(2009) 01 DEL CK 0262

Delhi High Court

Case No: FAO (OS) No. 122 of 2005

Delhi Development Authority		APPELLANT
	Vs	
Prem Chand Sharma and Co.		RESPONDENT

Date of Decision: Jan. 20, 2009

Hon'ble Judges: Vipin Sanghi, J; Mukul Mudgal, J

Bench: Division Bench

Advocate: Pawan Mathur, for the Appellant; Sandeep Sharma, for the Respondent

Judgement

Mukul Mudgal, J.

This appeal challenges the upholding of the award dated 27.03.1991, made by the arbitrator appointed by the appellant DDA being a retired Chief Engineer, CPWD. The Learned Single Judge has upheld the award and dismissed the objections filed by the appellant/DDA by its impugned judgment dated 04.02.2005. Four submissions were primarily urged before us, in respect of claim Nos. 19, 23 and 24 and the rate of interest granted by the Learned Single Judge.

2. In so far as claim No. 19 is concerned, it is related to enhanced rates for work done after the original date of completion as per the agreement. The work was commenced on 09.07.1982, and the original agreement stipulated the date of period of completion to be 12 months. The work was eventually completed on 30.11.1985. The arbitrator after going through the correspondence recorded the finding that the work got prolonged for a considerably long period due to hold ups and delays on the part of the appellant/DDA resulting in breach of the contract for which the claimant/respondent was entitled to compensation. Consequently, if the arbitrator found the claim for compensation to be justified, in principle, on the finding that the delay was attributable to the appellant/DDA, this finding of fact based upon the record cannot be interfered with or challenged. Even otherwise, we find the aforesaid finding to be reasonable.

3. The only other plea in respect of claim No. 19 relates to the computation of the said claim. From the award it is seen that the amount awarded is based upon the

calculation of Rs. 6,37,535/- done by the appellant themselves. Accordingly, this computation cannot be questioned as it is based on the appellant's own calculation. Learned Counsel for the appellant submits that the award on this claim was based on Clause 10-CC, which was not part of the agreement at the relevant time. We are of the view that Clause 10-CC constitutes the formula devised by the DDA themselves, and even if it was actually not a part of the contract, the same could, in any event, be adopted as a reasonable manner of computation of the respondent's claim. Reliance on the formula cannot be termed to be unreasonable, so as to permit interference with the award.

4. The next objection relates to claim No. 23 which was a claim for a sum of Rs. 2,75,000/- towards salaries of staff and overheads for the extended period of contract. The fundamental premise for this claim was that the work got prolonged because of hold ups and delays amounting to breaches in the contract on the part of the appellant. During the extended period, the respondent incurred salaries of its employees/labour/staff. While the entire staff expenditure was claimed by the respondent/claimant for the extended period, the arbitrator has, in our view, rightly tapered down in favour of the appellant the requirement of staff based upon the work done; and has awarded a sum of Rs. 1,31,163/- against a claim of Rs. 2,75,500/-. There is thus no further scope of reduction in the amount awarded. In our view, the arbitrator's reasoning is rational and is based on a scientific method and thus warrants no interference particularly in light of it being upheld by the Learned Single Judge.

5. The next objection relates to claim No. 24. This claim relates to loss of profitability due to prolongation of the contract because of defaults and breaches of the contract on the part of the appellant amounting to Rs. 7,73,900/-. In computing the loss of profitability, the arbitrator has relied upon a formula given in Hudson on Building Contracts and the arbitrator has awarded a sum of Rs. 3,83,605/- to the claimant. Taking into account the fact that the delay occurred on the part of the appellant, the aforesaid loss of profitability based on the aforesaid formula is justified. Accordingly, the award of claim No. 24 is upheld.

6. The last plea raised by the learned Counsel for the appellant was with regard to grant of interest @ 18% p.a. interest. So far as the question of interest is concerned, we are of the view that taking into account the prevailing rates of interest available on F.D. and that the rates of interest have consistently fallen, and that the award was made in 1991, awarding of interest @ 18 % p.a. is excessive. The award is modified and the quantum of interest is reduced to 12% p.a. Learned Counsel for the respondent states that the entire payment in terms of decree was made three years ago along with interest @ 18% p.a. Consequently, due to the lowering of the rate of interest from 18% p.a. to 12% p.a. the respondent would now be liable to refund the difference in the interest amount. In the interests of justice, we direct that in case the respondent refunds the excess amount within a period of 60 days,

the respondent shall not be liable to pay any interest on the amount to be refunded. However, in case, the said payment is not made, the respondent shall refund the amount with interest at the rate of 12% p.a. from the date of receipt of the amount by the respondent till realization.

Appeal stands disposed off.