

(2008) 03 DEL CK 0247

Delhi High Court

Case No: OMP No. 240 of 2006

Naresh Kumar Gupta

APPELLANT

Vs

Municipal Corporation of Delhi
and Another

RESPONDENT

Date of Decision: March 11, 2008

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 11(6), 21, 34, 37(1)
- Limitation Act, 1963 - Article 113, 18, 14, 3

Hon'ble Judges: S. Ravindra Bhat, J

Bench: Single Bench

Advocate: N.K. Khetrapal and Ankit Khetrapal, for the Appellant; Smita Shankar, for the Respondent

Final Decision: Dismissed

Judgement

S. Ravindra Bhat, J.

The Petitioner, in this proceeding u/s 34 of the Arbitration and Conciliation Act, 1996, challenges the correctness and legality of an award dated 27.3.2006 by the Sole Arbitrator appointed by this Court. The only ground taken was that a finding about the claim being time barred is patently illegal and contrary to provisions of law.

2. The facts briefly are that the Petitioner had tendered for construction of Municipal Staff Quarters in June, 1991. The work order for Rs. 1,20,77,499/- was awarded; according to the agreement the work was to be completed within 18 months. It is not in dispute that the work commenced on 25.1.1992 and was completed on 10.1.1997. The Petitioner sought a reference and his application u/s 11(6) was allowed by this Court. His claim in arbitration was that the Respondent (hereafter called the "MCD") defaulted in its obligations which led to delay in execution of work and that MCD did not prepare a final bill. The Petitioner also claimed compensation

for escalation charges under Clause 10(CC) of the Agreement.

3. The MCD resisted the proceedings alleging that the claim was time barred as the amounts demanded were much after the expiry of three years from the accrual of the cause of action for their recovery. The MCD also alleged that a final bill had to be prepared by the claimant and that it had paid all bills raised by the latter. In addition it alleges that the claimant had accepted the amounts in full and final settlement of his dues and that he never demanded any further amounts towards so-called final bills. The MCD also alleges that it had no occasion to repudiate any such claim allegedly in the final bill.

4. After hearing the parties and considering the materials the Sole Arbitrator rendered his findings both on the question of limitation as also on merits. He upheld the objection on limitation and held that the claimants invoked the arbitration clause in terms of Section 21 only on 18.8.2002 which is deemed to be the date for commencement of arbitration. The Arbitrator noticed rival contentions about applicability of Article 18 of the Limitation Act, in contrast to Article 113 and held as follows:

Now so far as the question of the applicability of Act. 18 of the limitation Act for the claims Nos. 1 and 2 is concerned, I find myself in agreement with the contention of the respondent's counsel that there is nothing in the contract and in Clause 7 thereof in particular, on which reliance for the contrary view is placed, that time for payment of the price of the work done was provided in the contract. The last sentence of Clause 7 of the contract says that the final bill shall be submitted by the contractor within one month of the date fixed for completion of the work, otherwise the Engineer incharge "s certificate of the measurement and of the total amount payable for the work accordingly, shall be final and binding on all parties. This clause only put finality to the measurement as taken by the Engineer-incharge of the respondent and to the amount of the final bill as prepared on the basis of such certificate in a certain eventuality. There is not the slight indication even in this clause as to when the payment of the final bill as prepared on the basis of the final bill as submitted by the contractor, if any, or in the absence of that for the payment of the bill prepared on the basis of the Engineer incharge's certificate is to be made. This clause does not even provide for any time during which the Engineer incharge may take measurements of the work done or for the preparation of the final bill by the respondent thereafter and not even for payment of the amount of the final bill so prepared by the respondent's concerned official. The decision of a division bench of the Punjab and Haryana High Court in *State of Punjab v. Sham Lal Gupta* 1971 PLR 166 cited by the respondent's counsel is a clear authority on the point that time for payment of the price of the work done cannot be deemed to have been provided by virtue of the clause of the contract in that case which was identical to Clause 7 of the present contract. A contrary view was no doubt taken by the Allahabad High Court in [State of U.P. Vs. Thakur Kundan Singh](#), referred to by the learned Counsel of

