

* **HIGH COURT OF DELHI: NEW DELHI**

% Judgment decided on: 22.09.2011

+ **OMP No.675/2008**

EXECUTIVE ENGINEER CD-II, NCET OF DELHI

..... Petitioner

Through: Mr. V.K. Tandon, Adv.

Versus

SHRI SYAM LAL GOVERNMENT CONTRACTOR

..... Respondent

Through: Ms. Abha Malhotra, Adv.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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

MANMOHAN SINGH, J. (Oral)

1. By this order, I shall dispose of the present petition filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996. The facts of the case, as averred in the petition are that vide agreement No.EE-II/Acs/Agt. No.16/99.2000 the petitioner had appointed the respondent contractor for the construction of supplementary drain, sub work, excavation, disposal of excavated material/earth and the amount agreed between the parties for the said work was Rs.26,96,408/-. The dates

stipulated of the start and completion of the work, were 09.12.1999 and 08.03.2001 respectively.

2. Thereafter, certain disputes arose between the parties due to which arbitration proceedings were initiated between the parties and Shri Ashok Khurana was appointed as the sole arbitrator to adjudicate upon the disputes between the parties.

3. After having various hearings the learned arbitrator passed the impugned award dated 04.08.2008 wherein the respondent was awarded Rs.6,12,000/- in respect of claim No.1 and claim No.22 which were dealt together by him, claim No.1 was regarding non preparation of correct account of earth work and claim No.22 was regarding breach of clause 29 of the contract. Against claim No.3 which was regarding unauthorized withholding of the amount from extra item No.6 a sum of Rs.1,22,000/- was awarded. In respect of claim No.4 which was regarding unauthorized withholding of the amount for the damage of lining /pitching a sum of Rs.90,000/- was awarded. Claim No.7 was regarding unauthorized withholding of the due amount for the works executed at the Shalimar Bagh site of DDA a sum of Rs.2,53,135/- was awarded. Rs.5,95,000/- were awarded against claim No.17 which was regarding non-payment of due amount under clause 10 CC of clauses of the contract and in respect of claim No.25 interest @ 8.5% p.a. was awarded by the learned arbitrator on account of interest for delay of

payments.

4. The petitioner, feeling aggrieved by the said award dated 04.08.2008 filed the present petition/objection praying that the award dated 04.08.2008 be set aside to extent of the claims made by the respondent. According to the petitioner, the arbitrator failed to appreciate the detailed reply filed by the petitioner and that the respondent had not completed the work assigned to him.

5. In the reply filed on behalf of the respondent it is stated that the High Court cannot exercise appellate jurisdiction over the award of the arbitrator as there is nothing in the award to show that the arbitrator has acted contrary to the public policy or in breach of substantive provisions of law. The award passed by the learned arbitrator is a well reasoned award and the same has been passed after considering all the issues between the parties and is within the substantive provisions of law and was passes in terms of the contract.

6. The law on the issue raised by the petitioner in its objections filed under Section 34 is quite settled. The following are the few decisions which are directly applying to the facts of the present case :

(a) In the case of *Indu Engineering & Textiles Ltd. v. Delhi Development Authority*; AIR 2001 SC 2668, the Supreme Court observed as under:

“This Court, while dealing with the power of courts to interfere with an award passed by arbitrator, had consistently laid stress on the position that an arbitrator is a Judge appointed by the parties and as such the award passed by him is not to be lightly interfered with. In the case on hand the only question that arose for consideration was whether the appellant was entitled to claim the enhanced price of hard coke for the quantity supplied by it to the respondent. Under the contract a specific quantity of the material was to be supplied during the period fixed under the agreement. Right from the beginning while submitting the tender the appellant had included a price escalation clause in which it was stipulated that any escalation of the price after submission of the tender will entitle the supplier to claim higher price from the other party. This clause was subsequently revised only to the effect that the price escalation will be applicable when there is statutory enhancement in the price of the commodity. No dispute was raised before the arbitrator or the court that the escalated price claimed by the appellant was not the statutorily enhanced price of hard coke. It was also not in dispute that even accepting the appellant's claim for escalated price of the commodity, it was entitled to the claim only in respect of a part of the quantity supplied and not the entire quantity. In these circumstances, the arbitrator had not attached importance to the non-mention of the enhanced price of hard coke in course of negotiations between the parties. The view taken by the arbitrator, in the circumstances of the case, was a plausible one and the same could not be said to be suffering from any manifest error on the face of the award or wholly improbable or perverse one. As such it was not open to the court to interfere with the award within the statutory limitations laid down in Section 30 of the Act. The single Judge, therefore, rightly declined to interfere with the award passed by the arbitrator and made it rule of the court.”

(b) In the case of *Oil and Natural Gas Corporation Ltd. v. SAW Pipes Ltd.*; AIR 2003 SC 2629, the Supreme Court observed as under:

“It cannot be disputed that for construction of the contract, it is

settled law that the intention of the parties is to be gathered from the words used in the agreement. If words are unambiguous and are used after full understanding of their meaning by experts, it would be difficult to gather their intention different from the language used in the agreement. If upon a reading of the document as a whole, it can fairly be deduced from the words actually used therein that the parties had agreed on a particular term, there is nothing in law which prevents them from setting up that term. Further, in construing a contract, the Court must look at the words used in the contract unless they are such that one may suspect that they do not convey the intention correctly. If the words are clear, there is very little the court can do about it.”

7. In view of the above said settled law and coupled with the fact that the arbitrator has given a complete answer to all the points raised by the parties, there is no reason given by the petitioner to interfere with the award. Therefore, the objections, filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award, are dismissed. No costs.

8. The amount deposited by the petitioner with the Registrar General of this Court in terms of order dated 20.03.2009 be released to the respondent by the Registry.

MANMOHAN SINGH, J

SEPTEMBER 22, 2011