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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: April 30, 2009

Date of Order: July 23, 2009

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DDA

23.07.2009

.... Petitioner

Through : Mr. Gaurav Sarin, Adv.

Versus

M/S K.C. CHIBBER & CO.

.... Respondent

Through: Mr. Shiv Khorana, Adv.

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 under Section 34, DDA (respondent before Arbitrator) has assailed an award dated 30th December, 2005 whereby the learned Arbitrator awarded an amount of Rs.32,06,206/- to be paid to the claimant/petitioner with future interest of 9% on an amount of Rs.8,72,898/- from the date of award till realization of the amount.

2. The award has been challenged by the respondent on various grounds, inter alia, that the award of the learned Arbitrator was contrary to the public policy. The award amounted to rewarding the contractor for indulging into corruption in connivance with the Engineers of DDA.

3. It is submitted that the contractor had left and abandoned the work in between and the work done by the contractor was of such a poor quality that the Lieutenant Governor had to institute an Inquiry. The Inquiry Committee appointed Central Building Research Institute, Roorkee (CBRI) to inspect the building for ascertaining structural soundness or otherwise of the existing construction before further construction could be started. The report of CBRI received by the Lieutenant Governor showed that the structure constructed by the contractor was of such a poor quality and so inherently weak that it was dangerous to allow it to stand and do further construction over it. No repair work could be undertaken of the structure, in view of the report of CBRI and in a part of the work the repair would have been more costly than the new construction. Thus, the entire structure had to be demolished.

4. Counsel for the objector submitted that the DDA had initiated action against its Engineers for connivance with the contractor and they were all charge-sheeted. The report of CBRI and the consequences of the report were brought to the notice of the learned Arbitrator. The learned Arbitrator instead of considering the report of CBRI in proper perspective, observed that the report does not indicate a complete demolition of the work to be executed. The learned Arbitrator ignored the report and contrary to report observed that some defects were on account of defective designing. He observed that DDA ought to have taken action as per the recommendations of CBRI for correcting measures and debited the extra cost of such

measures to the claimants. After making the observation, he made a contradictory observation that the responsibility of defective work did not lay entirely on the claimant. The respondent (DDA) should have done analytical work timely and prompt action should have been taken within a reasonable time, giving full opportunity to the claimants. Since action was not taken by the respondent timely, the respondent cannot go back upon their certification of the work done.

5. The award of learned Arbitrator is a glaring example of rewarding the corrupt contractors. The claimant was given a contract for construction of 936 Janta Houses at Pitampura. These houses were to be three storey houses where poor strata of the society were to live since they were Janta houses. The contractor abandoned the work sometime in May, 1981 and the respondent found that no labour was engaged at site except one Chowkidar for watch and ward of cement godown and the site was lying deserted. No electricity connection, no water connection had been taken by the contractor. Letters to this effect were written by DDA to the contractor on 1st May, 1981 and 2nd May, 1981. In the notice dated 2nd May, 1981, the contractor was requested that he should start the work without any delay and without further loss of time and in case no action was taken within a weak time, DDA would be constrained to rescind the contract.

6. There is no dispute that the contract was rescinded because of the poor progress of the work. After the contract was rescinded, the contract for balance work was to be given to some other contractor. At that stage it was found by DDA's high officials that the

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work already done was of so poor quality that an assessment was necessary of its strength and structural soundness. An Inquiry Committee was constituted by the Lieutenant Governor for this purpose. The Inquiry Committee requested CBRI to do intensive technical check up of the work done till that stage. CBRI then did the technical assessment and gave a report. This report was submitted with the Arbitrator in 1984 itself. At that time, the Arbitrator was one Mr. G.R. Hingorani and the Arbitrator was told that the entire work was required to be demolished and he may visit the site himself and see the quality and quantum of the work executed by the contractor. However, the Arbitrator did not visit the site. Ultimately the work was demolished.

7. The relevant extracts of report which speak of the quality of work, necessary to pay attention are as under:

“All these buildings had been planned as three storey structures with load bearing brick work construction having spread footing foundation and RCC slabs in intermediate floors and roof.

