

+ **OMP 110/2001**

M/S S.S. BEDI & SONS Petitioner

Versus

Through: Ms Anusuya Salwan, Advocate.

1.	Whether reporters of Local papers may be allowed to see the judgment?	No
2.	To be referred to the reporter or not?	No
3.	Whether the judgment should be reported in the Digest?	No

1. The petition has been preferred under Section 34 of the Arbitration Act, 1996 with respect to the arbitral award dated 9th February, 2001 of Shri Surinder Gandotra, sole arbitrator DSIDC (Respondent). Notice of the petition was issued to the respondent and arbitral record called. The counsel for the parties have been heard.

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informed the respondent that Shri Jasbir Singh Bedi had retired from the partnership and as such allotment was sought in the name of the petitioner with Shri Sarabjit Singh Bedi and Shri Gurpreet Singh Bedi only as partners. The respondent asked the petitioner for payment of transfer charges for effecting the aforesaid change in constitution of the petitioner firm and which the petitioner controverted, leading to the respondent not accepting the balance payments for allotment stated to have been tendered by the petitioner and also not making the allotment in favour of the petitioner or delivering possession of the shed to the petitioner. The brochure containing the terms and conditions on which applications for allotment were invited inter alia provided that dispute, if any, regarding allotment clause or any other terms and conditions shall be referred to the sole arbitration of the person to be appointed by the Chairman-cum-Managing Director of the respondent. The petitioner invoked the arbitration clause and the respondent appointed the arbitrator.

3. The arbitrator has held that the petitioner had paid sums of Rs 55,000/- and Rs 2,16,625/- to the respondent towards provisional allotment and as first instalment; that the allotment of industrial shed had been made by the respondent in favour of the petitioner firm on the basis/strength of qualification of Shri Jasbir Singh Bedi who had ceased to be the partner of the petitioner firm; that the terms and conditions on which applications for allotment were invited contained the eligibility criteria and the said eligibility criteria was met by Shri Jasbir Singh Bedi only; that under the guidelines for Management of Industrial land managed by Delhi Administration, the respondent was justified in claiming the transfer charges, claimed from the petitioner firm on the re-constitution as

aforesaid of the petitioner firm; that if the petitioner wanted allotment in favour of the new firm, they had to pay transfer charges, else forfeit the monies deposited; that the petitioner is also liable to pay the ground rent and other charges for the reason of having held up allotment of the said shed. The arbitrator thus directed the petitioner to pay Rs 17,36,218.12p to the respondent within one month of the award towards balance costs, transfer charges, watch and ward charges, ground rent charges etc with respect to the shed and together with interest at 18% per annum from 1st September, 2000 till the date of payment and upon which payment the respondent was directed to hand over the possession of the shed and execute necessary documents in favour of the petitioner. The award further directs that in case the petitioner fails to pay the said amount within a month from the award, the respondent shall be entitled to recover the sum of Rs 17,36,218.12p and the petitioner shall then cease to have any rights with respect to the shed allotted to it and the respondent shall be entitled to allot it to anyone else.

4. Though the petition has been pending for the last over eight years but the petitioner has neither claimed any relief/interim measure of restraining the respondent from allotting the shed to any other person nor taken any other step showing its inclination to take possession of the said shed. The counsel for the respondent, on inquiry, on instructions, informed that the respondent by way of abundant caution had not allotted the said plot to any other person.

5. The petitioner has in the petition under Section 34 challenged the award inter alia on the ground that the arbitrator did not give any opportunity to the parties to lead any evidence or to cross

examine witnesses of each other; that the remaining partners of the firm also fulfilled the eligibility criteria for allotment as per the brochure and/or corrigendum thereto which has not been considered by the arbitrator; that the retirement of one of the partners did not amount to transfer of the shed requiring payment of transfer charges; that there was no provision, in the brochure inviting applications for allotment, of levy of transfer charges; that in any case since the allotment of the plot had not taken place in favour of the petitioner, the arbitrator was wrong in directing the petitioner to pay the watch and ward charges and ground rent charges etc with respect to the plot; that the arbitrator was to determine the disputes as arising from the brochure for allotment but had decided the disputes de hors the same.

6. The counsel for the petitioner has during arguments, also contended that the arbitrator has not discussed any terms of the brochure and has also erred in applying the guidelines meant for industrial plots to industrial shed which is the subject matter in the present case. It is further contended that no question of payment of transfer charges could arise before a definite allotment had been made and possession delivered. It is contended that even the draw of lots had not taken place till the change aforesaid in the constitution of the petitioner.

7. The counsel for the respondent has on the contrary argued that the award is a reasoned one; that the arbitrator has considered all the documents and given a reasoning/basis for his award and the same does not permit any interference under Section 34 of the Act.

8. I may also add that the counsel for the petitioner, during the hearing on 13th August, 2009, urged that the petitioner was mainly

aggrieved by the direction in the award for recovery of Rs 17,36,218.12p from the petitioner in any case, even if the petitioner was to not opt for the shed. However, subsequently it was argued that since the shed has not been allotted by the respondent to anyone else till date, the petitioner is also interested in the shed. However, the levy of transfer charges and recovery of ground rent, watch and ward charges etc from the date of allotment and interest from 1st September, 2000 onwards is disputed.

