

(2005) 11 DEL CK 0089

Delhi High Court

Case No: IA 6312 of 2003 and CS (OS) No. 2036 of 2002

Sardar Prem Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Nov. 14, 2005

Acts Referred:

- Arbitration Act, 1940 - Section 14(2), 17, 30, 33

Citation: (2005) 3 ARBLR 644 : (2005) 125 DLT 380 : (2006) 1 RCR(Civil) 504

Hon'ble Judges: Badar Durrez Ahmed, J

Bench: Single Bench

Advocate: A.B. Dial, Sumati Anand and Navneet Mishra, for the Appellant; Jagjit Singh, for the Respondent

Judgement

Badar Durrez Ahmed, J.

The petitioner which is a proprietorship concern carrying on business of manufacture and sale of furniture and furnishings has moved this application u/s 14(2) read with Section 17 of the Arbitration Act, 1940 for directions to respondents No.3 & 4 to file the award dated 30.10.2002 and for making the award a Rule of the Court.

2. The award has, however, been filed and now the question is of making the award a rule of the Court. The respondents no.1 & 2 have filed their objections u/s 30 & 33 of the Arbitration Act, 1940 in respect of the award in the form of is No.6312/2003.

3. The respondent No.2 had advertised for pre-qualifications of contractors for manufacturing, supplying of furniture and other interior decorations works. The petitioner submitted its tender for the above works. His tender was accepted by respondents No.1 & 2. The petitioner also submitted three bank guarantees for an amount of Rs.9.73 lakhs. However, subsequently certain disputes arose between the petitioner and the respondents No.1 & 2 resulting in the termination of the contract on 11.5.1990 by the respondents. The respondents are stated to have the balance

portion of the contract completed by some third party. It is alleged by the petitioner that on the date on which the contract was terminated there were several items, a list whereof is filed along with the objections as Annexure "A" to the objections, belonging to the petitioner which were left at the premises of the respondents No.1 & 2.

4. Since disputes had arisen between the petitioner and the respondents No.1 & 2 the same were referred to arbitration. The petitioner being the claimant had filed its claim which was sub-divided into claim Nos.1 to 5. The respondent also filed its counter claim. The said claims and counter-claims were the subject matter of arbitration before the arbitrators (respondents No.3 & 4) who were officers and employees of respondent No.1. After considering the entire evidence on record and arguments advanced by the parties the arbitrators made the award dated 30.10.2002 which is the subject matter of the present petition. All the claims of the petitioner except claim No.4 have been disallowed. The counter claim of the respondent has also been disallowed.

5. Mr.Jagjit Singh, who appears for the respondents No.1 & 2 submitted in support of his objections that the award was liable to be set aside on three counts. The first ground being that the claim filed by the petitioner did not have any specific claim for interest nor was there any such reference to arbitration, yet the arbitrators have allowed interest to the claimant/petitioner. The second point that was urged by Mr.Jagjit Singh was with regard to claim No.4 which has been granted to the petitioner. This is in respect of the value of materials which were left by the petitioner and which were re-tendered by the respondents No. 1 & 2. According to Mr.Jagjit Singh, the said items were as per annexure "A" to the objections filed by them and the same had been re-tendered to the third party who had been awarded the balance work and the amount of the re-tender in respect of these items was Rs.2.73 lakhs. He has further submitted that the arbitrators did not take this value of Rs.2.73 lakhs but have awarded a higher value of Rs.4,09,500/-. According to Mr.Jagjit Singh, this enhancement is purely arbitrary and without any basis. He drew my attention to the award and in particular where it is stated as under:-

"However, considering the data/documents before us, the base value with which we have to go by is the value obtained by the respondent for the materials i.e. ,2.73 lakhs. Further this is to be appreciated that this value was the value paid by the tenderer in re-tender and he surely would have taken a reduced cost. We are of the firm belief that the actual value of this material would have been higher. While there could be no basis for valuing this material, we believe that justice would be done if an adhoc increase is put on this amount. We feel that increasing this value by 50% would meet the ends of justice and as such we value this material at Rs.4,09,500/-."

6. He also indicated that in the award itself, it is mentioned that there was no proof of the items actually left behind him by the petitioner. Yet the arbitrators have fixed the amount of Rs.4,09,500/-. The third ground taken by Mr.Jagjit Singh is that the

counter claim of the respondent was rejected for no valid reason.

7. Mr.Dial, the learned senior counsel appearing for the petitioner submitted that in so far as the question of interest is concerned, the same was very much prayed for in the claim filed by the petitioner. Although it was not specifically marked as a claim, the prayer clause contained the prayer for interest. As regards the second objection taken by Mr.Jagjit Singh which was with regard to the allowing of claim No.4, Mr. Dial submitted that the fixation of the value of articles left by the petitioner with the respondents No.1 & 2 at Rs.4,09,500/- is not arbitrary and is also not unreasonable. He submitted that, in point of fact, the value as submitted by the claimant of the said article was Rs.15 lakhs. The arbitrators did not accept that valuation and, instead, derived the figure of Rs.4,09,500/- on the basis of the figure provided by respondents No.1 & 2, i.e., of Rs.2.73 lakhs. He has also submitted that the logic of enhancing the re-tender amount by 50% is not without any basis in as much as the arbitrators have been pragmatic in Realizing that the value of the amount paid in a re-tender would normally be a reduced amount. He has also stated that in any event the respondents never informed the petitioner to take up the material. As regards the counter claim being rejected by the respondents, Mr.Dial submitted that the same was rightly rejected by the arbitrators in as much as no proof in support of the counter-claim had been submitted by the respondents.

8. Having considered the arguments advanced by the counsel for the parties and having examined the award, I am inclined to agree with the submissions made by Mr. Dial on all three points. Although the claim by itself does not refer to interest as specified claim, but the prayer includes the item interest. The fixation of the amount of Rs.4,09,500/- by the arbitrators also does not amount to an arbitrary fixation of the same in as much as the items left behind stand admitted by the respondents No.1 & 2 and it is only a question of fixation of the value of goods thereof and for which purpose they have taken a sum of Rs.2.73 lakhs as the basis on which the final amount of Rs.4,09,500/- has been worked out. The reasoning adopted by the arbitrators as indicated above cannot be faulted and in any event would not amount to such an error as would qualify to be termed as perverse. No interference, Therefore, is called for by this Court. Moreover, there is no allegation of bias or misconduct on the part of the arbitrators. As regards the third aspect i.e., the rejection of the counter claim, it is apparent from a reading of the award itself that no proof whatsoever was submitted by the respondents. It is also a fact that the specifications were altered. It is also recorded in the award that the altering of the specification was not rebutted at any stage by the respondents. Therefore, the rejection of the claims of the respondents by the arbitrators cannot also be faulted. In this view of the matter, the objections raised by the respondents cannot be accepted.

9. Accordingly, it is directed that the award dated 30.10.2002 be made a Rule of the Court.

10. A decree be drawn up accordingly and it is also decreed that the respondent Nos.1 and 2 shall be liable for future interest @ 8% per annum till the date of realisation.

11. The award shall form part of the decree.