the claimant. However, I need not delve with this aspect of the matter further as, in my opinion, Act. 18 of the Limitation Act does not govern the case-far a different reason. This is that even though time for payment is not presided in the contract, payment of the price for the work done by the contractor could not become due on the completion of the work simplicitor. Said Clause 7 provides for a certain step to be taken by the contractor on the completion of the work, viz to submit the final bill within a period of one month of the completion of the work. The Engineer incharge had to pass that bill, if so submitted, or in the absence of that, to get the final bill prepared on the basis of the measurements of the work done by the Engineer incharge, Clause 7 thus provides for preparation and finalisation i.e. settlement of the last bill much beyond the date on which the work stood completed. Article 18 of the Limitation Act thereof could not come into play in view of this agreement between the parties relating to the time of payment of the price of the work done. Under the circumstances the residuary Article 113 of the Limitation Act, 1963 would no doubt be applicable to the case. The controversy thus gets narrowed down only to the question as to when the cause of action to sue for the price of the work done could be said to have arisen. The contention of the respondent's learned Counsel that the cause of action also shall be deemed to have arisen on the date of the completion of the work as that is the normal position, stands negative on my above view about the effect of Clause 7 viz that the amount could not be said to have become due on the date of the completion of the work and no cause of action to sue for the recovery of the same could arise on that date and that would arise only on a subsequent date.

5. After the above observations and findings the Arbitrator noticed the effect and import of Clause 7 which granted a month's time to the contractor/ petitioner for submitting the final bill. It was also noticed that no time is provided to the Engineer-in-Charge for passing the bill. In these circumstances the Arbitrator deemed that a period of one month would be reasonable to finalize the bill in either situation. He thus held that the cause of action to sue for the balance price arose on 10.3.1997 whereas the claims were made on 18.2.2002 and were thus barred. The Arbitrator also overruled the contentions about extension of time since the last payment was made on 12.12.2001. He noticed that even if the contentions were to be given credence, the immediately previous payment was made on 31.3.1998. Since the payment in question was made more than 3 years after the said last payment there was no question of applicability of Section 18 of the Limitation Act.

6. Learned Counsel relied upon the decisions reported as R.K. Aneja v. Delhi Development Authority 2000 Arb LR 214; Union of India Vs. M/s. Momin Construction Company, and Satya Prakash v. Municipal Corporation of Delhi 91 (2001) DLT 38 and submitted that limitation would commence only in the contingency of a final bill having been drawn by the appropriate Authority. It was submitted that in this case the Petitioner kept representing and was able to persuade the MCD to make payment as late on 2001; in the circumstances the claim

for arbitration being made in 2002 and the payments made in the course of arbitration proceedings thereafter were well within the period of limitation. The finding to the contrary were, therefore, patently legal and liable to the set aside.

7. It is now well settled that the power of construing the terms of a document, or the agreement is the domain of an arbitrator. If he interprets a particular clause of the contract in one manner, the Court will not interfere with that decision (Ref [State of U.P. Vs. Allied Constructions, M/s. Ispat Engineering and Foundry Works, B.S. City, Bokaro Vs. M/s. steel Authority of India Ltd., B.S. City, Bokaro, - and BOC India Ltd. Vs. Bhagwati Oxygen Ltd.,](#) . Here, the arbitrator construed Clause 7 of the agreement between the parties, while deciding the question of limitation. The interpretation cannot be said to be unreasonable, or unwarranted.

8. Speaking about the question of limitation, in the context of arbitration and claims which are alleged to be time barred, the Supreme Court held, in [Panchu Gopal Bose Vs. Board of Trustees for Port of Calcutta](#), that:

the period of limitation for the commencement of an arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date on which the cause of action accrued, so in the case of arbitrations, the claim is not to be put forward after the expiration of the specified number of years from the date when the claim accrued.

