
R.K. Aneja Vs Delhi Development Authority

Suit No. 1837/96 and I.A. 12119/97

Court: Delhi High Court

Date of Decision: Nov. 26, 2001

Acts Referred:

Arbitration Act, 1940 " Section 30, 33

Hon'ble Judges: Vinod Sagar Aggarwal, J

Bench: Single Bench

Advocate: Harish Malhotra, for the Appellant; Anusuya Salwan, for the Respondent

Final Decision: Dismissed

Judgement

V.S. Aggarwal, J.

In pursuance of the Award having been filed and notices issued, objections have been preferred by the Delhi

Development Authority u/s 30 read with Section 33 of the Arbitration Act, 1940.

2. The Delhi Development Authority (hereinafter described as "the Objector") assails the award of the arbitrator with respect to Claim No. 1, 2, 3,

4 and 6. Needless to state that in the reply filed, the assertions of the objector have been controverted.

3. Before proceeding further, it would be appropriate to state the principle of law, which is not in controversy. It is admitted at either end that the

arbitrator is a tribunal appointed on basis of the contract between the parties. Ordinarily, Therefore, the findings of the arbitrator would be binding

on the parties. The findings of the fact could only be assailed if they are totally erroneous or no other view point is possible. Even if there is another

view possible on basis of the material on record, still, unless the aforesaid ingredients are satisfied on facts, the court would be reluctant to

interfere.

4. With this back-drop, one can conveniently take up the objections by the objector with respect to each of the claim.

5. As regards CLAIM No. 1, the petitioner had claimed Rs. 2,19,507/- on account of the amount due for work done but not paid. Later on, the

same was restricted to Rs. 2,09,286/-. The arbitrator has awarded Rs. 42,816/-. According to the objector, with respect to differences in

quantities of agreement item regular running account bill was prepared. The arbitrator took the measurement book and noted that the measurement

book did not bear the date and was not counter-checked by the higher authorities. He also recorded that the measurements/bill was not verified or

refuted. The objector asserts that the payment in running bill was in the nature of advance, subject to adjustment in the final bill and consequently,

there was an error apparent on the face of the record.

6. The arbitrator had gone into the said controversy and recorded that as per the 14th running account bill (Rule-39), the respondents measured

and paid Item 1.1 and item 2.1 brass batten holder. He went into the further controversy and concluded that as per the 15th running bill, under

item 1.1 there were 2940 and brass batten holder under item 2.1 were 1660 numbers. The arbitrator went on to conclude that it is not understood

as to how the variation has occurred from one bill immediately in the next bill. The measurement in such cases should have been taken flat-wise

while measurement has been taken for one flat and multiplied by the number of flats. In this regard, relying on the bills of the applicant, the amount

referred to above was allowed.

7. The said finding of the arbitrator indeed can not be described to be erroneous. The variation is obviously occurred from one bill to the next bill.

The arbitrator was right that measurements have not been taken correctly in accordance with each flat. It can not be termed, in face of the

aforesaid, that the view point of the arbitrator was erroneous. There is no scope for interference.

8. Pursuant to CLAIM No. 2, the applicant/petitioner has laid a claim for Rs. 1,60,823/- on account of increase in wages under Clause 10-C. The

objector contends that this is contrary to Clause 10-C, which provides that first 10% increase is to be borne by the contractor. While the arbitrator

has awarded Rs. 1,01,417/- without indicating as to how he found the said amount to be justified.

9. The arbitrator looked into the said controversy and has noted that rise in wages is a statutory obligation. The labour wages have increased four

times during the progress of the work. Notifications in this regard were issued on 1.6.1984, 16.10.1985, 30.4.1987 and 16.3.1988. The

difference in rates of wages adopted by the claimant and the objector was with respect to Fireman Grade-I, due to interpretation of the work

Highly skilled"" or ""more than skilled"". The arbitrator thereupon held:

The contract period expired on 14.8.84 and the first increase came in to effect on 1.6.84 as such 10% increase should be calculated on first

increase and on subsequent increases which came into effect on 17.10.1985, 20.4.87 and 16.3.88, 10% deduction should not be made and full

increase in labour rate should be paid.

I hold subsequent to the date of completion as per agreement i.e. 13.8.84 three notifications have been issued. The rates paid by the claimants are

per labour reports are as per the notifications discussed above. Considering the pleadings, documents and calculations of both the parties, I hold

that claim is justified for Rs. 1,01,417/- and as such I award a sum of Rs. 1,01,417/- in favor of the Claimants by the respondents.

10. The said reasoning indeed is based on the material on record and by no stretch of imagination can be described to be erroneous. This is for the

reason that the claim was for the enhanced payment made due to statutory increase in the minimum wages in terms of Clause 10-C of the contract.

The arbitrator took into consideration that rates were for highly skilled Grade-I workers adopted by the objector at Rs. 20.90 per day stood

contradicted and the correct rate applicable was Rs. 22.25 per day for highly skilled Grade-I Wireman. The said reasoning indeed, Therefore,

must be taken to be based on the material on record and does not permit the interference of the court. Once is constrained to observe that it is

based on fact and is not erroneous.

11. The only other claims, regarding which objections have been filed, are Claims No. 3, 4 and 6. The same to the following effect:

Amount Particulars Amount

Claim No. 3 claimed of the claim Awarded

Rs. Rs.

Claim No. 3: 1,56,195/- Increase in 96,567/-

the cost of

material

during the

extended

period

Claim No. 4: 2,87,500/- Overhead 2,47,552/-

and

establish-

ment

expenses

during the

extended

period

Claim No. 6 55,580/- Idle labour 55,580/-

and estab-

lishment

during

contract

and idle

labour

during

extended

period

12. According to the objector, under Clause 5 of the Agreement, the work was to be executed in close co-ordination with the progress of the

building work. If the site for work is not available, in part or in full, for any reason, the time for execution of the electrical work had to be extended

correspondingly. Objector contended that the work was extended largely due to delay in completion of the civil work. In accordance with Clause

5, the petitioner was not entitled to any of the three claims, referred to above, and Therefore, the award was liable to be set aside.

13. The arbitrator found that the date of completion of work was 13.8.1984 but due to various hindrances, it was completed on 29.12.1989 i.e.

after about five years from the stipulated date of completion. The hindrances pointed have been taken note of. The applicant demanded enhanced

cost in this regard. It was found that delay in execution of work was due to the objectors. Keeping in view that the delay was due to the objector,

the arbitrator had allowed the extra cost, viz. due to increase in cost of material in market (Claim No. 3).

14. For the expenditure incurred on account of overhead and establishment expenses due to prolongation of the period of contract (Claim No. 4)

the arbitrator had taken note of Clause 5 and held that it is only for co-ordination between the electrical and civil contractors. The reasoning is

correct because the claim of the petitioner/claimant was for expenses on the labour used by electrical contractor for handing over the flat to the

allottees after fixing fixtures, testing each and every flat. The staff and labour had to be present and keeping in view these facts, the arbitrator had

allowed the claims, as mentioned in the Award. Once again the reasoning is based on appreciation of facts. As already noted above, the court will

not interfere unless the reasoning is erroneous. In other words, even if another view point is possible the interference of the court would not be

permitted. The objections, Therefore, necessarily must be rejected.

15. For these reasons, the award made a rule of the court and decree in terms of the Award passed. The petitioner/claimant would be entitled to

further interest @ 12% p.a. on the principal amount from the date of this issue till final payment is made.