

(2001) 01 DEL CK 0119

Delhi High Court

Case No: Suit No. 888 of 1993

J.S. Constructions

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision: Jan. 23, 2001

Acts Referred:

- Arbitration Act, 1940 - Section 14, 17

Citation: (2001) 3 AD 477 : (2001) 91 DLT 134 : (2001) 59 DRJ 551

Hon'ble Judges: Jiwan Dass Kapoor, J

Bench: Single Bench

Advocate: M.S. Vinayak, for the Appellant;

Judgement

J.D. Kapoor, J.

Pursuant to the disputes raised by the petitioner, Mr. A.L. Garg, Superintending Engineer (Civil) was appointed by the Engineer Member, DDA as a sole arbitrator to decide the disputes and make the award.

2. The arbitrator filed the award Along with the proceedings on 21st April, 1993. The same was taken on record and registered as Suit No. 888/93. Notice of the filing of the award was served upon both the parties. The respondent was served on 25th June, 1993. The petitioner accepted the award and did not file objections against making the award rule of the Court. However the respondents filed objections against the award mainly challenging the findings of the facts in respect of various claims and against the conduct of the arbitrator for acting contrary to the terms and conditions of the contract.

3. It is well settled that the Court does not sit in appeal and none of the parties can be allowed to reopen the case while challenging the award in respect of findings of facts or evidence.

4. In [Associated Engineering Co. Vs. Government of Andhra Pradesh and another](#), it was held that the arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract. His sole function is to arbitrate in terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled outside the bounds of the contract, he has acted without jurisdiction. But if he has remained inside the parameters of the contract and has construed the provisions of the contract, his award cannot be interfered with unless he has given reasons for the award disclosed an error apparent on the face of it.

5. Reliance was placed upon *Bunge & Company v. Dewar & Webb*. [1921] 8 L.I.L. Rep. 436 wherein the scope of the arbitrator was enunciated as under; -

"If the arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction. But if he wanders outside the contract and deals with matters not allotted to him, he commits a jurisdictional error. Such error going to his jurisdiction can be established by looking into material outside the award. Extrinsic evidence is admissible in such cases because the dispute is not something which arises under or in relation to the contract or dependent on the construction of the contract or to be determined within the award. The dispute as to jurisdiction is a matter which is outside the award or outside whatever may be said about it in the award. The ambiguity of the award can, in such cases, be resolved by admitting extrinsic evidence. The nature of the dispute is something which has to be determined outside and independent of what appears in the award. Such jurisdictional error needs to be proved by evidence extrinsic to the award."

6. In [Puri Construction Pvt. Ltd. Vs. Union of India \(UOI\)](#), it was specifically held that while upholding an award the Court has to examine the merits of the award with reference to the materials produced before the arbitrator. The court cannot sit in appeal over the view of the arbitrator by re-examining and re-assessing the materials. The scope for setting aside an award is limited to the grounds available under the Arbitration Act.

7. In another case [State of U.P. Vs. M/s. Ram Nath International Const. Pvt. Ltd.](#), wherein the course of execution of the contract, drawings and designs were changed as a result of which there was abnormal increase in the quantity of work and for such increase of quantity of work, the contractor claimed a higher rate and gave the analysis and the arbitrator having considered all the relevant material accepted the rate, it was held that no interference of the Court is required.

8. In view of the settled position of law with regard to the award which is of speaking nature and is based upon the material and evidence, the objections to the award cannot be entertained as these would tantamount to re-assessing or re-examining the findings based upon the facts and material before the arbitrator.

9. It is contended that as per Clause 25 of the agreement the arbitrator was required to record the reasons for awarding any claim of any of the parties but while

awarding the amount in favor of the petitioner the arbitrator failed to record the reasons and this amounts to legal misconduct. Further that the arbitrator has also ignored important documents on the record and the findings of the arbitrator with respect to claim No. 1 & 2 are erroneous as the arbitrator has completely ignored that regular monthly payments made to the petitioner and case regular monthly payments were not made the amount of the bill was less than Rs. 25,000/-. Similarly the arbitrator has ignored Clauses 7 & 8 of the agreement under which the petitioner was to submit his bill for payment and on his failure to do so the respondent was to prepare the bills themselves and Therefore regular monthly payments could not be made. Similarly the findings of the arbitrator with regard to claim No. 3 are against the terms of the Clause 42 of the agreement.

10. With regard to claim No. 5 the respondent has averred that the arbitrator has ignored the fact that the date of completion recorded was provisional and subject to rectification of defects and similarly claim No. 8 is also not based upon evidence as the arbitrator has disallowed payment of Rs. 50,566/- for not finishing the exposed surface of RCC under item No. 3.10. The arbitrator has relied upon CPWD specifications to state that any surface of RCC which remains permanently exposed to view in the completed structure shall be considered exposed surface for the purpose of the specifications. As regards claim No. 9 the arbitrator has not taken into action lapse on the part of the petitioner which was required to finish the surface of the walls and weight included the cost of the material and labour involved in all such operations. Again claim Nos. 11 has been challenged because of disallowing recovery rate for the lengths of pipes having length of more than 2 metres each. Similarly the refund of deduction for sanction has been incorrectly granted with regard to claim No. 12. Similar disputes were raised in respect of claim No. 14, 16, 17, 20, 22, 29 & 30.

11. As is apparent from the objections raised by the respondent these centre around the findings of facts by the arbitrator. I have perused the award. For each and every claim the arbitrator has furnished the reasons and it is a speaking award.

12. As regards the objections to the award of interest there was no specific bar provided in the agreement for awarding the interest.

13. In case [Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy](#), the Supreme Court has upheld the powers of arbitrator to award interest even if there is no such contract between the parties.

14. In view of the foregoing discussion, the objections do not survive and are hereby dismissed. The award is accepted and made a rule of the Court and the suit is decree in terms of the award with pendente lite and future interest, @ 16% till realisation of the decretal amount.

15. The decree sheet be prepared accordingly.