

(2000) 07 DEL CK 0095

Delhi High Court

Case No: Suit No. 134-A OF 1993 and IA. 2970/93

Star Builders and Decorators

APPELLANT

Vs

DDA

RESPONDENT

Date of Decision: July 24, 2000

Hon'ble Judges: Mukul Mudgal, J

Bench: Single Bench

Advocate: Mr. B.M. Sehgal, for the Appellant; Mr. V.K. Sharma and Mr. Roopesh Kanwar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Mukul Mudgal, J.

These are the Objections filed by the respondent-DDA in IA.No.2970/93 to the Award dated 29th July, 1992, given by Shri S.C. Gupta, Chief Engineer (SWZ), an Arbitrator of DDA who was appointed by the Engineer Member of Delhi Development Authority to arbitrate in the disputes raised by the petitioner herein.

2. Arguments have been advanced by the learned counsel for the respondent-DDA/Objector mainly on Objections to Claim Nos.10, 17, 18 & 21.

The relevant portion of Claim No. 10 reads as follows :

"Claimants claim a sum of Rs. 39,312/- on account of compensation for supply of damages glazed tiles by the respondents by way of refund of recovery at double the issue rates."

3. In so far as Claim No. 10 is concerned, the learned counsel for the respondent-DDA/Objector has relied upon Clause 42 which provided for recovery at double the rate in respect of excess issue of material. On the basis of the excess gross tiles worked out theoretically, the respondent calculated that a total of 1974 gross white glazed tiles were issued to the claimant/petitioner herein but the theoretical consumption worked out for actual work done comes to 1860 gross.

Consequently in purported exercise of the power under Clause 42, the value of 108 gross of white glazed tiles was recovered at double the issue rate. The Arbitrator has found that Clause 42 provided for the recovery at a penal rate for various items but did not make any such provision in respect of white glazed tiles. In view of this, the Arbitrator while permitting the amount of recovery of Rs.19,656/- at the normal rate for the white glazed tiles declined to uphold the recovery in so far as it was made at double the normal rates. In my view, the Arbitrator has rightly held that the Claim of the claimants/petitioners herein is justified. It has not been shown by the respondent-DDA that the said Clause 42 provided for double rate recovery in respect of white glazed tiles. Accordingly the respondent's objection as to Claim No. 10 is dismissed and the Award in respect of said Claim is upheld.

4. The relevant portion of Claim No.17 reads as follows :-

"Claimants claim a sum of Rs. 30,000/- on account of watch and ward of DUs for the period beyond the date of completion."

5. In so far as Claim No. 17 is concerned, this claim was raised by the claimant/petitioner herein before the Arbitrator as to the watch and ward charges because the completed houses were not taken over by the respondent-DDA/Objector herein and the claimant was, Therefore, compelled to hand over the possession of each completed house to the allottees who were given letters of demand from time to time and not at one go. On the basis of these facts, the Arbitrator has come to the conclusion that the claim of the claimant for ward and watch charges was justified and the claimant/petitioner herein was entitled to sum of Rs.18,200/- which is the salary of 2 full time chowkidars for 13 months at the rate of Rs. 700/- per month. The Arbitrator has found that the ward and watch staff had to be retained as DDA had not taken over the completed houses and the petitioner had to maintain security till these houses were handed over to the allottees in phases. Against this claim of Rs.30,000/-, the Arbitrator has awarded only a sum of Rs.18,200/-. In my view, there is no legal infirmity in the reasoning of the Arbitrator and the Award in respect of Claim No. 17 is otherwise also just & reasonable. Accordingly the respondent's objection as to Claim No. 17 is dismissed and the Award in respect of said Claim is upheld.

The relevant portion of Claim No. 18 reads as follows :

"Claimants claim a sum of Rs. 46,500/- on account of applying WP cement paint in brought surface."

6. In so far as the Claim No. 18 is concerned, the Arbitrator has awarded against a claim of Rs. 46,500/- a sum of Rs. 25,076/-. On the basis of that claim for 50 per cent extra surface area was not justified and only 20 per cent surface area to cover the rough sand finished surface was justified. The Arbitrator while arriving at the figure of 20 per cent has relied upon applicable CPWD Specifications, Vol. I at Page 345, Para 13.32.6 read with Para 13.25. The Arbitrator has also relied upon the coefficient

where the surfaces are not plain as per Paragraph 13.33.6.4. In my view, there is no infirmity in the reasoning of the Arbitrator and the Award in respect of Claim No.18 is reasonable as it is based on C.P.W.D. Specifications. It has not been shown as to how the C.P.W.D. Specifications were not applicable or irrelevant. Accordingly the respondent's objection as to Claim No. 18 is dismissed and the Award in respect of said Claim is upheld.

7. The relevant portion of Claim No. 21 reads as follows :

"Claimants claim a sum of Rs.2,25,000/- on account of compensation for site expenses, overheads, salary of Engineers and staff etc. incurred due to prolongation of contract for reasons attributable to the respondents."

