

(2008) 3 ARBLR 276 : (2008) 105 DRJ 60

Delhi High Court

Case No: FAO (OS) 2 of 1993

Delhi Development
Authority

APPELLANT

Vs

Harbans Singh and
Sons

RESPONDENT

Date of Decision: July 21, 2008

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 30, 33

Citation: (2008) 3 ARBLR 276 : (2008) 105 DRJ 60

Hon'ble Judges: Manmohan, J; Manmohan Sarin, J

Bench: Division Bench

Advocate: Bhupesh Narula, for the Appellant; B.K. Sood, K.B. Soni and Rajesh Kumar, for the Respondent

Final Decision: Dismissed

Judgement

Manmohan Sarin, J.

Appellant-DDA has preferred this appeal impugning the judgment dated 17th September, 1992 passed by the learned Single Judge in Suit No. 2076-A/1990. The learned Single Judge dismissed the objections filed by the appellant-DDA vide I.A No. 11358/1990, against the arbitral award dated 28th March, 1990. With the dismissal of is 11358/1990 i.e the objections under Sections 30 & 33 of the Arbitration and Conciliation Act, 1940, the arbitral award dated 28th March, 1990, was made rule of the court except that the award granting future interest by the Arbitrator was set aside. The learned Single Judge while making the award rule of the court directed payment of interest @ 12% p.a on the awarded amount in respect of claim Nos. 1 to 6 from the date of award till payment. It was further ordered if the awarded amount of Rs. 7,86,245.08 together with interest @ 9% p.a and costs of Rs. 5000/- as awarded by the Arbitrator were paid within two months from 17th September, 1992, the decree would stand satisfied.

2. Appeal was admitted to hearing on 4th January, 1993. The Division Bench in CM 2/1993, vide orders dated 15th February, 1993, directed the appellant-DDA to deposit the decretal amount in the form of fixed deposit for a period of three years in the name of Registrar, with interest component to be calculated @ 9% on the award within eight weeks. The execution of the decree was stayed subject to said deposit. Appellant accordingly furnished F.D.R in compliance with the directions given. F.D. was further directed to be renewed for a further term. On 7th April, 2005, none was present on behalf of the appellant to press the appeal and the same was dismissed in default and the amount lying in the Registry was directed to be released to the respondent. In the event, appellant moved CM 14868/2007 for restoration of appeal together with an application for condensation of delay being CM 14869/2007.

3. For the reasons as set out in detail in our order dated 20th February, 2008, appellant's applications for condensation of delay and restoration of appeal were allowed and the appeal was restored to its original number subject to payment of costs of Rs. 10000/-.

4. Arguments were heard in appeal on 20th May, 2008 and judgment reserved. We now proceed to decide the appeal.

The relevant facts for appreciation of the appellant's contention in appeal may be noted in brief:

The offer of the respondent for supply of machine made door/window, shutters estimated at Rs. 50 lacs was accepted vide letter dated 14th May, 1984 of the Chief Engineer, DDA. An agreement was entered into between the parties on 16th August, 1984. In terms of the agreement, shutters were to be supplied to the appellant within eight weeks from 24th May, 1984 to 23rd January, 1985 at the agreed rates stipulated in the agreement. The Chief Engineer of the appellant was to make allocation to its different Divisions. The Executive Engineers of the concerned Divisions were to confirm the particulars, size and number of shutters required by them for their respective housing schemes under the Division. Appellant made nine allocations between the period from 29th May, 1984 to 18th February, 1986. The second allocation made on 20th June, 1984 was cancelled on 11th October, 1984. The concerned Executive Engineers of the Division gave confirmation against eight allocations between 16th June, 1984 to 12th September, 1986. It was on receiving of confirmation that supplies had to be made by the respondent. The contract period was to expire on 23rd January, 1985. The supply on confirmations received on 26th December, 1984 or thereafter could not be made before the expiry of the contract on 23rd January, 1985.

5. It has come on record that appellant withheld certain payments in the absence of extension of time and the respondent Therefore, applied for grant of provisional extension of time under duress. Respondent claimed to be entitled to enhanced rate for supplies made after the contractual period i.e 23rd January, 1985, claiming that they were not bound to supply at the contract rate. The claims of the respondent were disputed by the

appellant, resulting in arbitration clause being invoked. Mr.M.S.Telang was appointed as the sole arbitrator to adjudicate upon the disputes/claims raised by the respondent. Respondent raised six claims all on account of escalation of timber price, seasoning costs and also claiming future interest and cost of arbitration proceedings. The Arbitrator after perusal of the pleadings and the evidence produced before him and hearing the parties, awarded Rs. 7,86,245.08 together with future interest @ 12% and costs of Rs. 5000/-. As noted earlier, objections filed were dismissed by the learned Single Judge vide impugned judgment and the said judgment is assailed in this appeal.

