition under Section 14 of the [Arbitration Act, 1940](#) with a prayer to call upon the Arbitrator Respondent No. 2 Shri K.D. Bali to file his award in the dispute between the parties, viz., the petitioner and the respondent No. 1-the DDA. The petitioner obtained a contract for work of construction of 590 DUs under SFS at Vasant Kunj, Sector-C, Grade III

SH: Construction of stone boundary wall and park wall vide agreement No. 3/HD-II/87-88. Some controversies between the parties arose and the respondent No. 2 Shri K.D. Bali was appointed Arbitrator in the matter who published his award. On the petition being filed the CS(OS) No. 767-A/1996 was registered. Notice of filing of the award was issued to the parties and objections to the award was filed by the DDA under Section 30 and 33 of the [Arbitration Act, 1940](#). Objections have been replied to and both parties have filed affidavits in support of their respective contentions. A rejoinder has also been filed.

2. Objections under Sections 30 & 33 of the Arbitration Act as delineated at the time of arguments are as under:

1. Reasons for the award have not been given by the Arbitrator.

2. Claim No. 5 is nothing but duplication of Claim No. 1 under which damages have been awarded to the tune of Rs. 1,33,000/-, and, therefore, the damages awarded under Claim No. 5 could not have been awarded.

3. The Arbitrator has awarded interest @ 18% per annum from 16.5.1990 without indicating whether the interest was for pre-suit period or for the pendente lite period. The claimant had also not indicated whether it claimed interest for the pre-suit period or for the pendente lite period.

4. That the Arbitrator did not consider the documents submitted by the defendant.

3. There is no dispute that Clause 25 of the agreement required that the Arbitrator would give reasons for the award. For examining whether the Arbitrator had given a reasoned award, it is necessary that the award is looked into. The Arbitrator's award says that parties were allowed to argue the matter fully before the Arbitrator. Claim No. 1 deals with the claim for Rs. 2,35,305/- being the payment of final bill. The Arbitrator has awarded a sum of Rs. 1,64,506. The Award shows that the Arbitrator has examined various factors. The Arbitrator has gone through each and every aspect of the claim and has arrived at a conclusion by due application of mind. The following portion of the award in respect of Claim No. 1 will indicate that the Arbitrator has given reasons for his conclusions.

From the perusal of C-22 being the copy of the hindrance register maintained by the respondent it is revealed that there was total delay in performance of the contract because of the respondent. The claimants have referred various documents C-10 to C-21 also in support of the said contention and on consideration of the evidence adduced by the parties I am of the view that there was delay in discharge of obligations at the hands of the respondents with the result the work could be actually completed on 27.12.1988 after about 15 months of the stipulated completion. I hold that the respondents committed breach of contract and are liable to damages.

As regards quantum, from the cost index as issued by Government from time to time the increase during this period of delay comes to 20%. The claimants in support of this has filed C-27 indicating the cost index of the relevant period. I assess and award 15% on the work executed after stipulated date of completion which comes to Rs. 66,460/-

In consideration of the above facts I award a sum of Rs. 1,64,506/- (Rupees one lakh sixty four thousand five hundred six only) in favor of the claimants under this claim.

4. Clearly the Arbitrator had taken into account the facts of the case, register maintained by the DDA and the cost index issued by the Government from time to time. The Arbitrator could have awarded the damages @ 20%. Yet the Arbitrator actually awarded @ 15%. There is no reason why the DDA against whom the award has been made should have any grievance that the Arbitrator has not given a reasoned award.

5. The other claims also indicate that the Arbitrator has taken into account all the relevant facts and has given reasons for arriving at conclusion about each claim. The objection that the reasons have not been given is, therefore, not true.

6. It is said that Claim No. 5 and Claim No. 1 is overlapping. However, this objection is not proved. Claim No. 5 deals with damages due to breach committed by the Department. Claim No. 1 is actually based on escalation in cost, in labour as well as material on account of prolongation of the contract work beyond the

stipulated period of completion. Claim No. 5, however, deals with the costs incurred by the claimants in maintaining their establishment. In particular the Arbitrator has awarded damages to the claimants on account of the payment that was required to be made to the junior engineer, supervisor and chowkidar in maintaining the establishment. A small amount of Rs. 15,000/- has been awarded by the Arbitrator towards this claim. Thus Claim Nos.1 & 5 cannot be said to have been overlapping.

7. The Arbitrator has awarded interest @ 18% per annum from 16.5.1990 till the actual payment. It has found that the final payment could have been made latest by 15.5.1990. therefore, interest is awarded from 16.5.1990. The award does not say that the DDA raised any objection regarding the rate of interest on which the claim was made. The claimants claimed interest @18% and this is what the Arbitrator has awarded. The Division Bench of this Court in EM & EM Associates v. Delhi Development Authority and Anr. 2002(2) A LR 222 and held that it was not proper for the Court to modify the rate of interest which the Arbitrator had granted in exercise of discretion vested in him. In that case the rate of interest granted was 18% per annum. The Court did not interfere with this interest.

8. The Arbitrator has awarded interest from 16.5.1990 till the date of realisation. This Court can grant interest from the date of the award till the date of realisation. therefore, even if the Arbitrator has exceeded his jurisdiction in awarding future interest, no objection thereto can be raised. All that can be said is that from the date of the award till the date of realisation the appropriate interest should be at the rate of 9% per annum.

9. So far as the last objection regarding non consideration of documents is concerned the same is certainly not proved when the award is seen. This Court cannot sit in appeal over the award and determine as to whether on considering the documents of the parties the Arbitrator should not have come to the conclusions which he arrived at. I find no infirmity in the award. therefore, the objections under Section 30 & 33 of the Act is dismissed and the award is made rule of the Court subject to the modification that from the date of the award till realisation of the decretal amount interest will be payable @ 9% per annum

Decree sheet accordingly be drawn up.

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