

## Sh. Shyam Construction Vs Union of India and Another

**Court:** Rajasthan High Court (Jaipur Bench)

**Date of Decision:** Feb. 28, 2013

**Citation:** (2013) 2 CDR 1046

**Hon'ble Judges:** Prem Shanker Asopa, J

**Bench:** Single Bench

**Advocate:** D.D. Sharma and Ms. Manju Dave, for the Appellant; Shailesh Prakash Sharma and Mr. Ganesh Gupta, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

Prem Shanker Asopa, J.

Heard learned counsel for the parties. By this arbitration application, the Applicant-claimant is seeking direction

for referring the dispute to the General Manager, North-Western Railway for appointment of the Arbitrator as per Clause 64.1.

2. Briefly stated, the facts of the case, are that the Non-applicants invited tender vide NIT No. 05/Track Ajmer/06 duty bunk at Railway Crossing

No. 43, 44, 46 and 49 at Ajmer Madar Station and pursuant thereto, an agreement No. WA/350/2/667-1 was signed between the Applicant and

the Non-applicants and the work was awarded to the Applicant on 17.3.2006 for Rs. 1,68,207.39. Thereafter, a supplementary work order for

Rs. 41,663.22 was issued, thus the total cost of the work order was Rs. 2,09,870.61 in respect of which, after preparation of the final bill, the

amount has not been paid, therefore, disputes and differences have arisen between the parties and then notice was issued on 22.2.2009 (Anx. 3).

In reply to the said notice, on 8.10.2009 the Non-applicants have replied that as per the special conditions of the contract - 1.2, the Contractor

shall not be entitled to ask for reference by arbitration before the completion of the work assigned to him under the contract and further, the

Contractor shall seek reference to arbitration to settle the dispute only once within the ambit of condition 1.1. It was further mentioned in the said

reply that since the work was not completed under this contract, case is not arbitrable as per Special Condition of this contract 1.2.

3. Earlier in reply, the counsel for the Non-applicants has taken the objection that since the dispute was of Rs. 40,000/- and the same is more than

20% of the total amount of the contract, no arbitration can be made as per Clause 1.1 of the special conditions of contract.

4. Submission of Mr. D.D. Sharma, counsel for the Applicant is that while computing the total amount of the work, not only the initial cost of the

work but the cost of the supplementary work is also to be added and in case the same is added, then the total cost would be Rs. 2,09,870.61 and

the claim which has been filed for Rs. 40,000/- is not more than 20% of the contract value. In support of aforesaid submissions, counsel for the

Applicant has placed reliance on the judgment of the Supreme Court in Deepak Kumar Bansal vs. Union of India & Ors., Civil Appeal No. 1089

of 2009 decided on 17.2.2009. Counsel also submits that Clauses 1.1 and 1.2 are independent clauses and Clause 1.1 has nothing to do with the

completion of the contract and Clause 1.2 is an independent Clause.

5. Submission of Mr. Shailesh Prakash Sharma, counsel for the Non-applicants is that the 20% value is to be counted from the initial work order

and on counting the same, the claim of Rs. 40,000/- is more than 20%, therefore, the dispute was not arbitrable. His second objection is that as

per Clause 1.2, the Contractor is not entitled to reference by arbitration before completion of the work assigned to him under this contract and

since the contractor has left the work incomplete, he is not entitled for reference.

6. Before proceeding further, it is necessary to reproduce relevant Para 9 of the judgment of the Supreme Court in Deepak Kumar Bansal vs.

Union of India & Anr. (supra) as also Clauses 1.1 and 1.2 of the special conditions of contract. The same are as under:

Para 9 of the judgment of the Supreme Court

in Deepak Kumar Bansal (supra)

09. In our view, the High Court has mis-directed itself in holding that the claim was in excess of 20% of the total cost of the work. Admittedly, the

work was for a sum of Rs. 32,17,641.29 (original) and three additions viz., Rs. 4,99,471.36, Rs. 3,25,865.02 and Rs. 2,17,748.63 totalling Rs.

42,60,726.30, which cannot be in excess of 20% of the total cost of the work.

(emphasis supplied)

Clauses 1.1 and 1.2 of the special conditions

1.1 The provision of clauses 63 to 64 of the general conditions of contract will be applicable only for settlement or claim of dispute between the

parties for values less than equal to 20% of the values of the contract and when claims or disputes are of value more than 20% of the value of the

contract. Provision of clauses 63 to 64 and other relevant clauses of the general condition will not be remedy for settlement of such disputes.

1.2 The contractor shall not be entitled to ask for reference by arbitration before the completion of the work assigned to him under this contract.

The contractor shall seek reference to arbitration to settle the dispute only once within the ambit of condition 1.1 above.

(emphasis supplied)

7. I have gone through record of the arbitration application and further considered the rival submission of counsel for the parties.

8. On consideration of the aforesaid submissions, I am of the view that while calculating the total cost of the work, the supplementary

cost/additional cost is to be included. In this particular case, the Applicant was awarded work initially vide work order dated 17.3.2006 for Rs.

1,68,207.39 and thereafter, subsequently, work order was of Rs. 41,663.22, thus total cost of the work was Rs. 2,09,870.61. The claim of the

Applicant is of Rs. 40,000/- only which is less than 20%, therefore, the restriction of applicability of Clauses 63 and 64 of the General Conditions

of Contract only for settlement or claim of dispute between the parties for values less than equal to 20% of the values of the contract, will not

apply.

9. A conjoint reading of the two Clauses 1.1 and 1.2 of Special Conditions of Contract will reveal that the contractor is entitled for reference once

either under Clause 1.1 or 1.2.

10. The arbitration application is allowed and the dispute is referred to the General Manager, North Western Railway, Jaipur for appointment of

the Arbitral Tribunal consisting of the Sole Arbitrator as per Clause 64(3)(a)(i) of the General Conditions of Contract.

11. The non-applicant is at liberty to raise the objections before the Sole Arbitrator. A copy of this order be sent to the General Manager, North

Western Railway, Jaipur.