

## Rajdev Engineering Works Vs Delhi Development Authorities

**Court:** Delhi High Court

**Date of Decision:** May 19, 1988

**Citation:** (1988) 2 ARBLR 241 : (1988) 35 DLT 197 : (1988) RLR 421

**Hon'ble Judges:** N.C. Kochhar, J

**Bench:** Single Bench

**Advocate:** R.L. Pal and M.L. Jain, for the Appellant;

### Judgement

N.C. Kochhar, J.

(1) Delhi Development Authority (the respondent) had awarded the contract for internal electrification of 201 dwelling units, Phase II in Asian

Games Village Complex, Shri Fort, New Delhi to M/s. Rajdev Engineering Works .(the petitioner). Agreement No. 4/PE/AGD VII/E/80-81 was

executed between the parties. This agreement was governed by an arbitration clause. The disputes having arisen, the .Engineer Member of the

respondent referred them to the sole arbitration of Shri M.P. Gandhi, Superintending Engineer (Electrical) of the respondent (the arbitrator), who

entered upon the reference and made his award dated 19th July, 1985.

(2) On an application having been filed by the petitioner (Suit No. 1443-A/85), direction were issued to the arbitrator and consequently the award

was filed in court. The respondent filed objections (I.A. 1180/86) challenging the award in respect of items 2,4,6,8,9 and 10 on the grounds that

the arbitrator had not given reasons in support of his award; had misinterpreted the terms of the agreement between the parties and had not

decided the matter in accordance with law and as such had misconducted the proceedings. The objection petition has been opposed.

(3) On the pleadings of the parties, following issue was framed on 14th May, 1986:

WHETHER the award is liable to be set aside on any of the objections of the objectors ?

The parties were allowed to lead their evidence in the form of affidavits and documents and consequently necessary affidavits have been filed on

behalf of the parties.

(4) I have heard Shri M.L. Jain, Advocate for the objector/respondent; Shri Rajesh Lakhanpal, Advocate for the petitioner and have also perused

the record of the case. My findings on the issue are as under : Claim No. 2.

(5) This claim related to the sum of Rs. 8,000.00 for which refund was claimed by the petitioner from the respondent who had deducted the above

said sum from the bill of the petitioner on the ground that he had failed to supply thimbles/lugs. The learned arbitrator found that the thimbles/lugs of

the value of Rs. 4,824.60 had not been supplied by the petitioner and as such the respondent was justified in deducting the said sum from the bill of

the petitioner. He further found that no material had been placed before him to justify the withholding of the balance sum of Rs. 3,175.40 and as

such the petitioner was entitled to receive the same from the respondent. The learned arbitrator has given valid reasons for allowing the claim of the

petitioner to the extent of Rs. 3,175.40 and the award of the arbitrator cannot be said to be invalid or bad on any account in regard to this claim.

Claim No. 4:

(6) The petitioner had claimed a sum of Rs. 10,200.00 for making good the edges of hook boxes, junction boxes and fan regulator boxes. The

claim had been resisted by the respondent on the ground that this was the responsibility of the petitioner to do so at his own cost in view of the

additional conditions No. 23 and 24 of the agreement between the parties. The learned arbitrator found that the contention of the respondent was

not correct but held that the claim of the petitioner to the extent of Rs. 4,896.00 was justified and allowed the same. After perusing the said

conditions, I do not find that the arbitrator came to a wrong conclusion or that any interference is called for. Claim No. 6:

(7) The petitioner had claimed Rs. 24,000.00 for providing adopter boxes. It has not been disputed that the adopter boxes of the said value had

been provided by the petitioner but the claim was contested on the ground that according to the opinion of the Chief Technical Examiner the cost

of the adopter boxes was included in the cost of switch boards. After going through items 30 to 34 and 36, which given the cost of various items, I

am of the view that the learned arbitrator rightly held that the cost of the adopter boxes were to be paid separately and was not included in the

switch boards. The learned counsel for the respondent has not been able to point out to me as to how the decision of the arbitrator is wrong on this

point. Claim No 8.

(8) The next challenge on behalf of the respondent is to the award in regard to claim No. 8 whereby the learned arbitrator allowed a sum of Rs.

18,000.00 to the petitioner. Before discussing the arguments raised at the Bar, it may be stated that it is not disputed that according to the original

agreement, the petitioner was to commence work on 22nd February, 1981 and to complete it by 21st October, 1981 i.e. within a period of 8

months but the actual date of completion of work was 30th October, 1982. It is also not disputed that under the terms of the agreement, the

petitioner was bound to employ engineer and during the continuation of the contract, he had to maintain establishment. The petitioner has claimed

that during the extended period of 12 months, he was entitled to claim Rs. 26, 480.00 Rs. 2240.00 p m. taking into account Rs. 800.00 p.m paid

as salary to one engineer, Rs. 360.00 p m. paid as salary to one Munshi and a sum of Rs 1080.00 p m. paid as salary to three chowkidars.