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In general, it was observed that the depth of foundations were provided as per drawing, **but the widths and profiles of the foundations were not faithfully executed. There were no base concrete projections but the brick masonry walls were started from entire width of base concretes which too instead of 15 cm deep as provided in drawing referred above were only 8 to 10 cm thick.** Some typical sections of the foundation showing the anomaly are shown in Figs. 10, 11 and 12. **It may be seen that the steps in the foundation masonry have not been correctly provided.**

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In view of this finding, it is suggested that for all such walls where only 34.5 cm thick brick has been provided without any regular steps, the entire foundation masonry wall should be dismantled and proper foundation provided.

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In the masonry, a large number of brick-bats had been used, the mortar joints were very thick and not properly filled. There was no proper key at the junctions of walls and due to this, separation cracks had developed. It was also seen that there was efflorescence in the masonry walls and substantial percentage of the bricks were showing deterioration; some parts of the wall surfaces were showing powdering effect. The mortar in the joints was very weak and it could be easily removed by finger-touch. A substantial percentage of the walls were out-of-plumb. It was also observed that during one of the inspections, a wall panel fell down due to high wind.

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It was observed that the quality of concrete was very poor. One cantilever chajja had fallen (Fig.22) and it was noticed that the reinforcement in cantilever portion had not been provided correctly. At number of places there was no cover of concrete to the main reinforcement, it was exposed and getting rusted (Fig.23 to 25). The slab concrete was of poor quality and with the pressure of the foot the whole slab could oscillate. There was a deflection of upto 4 cm in the slabs at mid-span (fig. 26 and 27). There were cracks in the slabs at the wall supports (Fig. 28 and 29). This indicated that no negative reinforcement might have been provided at the supports. A part of the slab was got cut at one of the supports. There was no negative reinforcement seen in the slab (Fig. 30). Lot of honey-combing was observed in the RCC works. This showed that neither adequate care was taken in maintaining the proper grading of the aggregates nor was the concrete properly compacted. It also appeared that even proper curing of the slabs was not done, as there were large number of fine

cracks. In one of the beams of verandah slab, there was a sag of about 3 cm (Fig.31).

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From this, it may be seen that almost in all the walls, the existing 23 cm thick walls are not safe to bear the loads of three storeys. However, 34.5 cm thick foundation masonry is capable of bearing the load of 101 012 N/m which is more than the accrual maximum load on any walls. Hence, the foundation masonry upto plinth is considered adequate, of course, with some minor repairs and plinth beams as described subsequently under the recommendations.

G. However, rebound hammer tests were carried out on the slabs at six points as shown in Fig. 32. It was observed that rebound hammer test readings were between 10 to 12 only. **This showed that the strength of concrete of RCC slabs was very much weaker than the required strength M 15.** By extrapolation it was seen that the concrete strength may be only 4N/nm² or so.”

8. CBRI gave its conclusions and recommendations as under:

“The foundations of the load bearing walls of all the blocks be excavated for a part-length of about 1 metre to check the foundation profile. In case, it is found that the foundation masonry has been started with only 34.5 cm thick brick wall as had been noticed in block no.12, **all such foundation masonry walls should be dismantled. Proper excavation should be got done and the entire foundation including base concrete and brick masonry be re-done, keeping the minimum width of the base concrete as given in Table 1 column 6 or the same profile as given in the foundation design drawing of DDA dated 10.1.81** referred to earlier be followed.

In case, in any wall, the width of the foundation is found to be less than the minimum width specified in Table-1 column(6) the entire foundation be redone as mentioned in (1) above.

Since the joints in the plinth masonry have not been filled in properly, raking of mortar to a depth of 30mm should be done in the masonry from ground level to plinth level on both faces and cement-sand

mortar 1:4 should be filled in and the masonry be cured for a week.

Even if it is considered to rake mortar joints and refill with 1:4 cement-sand mortar, the existing walls not being properly bonded and out-of-plumb, the required strength of the masonry cannot be achieved. In view of this, the walls of all the blocks including block nos. 1 & 6, where RCC slab of the ground floor roof had been laid be dismantled above plinth level.