It was also held that "action" and "cause of action" in the Limitation Act were to be understood to mean arbitration and cause of arbitration. The cause of arbitration, therefore, arises when the claimant becomes entitled to raise the question, i.e., when the claimant acquires the right to require arbitration. It was held that:

13. In the Law of Arbitration by Justice Bachawat in Chapter 37 at p. 549 it is stated that just as in the case of actions the claim is not to be brought after the expiration of a specified number of years from the date when the claim accrues, so also in the case of arbitrations, the claim is not to be put forward after the expiration of a specified number of years from the date when the claim accrues. For the purpose of Section 37(1) "action" and "cause of action" in the Limitation Act should be construed as arbitration and cause of arbitration. The cause of arbitration, therefore, arises when the claimant becomes entitled to raise the question, i.e. when the claimant acquires the right to require arbitration. The limitation would run from the date when cause of arbitration would have accrued, but for the agreement.

14.... Section 3 of the Limitation Act applied by way of analogy to arbitration proceedings, and like interpretation was given to Section 14 of the Limitation Act. The proceedings before the arbitration are like civil proceedings before the court within the meaning of Section 14 of the Limitation Act. By consent the parties have substituted the arbitrator for a court of law to arbitrate their disputes or differences. It is, therefore, open to the parties to plea in the proceedings before him of limitation

as a defence.

9. In State of Orissa and another etc. Vs. Sri Damodar Das, the Supreme Court, quoted Russell on Arbitration with approval; the author stated that the period of limitation to start an arbitration runs from the date on which the "cause of arbitration" accrued, or, from the date when the claimant first acquired either a right of action or a right to require that an arbitration take place upon the dispute concerned. The period of limitation for the commencement of an arbitration therefore, runs from the date on which, had there been no arbitration clause, the cause of action would have accrued.

10. In Major (Retd.) Inder Singh Rekhi Vs. Delhi Development Authority, it was held that:

... a party cannot postpone the accrual of cause of action by writing reminders or sending reminders but where the bill had not been finally prepared, the claim made by the claimant is the accrual of cause of action. A dispute arises where there is a claim and a denial and repudiation of the claim. - There should be a dispute and there can only be a dispute when a claim is asserted by one party and denied by the other on whatever grounds. Mere failure or inaction to pay does not lead to the inference of the existence of dispute. Dispute entails a positive element and assertion of denying, not merely inaction to accede to a claim or request. Whether in a particular case dispute has arisen or not has to be found out from the facts and circumstances of the case.

11. The work was, undeniably, completed here by the petitioner, on 10.1.1997. The demand for arbitration was made more than four years later. Whatever be the correspondence between the parties earlier, on an application of the rule in Major (Retd.) Inder Singh Rekhi's case (supra) it has to be held that the inaction of the petitioner to claim amounts, through arbitration, or the failure to approve the final bill did not postpone, indefinitely, the accrual of cause of action. In that respect the arbitrator is correct in surmising that the aggrieved party is expected to wait reasonably, and thereafter approach the court, or seek arbitration. If indeed arbitration is understood to mean a speedy and effective mechanism for dispute resolution, then it is expected that the party seeking it should act with dispatch, and alacrity, not biding his time, awaiting an opportune moment to approach the court. The petitioner, has done precisely that. The other decisions of the Supreme Court mentioned in the preceding paragraph are categorical in that arbitration is only a mechanism whereby the court is substituted; application of other laws is not disputed.

12. With the advent of the Act and the articulation of the standards of judicial intervention, in judgments of the Supreme Court, the scope of this Court's powers are limited. These are confined, *inter alia*, to violation of law or contract, the award being contrary to public policy or national interest. On an application of those

standards, this Court is of the opinion that the findings of the arbitrator do not call for interference. The petition is accordingly dismissed, without any order on costs.