6. The main contention of Mr.Bhupesh Narula, learned Counsel appearing for the appellant is that as per the arbitration agreement, the arbitrator was required to give his reasons in respect of the award for any claim/dispute over Rs. 50,000/-. The Arbitrator has singularly failed to give his reasons for the amounts awarded. Counsel submits that the Arbitrator has simply given his conclusions without reasons. There is no reason justifying the quantum of award or indication in the award as to how the amount awarded had been arrived at. Learned Counsel further contends that respondent has failed to lead any evidence of the escalated costs or higher amounts being expended by them in the acquisition of the material and in execution of the contract. Learned Counsel for the appellant referred to the letter dated 18th September, 1985, written by the respondent to the appellant wherein while noting that due to placement of orders and confirmation of sizes after the expiry of contract period, delay had occurred. The respondent was still cooperating with the Department in execution of balance orders when the market rates had gone up by 25%. Respondent also sought six months" time as 55% of the work was ordered six to eight months after the expiry of contract. Respondent also protested against payment being stopped because of extension of time not having been applied for. Respondent sought issue of provisional time extension in the interest of work so that they could resume supply. Learned Counsel for the appellant urges that use of expression by the respondent that they were cooperating with the respondent indicated that they were willing to make the supply on the contracted rates and were only seeking extension of time. The claim for enhanced rate was thus an afterthought. Counsel further submitted that the Arbitrator had erred in ignoring letters of the respondent dated 26.1.1985, 24.2.1986 and 15.12.1986 which showed that due to an accident having occurred in the factory of the respondent and the non availability of timber etc., work remained closed Appellant urged that these were delays attributable to the respondent which were ignored.

7. On the first submission that the basis of amounts awarded not having been disclosed the award suffered from vice of non giving of reasons and simply conclusions being given, the appellant places reliance on [Gora Lal Vs. Union of India \(UOI\)](#), , College of Vocational Studies v. S.S.Jaitley AIR 1987 Del 134. Regarding ignoring of material documents and resultant misconduct, counsel relied on [Seth Mohanlal Hiralal Vs. State of M.P.](#), , [Union of India \(UOI\) and Others Vs. Banwari Lal and Sons \(P\) Ltd.](#), , Ms.Bombay Ammonia Pvt. Ltd v. Union of India AIR 1987 Del 148 to urge that award suffered from

non application of mind. Reliance was also placed on [Sathyanarayana Brothers \(P\) Ltd. Vs. Tamil Nadu Water Supply and Drainage Board](#), to urge that non consideration of relevant writings and documents deprived a just and fair decision and vitiated the award.

8. We have heard learned Counsel for the parties, carefully perused the arbitral award, the objections thereto, the impugned judgment and the grounds of appeal and the submissions made before us. The learned Single Judge in his judgment and the Arbitrator in the award have clearly set out the facts which bring out that there was failure on the part of the appellant to make allocation for the orders to be executed in time and also delayed confirmation by the concerned Executive Engineers of the Divisions, who were to confirm their requirement of particular sizes of doors/window shutters in respect of different Divisions. The Arbitrator has found that confirmation in respect of housing scheme of 288 LIG houses was well within reasonable time. However, confirmation in relation to 160 SFS houses was sent on 26th December, 1984 which hardly gave one month time to manufacture and supply thereof. The Arbitrator has found that effectively only four allocations out of nine were made before 23rd January, 1985 and confirmation in respect of one and a half of them was made before the said date. All other allocations and the confirmations were made in the extended period of contract. In view of these clear and categorical findings of facts in the award which are based and supported by records, it is idle for the appellant to contend that delay had occasioned on account of respondent based on two or three letters written wherein they had intimated the factum of an accident in their factory and temporary closure flowing therefrom. The said intimation may have explained the delay that was taking place in manufacture and supply of the particular consignment in question. The said letters do not dilute or negate the findings of breach or delay having been occasioned in the execution of contract on account of appellant. Moreover, the Arbitrator is the master of facts and law. He has given clear findings of breach by appellant which cannot be assailed in these proceedings. The judgments cited by the appellant regarding non consideration of material documents would not be attracted and do not advance the appellant's case in these circumstances.

9. This takes us to the second submission regarding the claim of the respondent for payment at enhanced rates being not admissible under the agreement and in view of the respondent having themselves applied for extension of time which was granted without levy of compensation or damages. The Arbitrator had found on examination of evidence that the costs of machine made shutters were rising after the agreement had been entered into. He also found that claimant/respondent applied for extension of time not under free consent but only under duress and the threats of withholding of eligible and due payments by the appellant. Letter dated 18th September, 1985 on which reliance was placed by the appellant and where the respondent mentioned the factum of cooperating with the Department in executing the balance orders, respondent had significantly pointed out that market rates had gone up by 25%. Respondent had also protested and described the appellant's action unjustified in directing the Executive Engineer to stop payment because extension of time had not been applied for. It was, in

these circumstances, that provisional extension of time was sought for to resume supplies. The findings of the learned Arbitrator is in consonance with the basis as unfolded and as noted by us it is a finding of fact, which is not assailable. Similar is the position with regard to finding reached by the Arbitrator that appellant committed breach of the agreement as they failed to make allocations and confirmation in sizes before the stipulated date and the respondent was thus entitled to receive suitable compensation.