Since the foundation masonry is having some irregularities in respect of proper stepping, to transfer the superstructure load uniformly, it is recommended that a RCC plinth band on all the load bearing walls at plinth level should be provided (Fig. 33). Before laying this plinth band, top three courses of brick masonry of 34.5 cm thick walls at plinth level should be removed. Two courses should be re-laid with bricks of 7.5 N/nm² with 1:6 cement sand mortar.

There was lot of honey-combing in the concrete and the entire slab oscillated even on walking over it. There was a deflection of 4 cm which is about 1/10 of the span. This deflection may be due to not only poor concrete, but even adequate reinforcement may not have been provided. Further, there was no negative reinforcement provided at the wall supports. The rebound hammer test indicated a very low compressive strength of concrete-only 4N/nm². On account of such low strength concrete, excessive sagging, inadequate cover to the main reinforcement and no negative reinforcement at required place, even if any strengthening measures are to be provided, these will amount to almost providing a new slab. **In view of all these points, the RCC slabs of both blocks 1 and 6 are to be dismantled."**

9. It is apparent from a perusal of the defects and the weaknesses mentioned by CBRI and the recommendations of CBRI that there was no manner of salvaging the existing structure. CBRI had recommended excavation of all foundations including base concrete and recommended re-doing of brick masonry and concrete work. The

foundation of any building cannot be redone without demolishing the building. The second recommendation was again for re-laying the foundation. The other recommendations regarding walls were such that the walls had to be dismantled. Recommendation regarding RCC slabs was that the quality of RCC slab was also very poor and the same had to be demolished. The CBRI, in view of irregularity in respect of foundation recommended providing of RCC plinth, on all load bearing walls. The RCC slabs already constructed oscillated even on walking and there was deflection of about $1/10^{\text{th}}$ of the span so CBRI recommended demolition of all these RCC slabs. Looking into these recommendations of CBRI no course was left with DDA but to demolish the entire structure. The annexed along with the report of the CBRI are photographs and sketches showing deviations made by the contractor in connivance with DDA Engineers, in providing a weak and inadequate foundation. It is certain that if further construction had been permitted over this structure having weak foundations, shaky and unsafe slabs and walls, (which came down with the flow of wind) the persons to whom these flats had been allotted would have been thrown into a death trap.

10. There can be no doubt that there was deep connivance between the contractor and the Engineers of DDA who were in-charge of the work and who were responsible for the quality control and supervision of the work. There was no way that the foundation would not have been laid properly, RCC slabs not casted of requisite strength and wall coming down with blowing of wind if the contractor had not

connived with DDA Engineers and bribed them to save money in poor quality of bricks in poor quality of concrete mixture and the mortar used in the walls. It is not that the learned Arbitrator was oblivious of the report or of the dispute raised by DDA. In fact it is observed by him in Para 28 that after the contract of the petitioner was rescinded, the respondent got the work inspected internally and then got the detailed report from CBRI and the report of CBRI had been placed on record.

11. The respondent had rejected whole of the work. The learned Arbitrator observed that the work was not rescinded on bad quality but it was rescinded on the work having completely stopped in the show-cause matter to the contractor. There was no reference regarding quality of the work but it was stated that he had failed to complete the work.

12. There is no doubt that the work was initially rescinded by DDA because the contractor had stopped doing the work and rather had abandoned the site and the work had considerably delayed. However, the final bill of the contractor was in negative because of the investigation done by DDA regarding the quality of the work and the dispute before the learned Arbitrator was not only in respect of rescinding of the work but was also in respect of poor quality of the work. The site order book kept at the site, also showed that DDA had been pointing to the contractor about defective quality of material brought on the site and defective quality of work. The learned Arbitrator himself observed that he had gone through the site order

