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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: March 23, 2009

Date of Order: April 27, 2009

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Municipal Corporation of Delhi
Through : Mr. Nalin Tripathi, Advocate

27.04.2009
...Petitioner

Versus

M/s The Care Taker Group & Ors. **...Respondent**
Through: Mr. Rajinder Nischal, Advocate for R-1 and R-2

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. By this petition the petitioner has raised objections against the award dated 16th October 2008 passed by the Arbitrator allowing the claims of the claimant (respondent herein) with interest @ 9% per annum from the date when the amount became due till payment and also directed for refund of earnest money.

2. Brief facts relevant for the purpose of deciding this petition are that the respondent /claimant under a contract had supplied 7583 numbers of red stone benches for the parks of MCD in Delhi. The rate quoted by the respondent/ claimant was between Rs.3100 to 3500/-. The same was approved and a supply order was given to the respondent. After the respondent completed the supply and raised bills, these bills were verified and approved by MCD for payment. However, before the payment of the bills

could be released, some complaints were received regarding collusion between MCD employees and the contractor in securing the order for the benches at a much higher rates than the rates prevalent in the market. It was stated that the bench like this would not cost more than Rs.600 to 700 but the supply to MCD was made at the rate of around Rs.3350/- per bench. CBI conducted an inquiry into this and filed a challan against the claimants/respondents and against two employees of the petitioner/ objector namely Shri D.P. Singh, Director (Horticulture) and one junior engineer (Civil). Since a case was registered on the basis of CBI report, the payment of the respondent's bill was not made. The respondent, on this raised a dispute about the non-payment of the amount and filed an application for appointment of an Arbitrator to this Court. This Court appointed Justice Usha Mehra (retired) as an Arbitrator who gave an award in favour of the claimant.

3. The award has been assailed on the ground that the award was beyond the scope and ambit of the agreement between the parties. The learned Arbitrator failed to appreciate that no payment could be released to the Claimant during pendency of the criminal case, more so when the challan had already been filed. It is also submitted that the claim was hopelessly barred by limitation and the Arbitrator allowed a time-barred claim.

4. It is not disputed that the agreement between the parties had an arbitration clause and all issues arising out of the contract between the parties were to be referred to the Arbitrator. Non-payment of the amount of the bills of the claim is certainly a dispute arising out of the contract and could have been adjudicated by the Arbitrator. The plea that the claim made by the respondent/ claimant was beyond the terms of the contract is not

tenable. A perusal of record shows that after completion of supply, bills were raised by the claimant /respondent and when no payment was received by the claimant, the claimant served a notice on the petitioner on 8th December 2005 asking the petitioner to release the payment. The petitioner vide its letter dated 2nd February 2006 informed the respondent that since CBI case has been registered against him in respect of fixing of red stone benches, MCD issued an office order dated 23rd August 2004 that the bills would not be released in favour of the contractor in those cases which are pending investigation/ inquiry with Vigilance Department or CBI. After receiving this letter from MCD, the Claimant /respondent initially filed a writ petition for recovery of the amount before this Court, but without success and later on invoked the arbitration clause by making an application before this court in July 2007. Thus under no stretch of imagination, it can be said that the claim raised by the claimant was barred by limitation. If the limitation is counted from 23rd August 2004 when the petitioner issued an office order that payment shall not be made in those cases where investigation /inquiry is made even then the claim is not barred by limitation because the claimant had raised a dispute on 11th July 2007 by asking the petitioner to appoint an Arbitrator. When the petitioner failed to appoint an Arbitrator, the respondent moved this Court for appointment of an Arbitrator. However, the limitation would actually be counted from 2nd February 2006 when the petitioner informed respondent that the bills will not be paid. If counted from 2nd February 2006, the award itself has been made within the period of 3 years and the claim cannot be said to be barred by limitation.

5. The plea of the petitioner that the Arbitrator could not have proceeded because of pendency of criminal case against the respondent has been

considered by the Arbitrator. The petitioner and the respondent both had relied upon the judgments and the Arbitrator has analyzed all the judgments and come to conclusion that there was no bar on the Arbitrator from proceeding with the determination/ adjudication of the disputes between the parties. The learned Arbitrator relied upon *M/s Mafatlal Industries Ltd. v MTNL 2002 IV AD Delhi 769*, wherein this Court has observed that investigation by a criminal agency or registration of an FIR was no ground to refuse enforcement of the terms of the contract. The other decision relied upon by the Arbitrator is *Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr. 2005 Cr.L.J 2161 SC* wherein the Supreme Court observed that the standard of proof required in criminal and civil proceedings are entirely different and civil cases are decided on the basis of preponderance of evidence while in criminal cases, the entire burden lies on the prosecution. In *K.G. Premshanker v. Inspector of Police & Anr 2002(3) JCC 1975 SC*, the Supreme Court had observed that where criminal case and civil proceedings are for the same cause, the judgment of civil court would be relevant if conditions of Section 40 to 43 of the Indian Evidence Act are satisfied. In *State of Rajasthan v. M/s Kalyan Sundram Cement Industries Ltd. & Ors JT 1996 (3) SC 162*, the Supreme Court has held that pendency of the criminal case would not be an impediment for proceeding with the Civil suit. Considering this law, the learned Arbitrator came to conclusion that there was no bar in proceeding with the Arbitral proceedings. The learned counsel for the petitioner has failed to show as to how there was a bar on the Arbitrator in proceeding with the Arbitration proceedings.

6. In all, 49000 red stone benches were purchased by MCD from different contractors. The Claimant had supplied only 7583 red stone benches. The

claimant before the Arbitrator proved that the rates quoted by other contractors were either matching with the rates of the claimant or they were higher than the rates of the claimant. The Claimant also produced evidence to show that the red stone benches of similar quality were procured by Ghaziabad Municipal Authority on the similar price and the plea that the prevalent cost of a bench was between Rs.600-700 is a false and baseless plea. MCD failed to bring any evidence to show that the rates quoted by the Claimant in the tender were higher than the market rates. It is surprising that MCD had procured 49000 benches almost at the same rate but the criminal case and investigation was initiated only against the above two claimants and not for other claimants. It is also surprising that though it is a case of MCD that there was collusion between its employees and the contractors, but no departmental action was initiated by the MCD against the employees allegedly in league with the contractors and these employees were allowed to retire and perhaps are also taking full pension benefits and were allowed to go scot free.

7. The petitioner in this case has miserably failed to show that the award suffers from any illegality or the Arbitrator acted beyond the terms of the contract or without jurisdiction. It is settled law that this Court cannot go into the merits of the award and cannot act as a Court of appeal over the judgment/ award passed by the Arbitrator. The petitioner has also failed to bring its case within the ambit and scope of Section 34 of Arbitration & Conciliation Act, 1996. This petition is liable to be dismissed and is hereby dismissed. No orders as to costs.

April 27, 2009
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SHIV NARAYAN DHINGRA J.