10. Let us now consider the last contention of the appellant with regard to award being vitiated by non giving of reasons and only the conclusions having been given. The learned Single Judge has duly discussed and noted the decision as in *College of Vocational Studies v. S.S. Jaitely* (supra). The learned Single Judge has held that the Arbitrator has given ample reasons for the award of higher rates to the respondent for the supplies made after the expiry of the stipulated date of supply i.e 23rd January, 1985. The learned Single observed that the Arbitrator had not explicitly stated as to how he worked out the figure awarded by him against each claim. In other words, he had not given the computation or quantification of the amount awarded. The learned Single Judge with a view to satisfy his judicial conscience that Arbitrator had applied his mind in making the award and findings and conclusions were not arbitrary even went through the exercise to find out as to how the amount against each of the claims on account of price rise of timber, rise in seasoning cost etc had been arrived at by the Arbitrator. It was demonstrated before the learned Single Judge that the amounts have been worked out on the basis of rates at which the appellant had awarded tender on or about the dates of supply made by the respondent. The Arbitrator's minutes of proceedings dated 8th November, 1989, 9th January, 1990 and 16th January, 1990 and the calculation sheets on pages 44 to 50 of the award file were perused by the learned Single Judge to satisfy himself as to the basis of the award. This exercise had been duly gone into. The learned Single Judge has also noted that counsel for the appellant was confronted with this position who did not dispute the Explanation given by the counsel for the respondent but only insisted that this basis of arriving at the amount should have been mentioned in the award itself. Perusal of the award as also the judgment of the learned Single Judge and the proceedings sheet referred to him, have also been seen by us. We have no reasons to reach a different conclusion than the one reached by the learned Single Judge.

11. We may observe that the Arbitrator is required only to indicate his thought process. As held out in [Delhi Development Authority Vs. Alkaram](#), and *College of Vocational Studies v. S.S. Jaitely* (supra), an Arbitrator is not required to give the details of his computation and give his mental meanderings. It is sufficient if his thought process is indicated and the basis for awarding the amount is disclosed. Reference may also be made to the judgment of the Supreme Court in [Indian Oil Corporation Ltd. Vs. Indian Carbon Ltd.](#), where the court has considered the requirement of reasons being given for the award and the nature and extent of such reasons. The court observed that "Arbitration process should be quick and that quickness of the decision can always be ensured by insisting that short intelligible indications of the grounds should be available to

find out the mind of the arbitrator for his action." The award in the present case meets the said requirements. It would perhaps help had the learned Arbitrator explicitly stated that the computations were based on the rates at which the appellant itself had awarded contracts to others at the relevant period. It would have obviated the exercise which the learned Single Judge went through to satisfy his judicial conscience with regard to the basis of computation for the amount awarded. However, the absence did not introduce any fatality in the award.

12. This is not a case where the findings of the Arbitrator is not based on evidence. The purpose of arbitration is to provide a speedy and economical remedy for commercial disputes. The Arbitrator is not required to give detailed judgment or detailed reasons. Courts are not required to go into the reasonableness of the reasons or sufficiency of the reasons. The court is not required to reappraise the evidence and sit as a court of appeal. In this case, it would be seen that award is dated 19th March, 1990 and a period of nearly 18 years has elapsed since then, such objections and pleas do not deserve to be countenanced.

13. We may observe in addition that the Arbitrator has carefully considered each item of claims and wherever required had not granted or reduce the claim where the allocation was made before the stipulated date i.e 23rd January, 1985. It is only in cases where allocation or confirmation of sizes was given by appellant belatedly which made the execution impossible, before the stipulated date that compensation has been awarded taking into account the rise in price of timber, rise in seasoning cost, rise in fabrication cost and rise in truck freight. Moreover adopting the rates at which the appellant itself had awarded the work in competitive bidding to other parties during the contemporaneous period was a rational method adopted for assessing the enhancement in rates.

We, Therefore, find no error or infirmity in the award or in the impugned order. Needless to mention that none of the judgments referred to in view of the discussion aforesaid and the facts as noted would apply and advance the appellant's case.

Appeal has no merit and is liable to be dismissed. However, on the question of award of interest, considering the prevalent rate of interest and the rate as admissible for F.D's, counsel for the respondent on behalf of the respondent has consented that post award interest may be reduced to 8.25% p.a. We, accordingly, dismiss the appeal subject to the modification in the decree that the interest shall be @ 8.25% p.a from the date of award.