(9) I have gone through condition No. 11 according to which the parties had agreed that the petitioner was to adjust his time according to the

construction of the building and could not claim anything by way of compensation for idle labour or otherwise In my view it has been rightly

contended by Shri Rajesh Lakhanpal on behalf of the petitioner that the condition No. 11 in the agreement only debarred the petitioner from

claiming for idle labour if he could not get the site or could not do the work for certain period during the period notified in the contract. It does not

stand to reason that if for any reason the building is not made available to the petitioner who is bound to employ engineer etc. to carry out the work

even after the contracted period, condition No. 11 can debar his claim for compensation beyond contracted period on that account. I, Therefore,

do not find any error in the award in regard to this claim as well and no ground has been made out for interference. Claim No. 9.

(10) Mr. Jain has next assailed the award in regard to claim No. 9. The petitioner had claimed a sum of Rs. 2040.00 on the ground that the

earthing was carried out in rocky area rather than in ordinary soil. The arbitrator allowed the claim to the extent of Rs. 1360.00 . Mr. Jain contends

that according to condition No 3 in the additional conditions of the agreement, the petitioner was bound to visit the site of work in order to

acquaint himself with the access of site, location of work etc included in the work and to get any other relevant information such as physical

progress of building work, programme of building work execution etc and as such he ought to have known before tendering that he had to do the

earthing in rocky area and as such the claim could not have been made by him. After Redding condition No. 3, I do not think that the petitioner

was obliged to even dig the soil to find out whether it was normal soil or rocky one. The learned arbitrator, Therefore, for good and valid reasons

held that the petitioner could not be debarred from claiming the extra amount on this account. The award of the learned arbitrator cannot, thus, be

set aside in regard to this claim as well. Claim No. 10.

(11) The petitioner had claimed interest @ 12½% p.a. from the date of reference to the arbitrator till the payment of the amount by the

respondent. The arbitrator awarded interest effective from two months after the date of publishing of the award and payable by the respondent till

the date of actual payment or the decree whichever is earlier.

(12) Shri M.L. Jain, the learned counsel for the respondent has contended that the arbitrator is not a court and has no power to grant pendente lite

and/or future interest and as such there is error apparent on the face of the record in this regard and the award is liable to be set aside. He has

placed reliance on a decision of the Hon"ble Supreme Court in the case Executive Engineer (Irrigation), Balimela and Others Vs. Abhaduta Jena

and Others, .

(13) The contention of the learned counsel for the petitioner, on the other band, is that the arbitrator can award interest. He has placed reliance on

the decisions in cases Firm Madanlal Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore, : Union of India (UOI) Vs. Bungo Steel Furniture

Pvt. Ltd., : V.K. Madhok Vs. Union of India, Miss Mohinder Kaur Kochhar v. Punjab National Bank Limited, New Delhi AIR 1981 Del 106

and State of Orissa and Another Vs. Consolidated Construction Company (Engineers and Contractors) and Another, .

(14) The decision in cases Krishan Kumar Madhok v. Union of India, Miss Mohinder Kaur Kochhar v. Punjab National Bank Ltd. and Slate of

Orissa etc. v. Consolidated Construction Company (supra) were based on the decision of the Supreme Court in cases Firm Madanlal Roshanlal

Mahajan v. Hukumchand Mills Ltd., Indore and Union of India v. Bungo Steel Furniture Pvt Ltd, (supra). While deciding the case of Executive

Engineer Irrigation Galimala & others v. Abhaduta Jena (supra), the Hon"ble Judges of the Supreme Court had taken into consideration the

decision of the Supreme Court incases Firm Madanlal Roshanl Mahajan v. Hukumchand Mills Ltd. and Union of India v. Bungo Steel Furniture

Pvt. Ltd. (supra) besides other cases decided by the Supreme Court. After considering all those cases the Hon"ble Judges held that an arbitrator is

not a court within the meaning of Section 34 of the CPC and has no power to award pendente lite interest in cases which are not referred to him in

suits but where reference is made to an arbitrator in a suit the arbitrator assumes the power of the court and can award interest.

(15) In the present case, admittedly, the reference to the arbitrator was not made in a suit but was made by the Engineer Member of the

respondent Authority when the petitioner raised the above said disputes. It is not made clear to me as to how the arbitrator can be said to have the

power to grant future interest under the provisions of Section 34 of CPC when he has no such power to grant pendente lite interest. In this view of

the matter I hold that the arbitrator had no power to grant interest in this case.

(17) The present is, of course, a case of hardship for the petitioner. In view section 29 of the Arbitration Act this Court has no power to grant

interest prior to the date of decree and no compensation can be granted to the petitioner by awarding interest either from the date of award or

from the date that the petition for making the award a rule of the court remained pending. But it is for the Legislature to provide by law for a way

out in such like unhappy situations and I direct that a copy of this order be forwarded to the Ministry of Law and Justice for such action as they

may deem fit to take.

(18) The result is that the arbitrator acted without jurisdiction in awarding interest against claim No. 10 and there is error apparent on the face of

the record in this respect. The award in regard to claim No. 10 is liable to be set aside. Issue is decided accordingly. In view of my above findings

I set aside the award in regard to claim Nos. 10 of the petitioner but make the award a rule of the court in regard to claim No 1 to 9 and 11 and

direct that a decree be drawn in terms thereof. The respondent shall also pay to the petitioner interest @ 12 % p.a. from today till payment.

(19) I.A. 1880/86 and Suit No. 1443-A of 1985 stand decided accordingly.