8. In so far as Claim No. 21 is concerned, the Arbitrator has awarded against a claim of Rs.2,25,000/- a sum of Rs. 48,400/- only. The main plea of Mr. Sharma, the learned counsel for the respondent-DDA/Objector in impugning this claim is that this figure was covered by Clause 10 (cc) of the agreement. The relevant portion of Clause 10(cc) reads as follows :-

"If the prices of materials and store (not being actually supplied through services rendered at fixed rates by the department in accordance with Clauses 10 and 34 hereof) and/or wages of labour required for execution of the work increase the contractor shall be compensated for such increase as per provisions detailed below and the amount of the contract was accordingly be varied subject to the condition that such compensation for escalation in prices shall be available only for the work done during the stipulated period of contract including such period on which the contract is validly extended under provisions of Clause 5 of the contract without any action under Clause 2 and also subject to the condition that no such compensation shall be payable for the work for which the stipulated period of completion is six months or less."

9. In support of this plea, the learned counsel for the respondent-DDA/Objector has relied upon a judgment of this Court in Delhi Development Authority Vs. U. Kashyap reported as 1999(1) Arb. LR. 88. In the aforesaid judgment the plea relating to the applicability of Clause 10(CC) has been summarised in Para 5 to the following effect :-

"Under aforesaid Claim No. 11 the respondent had claimed Rs.15,90,000 towards increase in the prices of materials etc. for the work done after the stipulated date of completion. The arbitrator held that Clause 10(CC) of the agreement in question was based on various parameters and did not truly reflect the increase in market prices of the building materials and labour. Delay in execution of work was attributable to the appellant."

10. Applying the position of law as per the decision of the Hon"ble Supreme Court in Associated Engineering Company's case reported as 1991(2) Arb.L.R. 180, the

Division Bench held as follows:-

"Applying the ratio in Associated Engineering Company's the Arbitrator obviously had exceeded his jurisdiction in making the award under Claim No. 11 by adopting a formula different from that set out in Clause 10(CC) of the agreement. It will not be out of place to state that in response to the respondent's letter No. nil dated July 20, 1985 the Executive Engineer, Housing Division No. XIV, DDA, sent a letter dated August 1, 1985 to the respondent wherein it was pointed out that for any increase in the prices of material and labour respondent shall be compensated as per provision of Clause 10(CC) for the work done not only during the stipulated period of the contract but also for such period for which the contract is validly extended and, Therefore, question of charging revised rates after August 19, 1985 did not arise. It was asserted that nothing extra is payable beyond Clause 10(CC). For the work done beyond August 19, 1985 respondent admittedly stands compensated under said Clause 10(CC) by the appellant. Thus, agreeing with the submission advanced by Ms. Anusuya Salwan we are of the opinion that the award under aforesaid Claim No. 11 deserved to be set aside."

11. There is no dispute that if an increase in prices of materials and for wages of labour is sought for after the date of completion, Clause 10 (CC) would apply and such a claim would be barred. In the present case the petitioner had not sought increased rates which are clearly barred by Clause 10 (CC) but has in fact sought compensation due to prolongation of contract. In that view of the matter, the judgment of DDA Vs. U. Kashyap (Supra) which related to the claim for increased prices of materials cannot have any application to the facts of the present case.

12. The learned counsel for the petitioner has relied upon the judgment of Learned Single Judge of this Court in [Kalyan Chand Goyal Vs. Delhi Development Authority](#), .

In the aforesaid judgment while construing the effect of Clause 10(CC), the Learned Single Judge has held as follows:

"As it is found on the evidence on record that the delay in completion of the work was due to the failure on the part of the respondent the petitioner is required to be compensated for the loss suffered by him for maintaining staff beyond the stipulated date of completion. Position might have been different if the claim was for escalation of prices of materials and wages but no claim has been allowed on that count. No stipulation is there in the agreements debarring the contractor from making such a claim. The award of the arbitrator is based on reasons and no error apparent could be pointed out by the counsel for the respondent and Therefore, this award also stands upheld."

13. In the present case also the claim is not on account of escalation of prices of materials and wages but on account of the claim for maintaining the staff beyond the stipulated date of completion occasioned by the respondent's conduct. In my view, the aforesaid judgment of Kalyan Chand Goyal Vs. DDA (Supra), relied upon by

the learned counsel for the petitioner clearly applies to the facts of the present case. Accordingly the respondent's objection as to Claim No. 21 has no merits and is also dismissed and the Award in respect of said Claim is upheld.

14. The remaining Objections. raised on behalf of respondent-DDA/Objector in IA.No.2970/93 are factual in nature and are duly covered by the law laid down by this Court in the judgment of Shri S.K. Jain Vs. DDA & Another in S.No.1671-A/92 & IA. 43/93 which was pronounced on 18th April, 2000. Accordingly these Objections are dismissed.

The Award dated 29th July, 1992 is made a Rule of the Court.

The Arbitrator has not awarded any interest. However, in the facts and circumstances of the case and considering the passage of time taken in this Court, it would be in the interest of justice, if from the date of Award an interest of 6 per cent per annum is awarded till the date of decree. If the amount due under the Award is paid within three months from today, the award shall not carry any future interest. However, if the payment is not made within three months from today, the awarded amount shall carry interest at the rate of 12 per cent per annum from the date of the decree till realisation. There shall be no orders as to costs.

Decree sheet be drawn up accordingly.

Suit & application are accordingly disposed of.