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work and found that on few dates instructions were given to remove the bad quality of the material (bricks) and also that the other material on the site was not of proper quality. The contractor was also told not to bring the bad quality of the material otherwise he would not be allowed to use the same and supply of cement would be stopped. As per Arbitrator, despite these instructions being there on the site book, and despite there being no indication regarding rectifications and removing of bad quality material, since and the work was allowed to be continued with concurrence of DDA officials, therefore it would be presumed that the action as required was taken by the contractor. I consider that these observations only indicate the mindset of the Arbitrator and also show that there is a syndicate of the contractor, DDA's Engineers and the Arbitrator to see that the corruption thrives at the cost of the public exchequer and common man. Where the contractor was being told not to bring poor quality of material on site and not to do poor quality of work on site and it is also brought to the notice of the Arbitrator that ultimately the work was got inspected from outside agency and construction was found to be of so poor quality that the entire construction had to be demolished, no other conclusion could have been arrived at except that the contractor and the DDA Engineers were hand in glove with each other to see that the poor persons who were to buy these Janta Flats were deprived their right to live in safe houses, thereby right to life. If the Engineers of DDA allowed the contractor to continue with poor quality of work and the Arbitrator despite observing this still observes that it is to be presumed

that these instructions were complied and the work was to the satisfaction of the respondents, in the teeth of the report of CBRI, one can only take pity on the mentality of such Arbitrator.

13. It is argued by learned counsel for contractor that the work done by contractor was recorded in the measurement book and he was asking for payment for only those quantities which were jointly measured by both the parties. Deviation if any in foundation was known to DDA engineers and measurements prove this, thus he was entitled to the claim.

14. The Arbitrator was not to see if the work was done to the satisfaction of charged and suspended DDA Engineers. The Arbitrator was to consider if work was done in accordance with the contract, DDA Engineers or the contractor had no authority to vary the term of contract or building design, neither the Arbitrator had any authority to vary the contract. The work obviously was not as per contract and had to be demolished, still awarding an amount of Rs.32 lakhs by the Arbitrator to the contractor only amounts to rewarding corruption by the Arbitrator and amounts to giving an award contrary to the public policy of the State. I consider that this award is liable to be set aside on this ground.

15. The Arbitrator has addressed two issues one whether the recession of contract was proper or not. The Arbitrator observed that the fact that extension for time to complete work was granted upto 30.6.1982 without levying compensation indicated acceptance by DDA

that defects in foundation and obstructions were beyond the control of the contractor. The learned Arbitrator further observed that despite the work having been stopped by the contractor, the contract could not have been rescinded without fresh notice.

16. A notice was issued to the contractor by DDA as per Arbitrator's own record of 2nd May, 1981 that he should re-start the work and there was no reason for him to stop the work and desert the site. Another notice was issued by DDA on 24th September, 1981, to the same effect, which was replied by the contractor. The contract was rescinded on 3rd November, 1982, after finding that the contractor had not only failed to complete the work by the extended period of 30th June, 1982 but had not started the work after stopping it as noticed in May, 1981. The learned Arbitrator observed that a third notice should have been sent to contractor. I consider that the learned Arbitrator had acted contrary to the contract. The extended period of contract came to an end on 30th June, 1982. No further extension was granted to the contractor for completion of the work. The contract therefore came to an end on 30th June, 1982 because of the expiry of the extended period of time. The notices to the contractor had been sent one in May, 1981, second in September, 1981. Despite notices if the contractor had not resumed the work and had not completed the work and if the contract period had expired, no further notice was legally required to be served by DDA on the contractor for rescinding the work. In fact the contract stood rescinded because of the abandonment of the work by the contractor and because of efflux of

time. Since the learned Arbitrator had held (though wrongly) that the contract was not legally rescinded, he awarded claims of the claimant on this assumption. The learned Arbitrator also wrongly presumed that the quality of work of the contractor was to the satisfaction of DDA. He thus unlawfully allowed claims of the contractor.

17. I consider that in such a case where DDA officials and the contractor are found hand in glove to deprive the common man of his right to live in safe houses, it would have been expected of the Arbitrator that he should have recommended strong action against the contractor and should have recommended that the contractor should be black-listed for future and action should have been recommended against DDA officials, instead the Arbitrator took upon himself the job of rewarding corrupt contractor thereby rewarding corrupt DDA officials.

18. I here set aside this award for reasons stated above.

July 23, 2009
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SHIV NARAYAN DHINGRA J.