

IN THE HIGH COURT OF DELHI AT NEW DELHI

O.M.P. 467/2010

Reserved on: November 21, 2011

Decision on: December 7, 2011

RURAL ELECTRIFICATION CORPORATION LTD.

..... Petitioner

Through: Mr. R.K. Joshi with

Mr. Jyotindra Kumar, Advocates.

versus

M/S CAPITAL BUILDING & FURNISHING CO. Respondent

Through: Mr. Abhijat with

Ms. Princy Ponnann, Advocates.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

7.12.2011

1. Rural Electrification Corporation Ltd. challenges an Award dated 12th April 2010 passed by the Arbitral Tribunal allowing Claim Nos. 1, 2, 3 and 4 of the Respondent Capital Building and Furnishing Co., together with interest and costs while rejecting the counter-claims of the Petitioner.

2. In May 1994, the Petitioner invited tenders for interior and allied works at its registered office building comprising four floors. The tender was an item rate tender and work was to be completed in four months. On 15th July 1994 the Petitioner split the tender into two packages. The first package comprised of second and third floors and the second package

comprised of ground, first and fourth floors. This was on the premise that a single contractor might not be able to complete the entire work within four months.

3. The tender of the Respondent for the first package was accepted by the Petitioner. The Respondent gave a rebate of 3.01% on the amount quoted by it. The value of the contract, after discount, was approximately Rs. 89,34,593/-.

4. On 19th January 1995 the Petitioner issued a work order amounting to Rs. 89,34,109/-. The site was also handed over on that date along with a set of 85 drawings. According to the Petitioner, the Respondent did not agree to the inclusion of the term concerning escalation as proposed by the Respondent based on Clause 10CC of the CPWD Standard Terms and Conditions. The Petitioner on 25th January 1995 informed the Respondent that M/s. Dutt Designs had been appointed as Architects and Consultant for the works.

5. A formal contract was entered into between the parties on 13th March 1995. Under Clause 23.0 it was provided that the contractor, i.e., the Respondent shall from time to time be entitled to receive payment on the basis of the actual work executed, approved and certified by the Architect

subject to the deductions mentioned in the said clause. From every intermediate bill a sum of ten percent (10%) of the value of the work done subject to the maximum amount of retention as stipulated in the Appendix, shall be retained until the expiry of the defects liability period. No interest was to be due to the contractor for the sums retained by the Petitioner. All intermediate payments were regarded as payments by way of advance against final payment only and not as payment for the work actually done and completed. The final bill was to be submitted by the Respondent within two months of the date of virtual completion of work failing which the measurements of work taken by the Architect after due notice would be considered as final and binding on all parties unless objected to within one month of their being recorded in the measurement books. Under Clause 28.0 there were to be deductions for incorrect work. For the contract price, the decision of the Petitioner/Architect in that respect was to be final. Clause 40.0 dealt with the status of the Architect. The Architect was in consultation and approval with the Petitioner to make decisions on all claims of the Respondent and “...on all other matters relating to the execution and progress of the work or the interpretation of the Contract Documents.” Further, “the decision, opinion, direction of the Owner/Architect, with respect to all or any of the matters mentioned in Clauses (a) to (l) of Clause 40.0 was to be binding.”

6. According to the Petitioner, the Respondent delayed the execution of the work and deviated from various terms of the contract, using sub-standard material and failed to employ efficient manpower in sufficient numbers for timely completion of the work. It is submitted that the Respondent virtually suspended the work in October 1995 and adopted pressurizing tactics to force the Petitioner to agree with the terms favourable to it as condition precedent to resumption and completion of work. The last extension of time was made on 15th May 1996. The Respondent ultimately handed over possession of the premises to the Petitioner on 16th July 1996 without completing the works.

7. The Petitioner states that it received a total of eleven bills from the Respondent including the one final bill. It paid the Respondent a sum of Rs.79,04,596/- against the ten running bills after deducting Rs. 1,81,806/- towards tax deducted at source ('TDS') and a sum of Rs. 4 lakhs towards the security deposit. The Respondent was paid the balance amount of Rs. 73,22,790/- in stages.

8. The premises were inspected by the interior supervising committee of the Petitioner and also by the Chief Technical Examiner ('CTE') of the Central Vigilance Commission ('CVC'). The defects noted by the

aforementioned authorities were communicated to the Respondent with request to remove the same. According to the Petitioner, the Respondent failed to do so.

9. The Respondent submitted a final bill for Rs. 1,03,91,802/- on 4th December 1996 which was increased to Rs. 1,04,58,118/-. The Respondent claimed a sum of Rs. 20,78,360/- towards escalation and for refund of security deposit that was deducted by the Petitioner. As against the final bill submitted by the Respondent, the Architect certified and recommended payment of Rs. 6,41,000/- whereas the interior committee of the Petitioner found that no amount was due and payable. On the other hand, the Petitioner found that a sum of Rs. 4,76,337/- was recoverable from the Respondent after making various deductions and imposing liquidity damages ('LD') on account of delay in completion of the works.