9. A perusal of the brochure inviting applications for allotment shows that the same did provide for eligibility for allotment. It is also agreed that a corrigendum was brought out by the respondent with respect to the eligibility criteria. However, the findings in the award, of the petitioner matching/fulfilling the eligibility criteria on the strength of the qualifications of Shri Jasbir Singh Bedi and being otherwise not eligible for allotment are factual findings and Section 34 of the Act does not permit this court to foray into correctness or otherwise of such factual findings. That being the position, it brings me to the next stage of the dispute as to the levy of transfer charges. The arbitrator has given his reasons for upholding the claim of the respondent for transfer charges. The arbitrator while holding so has referred to the guidelines for management of industrial land managed by Delhi Administration. True, the brochure does not provide for transfer. However, the brochure refers to the policy of the respondent. The respondent even otherwise being a State within the meaning of Article 12 of the Constitution of India, has to act by its Rules and not arbitrarily. If the policy of the respondent is not to permit the transfers or to permit such transfers on payment of transfer charges, then it cannot be said that merely because of the detailed terms and conditions or the policy of the respondent is not

set out in extenso in the brochure, the respondent will not be entitled to apply the same to such allotments. Even otherwise it is well known that such allotments are in the form of largesse. The purport of such allotments was to encourage industrialization in a particular class/category of people who were deemed to be in need of encouragement. Thus, the petitioner cannot be heard to say that the arbitral award which has upheld the respondent's claim for transfer charges on the basis of the policy/guidelines of the Delhi Administration is contrary to public policy or to any substantive law.

10. There is another aspect of the matter. The brochure, if not providing for levy of transfer charges, does not even permit transfers. Once an eligibility criteria is laid down and the allotment has been made in favour of the applicant i.e. a firm with a particular constitution, the law does not permit any transfer. The petitioner which admittedly has a different constitution in the absence of any clause in the brochure permitting transfer would not be entitled to the allotment and hence the question of correctness or otherwise of the levy of transfer charges also would not arise. Thus, I do not find anything wrong with the arbitral award upholding the levy of transfer charges.

11. As far as the award directing the petitioner to pay the ground rent and watch and ward charges is concerned, the same is also not found to be contrary to public policy or to any law. Once the petitioner is found liable to pay transfer charges, the respondent ought to be put into the same position in which it would have been had the transfer charges demanded been paid at the time of demand. If the transfer charges had been paid at that time, the petitioner would have been put into possession of the shed, would have become

liable for payment of ground rent with respect thereto and the respondent would not have incurred the watch and ward charges also with respect to the said shed. Thus nothing wrong can be found with the award, while giving the petitioner option to take possession of the shed, directing the petitioner to pay besides the remaining premium and transfer charges, also the ground rent and watch and ward charges with respect to the shed. The award to that extent does not call for any interference.

12. The petitioner having not availed of the option and being even today not willing to make the payment, brings me to the alternative award i.e., of the petitioner, even without opting to take allotment/possession, being still liable for the transfer charges, balance premium, watch and ward charges, ground rent etc. This part of the award is found to be contrary to law and being without any basis and severable from the remaining award. Once it is held that the petitioner was liable to pay the transfer charges and had failed to pay the same, the petitioner did not become entitled to the allotment of the shed and there can be no basis whatsoever for the arbitrator to direct the petitioner to pay the balance premium as well as the transfer charges and other charges with respect to the shed. When there is to be no allotment and no transfer, the question of the petitioner being liable to pay the balance premium and transfer chargers does not arise. That part of the award is liable to be set aside.

13. In fact once it is found that the applicant had ceased to exist, no case for forfeiture of the amount paid till then also arises. The applicant or the remaining partners of the applicant would become entitled to refund of the monies deposited till then.

14. I have in ***UOI VS. Modern Laminators***, MANU/DE/1237/2008 held that the court in the exercise of powers under Section 34 of the Act is entitled to modify the award.

15. Accordingly, the part of the award requiring the petitioner to pay Rs 17,36,218.12p within one month, to be entitled to allotment in the name of reconstituted firm is upheld. The petitioner having not availed of the said option within the time permitted in the award, the said option is now not available to the petitioner. The alternative award of holding the petitioner liable to pay the sum of Rs 17,36,218.12p to the respondent in any case even without being entitled to the shed is set aside and the said part of the award is modified by directing the respondent to refund to the petitioner the sum of Rs 55,000/- and Rs 2,16,625/- admittedly received, together with simple interest at 6% per annum from 13th July, 1998 when the payments were demanded by the respondent from the petitioner and the petitioner failed to pay the same. The said rate of interest has been fixed keeping in mind that the shed remained unutilized for reasons attributable to the petitioner.

16. With the aforesaid directions, the petition is disposed of. The parties are left to bear their own costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

September 25th, 2009
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