

R-19

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision : April 16, 2009

+ **FAO(OS) 134/2002**

J.S.CONSTRUCTION Appellant
Through Mr. M.S.Vinaik, Adv.

versus

DDA Respondent
Through Ms. Anusuya Salwan, Adv.

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

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JUDGMENT (ORAL)

MUKUL MUDGAL, J.

1. This appeal challenges the judgment of the learned Single Judge dated 9.11.2001 whereby the learned Single Judge set aside two claims allowed by the Arbitrator in the Award dated 29.12.1994 in the proceedings for making the

Award a rule of the court and objections filed with respect thereto.

2. The first plea raised by the learned counsel for the appellant is that the height of plaster was more than 10 meters and accordingly the appellant was entitled to be paid extra. The learned Single Judge extracted the relevant clause 3.15 which reads as under:

“Rates quoted by the contractor shall hold for work at all heights/depths. The contractor shall not be paid any thing extra for maintaining in good condition all the work executed till completion of the entire work; nor on account of damage to the works caused by rains or other natural phenomena during the execution of works.”

The learned Single Judge thereafter went on to say that clause 3.15 clearly stipulated that the rates quoted by the contractor shall hold for work at all heights and depths. In view of the clear language of this clause we hold that this claim cannot be entertained as clause 3.15 is a clear bar in respect of this claim.

3. The other plea raised before the learned Single Judge by the appellant was in respect of the claim pertaining to straightening and cutting of steel bars. The learned counsel for the respondent however states that issue is fully covered by the judgment dated 1.4.2009 of the Division Bench of this Court in FAO (OS) 121/2006 titled *M/s Pt. Munshi Ram & Associates(P) Ltd. vs. Delhi Development Authority*, wherein a Division Bench of this Court, in which one of us (Mukul Mudgal, J) was a member, has, we affirmed the view taken by the learned Single Judge in *Narain Das R. Israni vs. Delhi Development Authority 126 (2006) DLT 10* which in turn affirmed the view taken by the learned Single

Judge in *M/s. Wee Aar Constructive Builders*, 2001 (IV) AD (Delhi) 65. The following observations in *Narain Das*'s case are opposite :-

“19. The position, which emerges from the aforesaid, is that the definition of reinforcement is that the definition of reinforcement for RCC work is illustrative and not exhaustive. Thus, no extra amount can be recovered for the same in view of the earlier judgment in *M/s. Wee Aar Constructive Builders*'s case (supra). However, simultaneous legal position, which emerges, is that in case the contractor puts DDA to notice during the currency of the contract and DDA does not raise any objection, then amounts can be recovered on this account. It may also be noticed that a correction slip No.4 was issued in January, 1990 clarifying that cutting would be included. Thus, it appears that there were some doubt over this proposition and, thus, the clarification was issued. Once the contractor has put DDA to notice on this account, it cannot be said that the Award made in this behalf is erroneous. If reference is made to the earlier judgment of *M/s. Wee Aar Constructive Builders*'s case (supra), it would be found that there is, in fact, no inconsistency in the judicial approach of various judgments. It was observed in paras 19 and 20 as under:-

“19. The two other decisions relied upon by learned counsel for the petitioner, that is, *K.C.Chibbar* and *Anand Raj Agencies* are clearly distinguishable. In both the cases, the petitioner therein had notified the DDA that the cutting of steel or the straightening of steel bars was being treated as an extra item of work. This was not objected to by the DDA. The claim of the petitioner in both the cases was upheld. In the present case, this situation did not arise. No letter or intimation was sent by the petitioner to the respondent. The claim of straightening and cutting the steel bars was made by the petitioner for the first time before the learned Arbitrator. The respondent had no occasion to react (or not to react) to the claim, prior to the arbitral proceedings.

20. In view of these facts, the decision rendered in *S.K.Mangla* has to be followed. Moreover, this decision also recognizes pragmatic and down-to-earth facts in building contracts.”

20. The aforesaid discussion shows that the material aspect taken into consideration by the learned Judge was that while in case the contractor puts the DDA to notice, a different position would emerge; if no such

notice is given, then the work of cutting would be included in the already assigned work.”.

4. We therefore agree with the submission of Ms. Salwan that the issue of disentitlement of claim in this case of the appellant for its claim for straightening and cutting of steel bars is fully covered against the appellant by the *Pt. Munshi Ram*’s case.

5. Mr. Vinaik, learned counsel for the appellant however to buttress his argument for sustaining this claim has relied on clause 12.3 which reads as under :

“If the altered, additional or substituted work includes any work for which no rate is specified in the contract for the work and cannot be derived from the similar class of work in the contract then such work shall be carried out at the rates entered in (current C.P.W.D. schedule of rates for Delhi) Schedule of rates 1977 with up to date correction slips, minus/plus percentage which the total tendered amount bears to the estimated cost of the entire work put to tender.”

He contends that the above clause is supportive of his claim for straightening and cutting of steel bars.

Reliance is also placed on clause 3.10 of the contract of bill of quantities to claim that the appellant was entitled to this extra work claim as the work required to be done as per clause 3.10 did not include straightening and cutting of steel bars. In our view, the plea of the learned counsel for the appellant cannot be accepted because clause 3.10 provides for doing of all work for

complete placing in position of the steel bars. This would necessarily include all that is required to be done including the straightening and cutting of steel bars. In any case this clause of the contract makes it evident that this was only an inclusive definition and obviously therefore does not include all eventualities.

6. Following the judgment of the Division Bench of this Court in *Munshi Ram's* case (supra) there is no merit in this appeal and the appeal stands dismissed.

MUKUL MUDGAL, J

VALMIKI J. MEHTA, J

APRIL 16, 2009
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