10. The Respondent invoked the arbitration clause and the disputes were referred to the Arbitral Tribunal which passed the impugned Award on 12th April 2010.

11. This Court has heard Mr. R.K. Joshi, learned counsel for the Petitioner and Mr. Abhijat, learned counsel for the Respondent.

12. Claim No. 1 by the Respondent arose from the final bill submitted by it to the Petitioner and was made under four different heads – (A), (B), (C) and (D). Before the Arbitral Tribunal, the Respondent gave up Claim 1 (D). Claim 1 (A) was for a sum of Rs. 17,20,923/-. As regards this claim, the Arbitral Tribunal found that the Architect had scrutinized the final bill submitted by the Petitioner on 9th April 1997 and certified payment for a sum of Rs. 6,41,000/-. The Tribunal observed that the Petitioner had not been able to show how the amount certified by the Architect is not payable and consequently allowed the claim to the extent of Rs. 6,41,000/-.

13. It was contended by the learned counsel for the Petitioner that the Arbitral Tribunal ought to have gone by the certificate of the Petitioner and not of the Architect. Clause 40.0 of the contract does state that the opinion of the Architect in respect of several items would be final. Consequently, this decision of the Tribunal as regards Claim No. 1(A) does not call for interference.

14. Claim No. 1(B) concerned the amounts deducted from the final bill by the Petitioner. The Petitioner herein sought to justify the deduction of Rs. 3,73,382/- on the ground that the materials used by the Respondent in respect of certain items was of low quality. In fact, the Petitioner deducted a sum more than what the Architect had certified. This, the Arbitral

Tribunal found to be unjustified and allowed the claim to the extent of Rs. 42,640/-. The deduction towards electricity and telephone charges in the sum of Rs. 1,71,430/- was also found to be unjustified. Against the said deduction, the deduction of Rs. 1,71,000/- was found to be unjustified. Since the Respondent claimed only a sum of Rs. 1,66,144/-, the Tribunal awarded that sum to the Respondent. The deduction towards water charges in the sum of Rs. 7,285/- and a further sum of Rs. 28,284/- deducted on account of the Respondent having used rubber wood instead of cedar wood was also held to be unjustified. The deductions of Rs. 25,000/- and Rs. 11,628/- for items of block board and granite cladding were held to be unsustainable in the absence of any supporting evidence or the certificate of the Architect. The deduction of Rs. 1,25,000/- on the basis of the report of the CVC was also held to be unjustified since the Petitioner did not prove the same by producing evidence. Consequently, against Claim No. 1 (B), the Tribunal awarded the Respondent a sum of Rs. 3,97,886/- which it held to have been arbitrarily deducted from the final bill by the Petitioner. Claim No. (1)(C) was in respect of extra items. Again, the Arbitral Tribunal appears to have gone by the certificate of the Architect who had approved an amount of Rs. 3,05,491/-. Consequently, against Claim No. 1, the Tribunal held that the Respondent was entitled to receive Rs. 13,57,277/-. The findings of the Arbitral Tribunal are factual, based on the

evidence before it. Counsel for the Petitioner has not been able to persuade this Court to hold that the above conclusion of the Arbitral Tribunal is patently illegal, contrary to any provision of law or of any clause of the contract.

15. It was submitted by the learned counsel for the Petitioner that in terms of Clause 23.1 of the General Conditions of the Contract, the payment in relation to the final bill had to be on the basis of the actual work executed, proved and certified by the Architect. This Court finds that the said clause has in fact been correctly applied by the Tribunal. Consequently, the award of interest at Rs. 58,000/- under Claim No. (3) by the Tribunal in favour of the Respondent also does not call for interference.

16. Claim No. (4) was in respect of delayed payment of the final bill. The Respondent had confined the claim to Rs. 24,92,836/-. The Tribunal found factually that the final bill was not paid within a reasonable time. The Tribunal nevertheless allowed interest on Rs. 13,57,277/- and not Rs. 24,92,836/- as claimed by the Respondent. Interest was also awarded at the rate of 12% per annum from 22nd November 1997 till 3rd June 2002. The other item was interest on security deposit (Claim No. 5). The claim of the Respondent for escalation (Claim No. 6) was rejected. The

Respondent's claim for compensation for the delay was also not accepted. The Petitioner's counter-claim in the sum of Rs. 20,26,276/- was rejected. Learned counsel for the Petitioner was unable to persuade this Court to reappreciate the evidence and come to a conclusion contrary to what was reached by the Arbitral Tribunal in respect of the aforementioned claims and counter-claim.

17. There is no merit in this petition and it is dismissed as such with costs of Rs. 10,000/- which will be paid by the Petitioner to the Respondent within four weeks.

S. MURALIDHAR, J

DECEMBER 7, 2011
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