

IN THE HIGH COURT OF DELHI AT NEW DELHI

O.M.P. 158/2009

Reserved on: 28th February 2012

Decision on: 27th March 2012

DELHI DEVELOPMENT AUTHORITY Petitioner

Through: Mr. Bhupesh Narula, Advocate.

Versus

M/S JAGDISH CHANDER KHANNA AND SONS

ENGINEERS AND CONTRACTORS Respondent

Through: Mr. S.K. Jain with Mr. Rajeev
Kapoor, Advocates.

AND

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CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

27.03.2012

1. These are two petitions under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') against an Award dated 31st October 2008 passed by the sole Arbitrator in the disputes arising between the Delhi Development Authority ('DDA') and M/s. Jagdish Chander Khanna & Sons Engineers and Contractors ('Claimant') which was awarded by the DDA for

the work of construction of a Local Shopping Centre at Ashok Vihar, Phase-III, Pocket-B under the Agreement No.2/EE/ND-10/DDA/94-95.

2. The date of the start of the work was 23rd June 1994. It was to be completed within 15 months i.e. by 22nd September 1995. According to the Claimant the work remained incomplete as a result of the breaches committed by the DDA. The DDA rescinded the contract by a letter dated 15th May 1996 and decided to get the remaining work executed at the risk and cost of the Claimant. Compensation in the sum of Rs.3,69,578 was also levied. Before the learned sole Arbitrator the Claimant filed seven items of claim and the DDA filed five of its counter-claims against the Claimant.

3. By the first impugned Award, disposing of the Claimant's claims, the learned Arbitrator awarded against Claim No.1, a sum of Rs.21,125 as part rates of different items of work. Against Claim No.2 for a sum of Rs.46,519 towards the work done but not paid, the Claimant was awarded Rs.30,208. Against Claim No.3 for Rs.52,000 as part rates in extra items, the learned Arbitrator awarded Rs.11,493. Against Claim No.4 for refund of security deposit of Rs.60,000 was allowed. Against Claim No.5 for Rs.80,000 under Clause 10-CC, the learned Arbitrator awarded Rs.79,437. Against Claim Nos.6 & 7 a for sum of Rs.2,50,000 on account of loss and profit and Rs.2,00,000 on account of damages, the learned Arbitrator awarded

Rs.4,17,263. Against Claim No.8, the learned Arbitrator awarded simple interest at 12% per annum *pendente lite* together with costs of Rs.50,000.

4. By the second impugned Award in deciding the DDA's claims, the learned Arbitrator rejected Claim No.1 for recovery of Rs.15,01,011 on account of differential increase of the balance work to be done at the risk and cost of the Claimant. Claim No.2 for Rs.24,053 for defective work was also rejected. Claim No.3(a) for sum of Rs.1,62,185 on account of tor steel not returned by the Claimant and Claim No.3(b) for Rs.4,000 on account of cement used in the work more than the permissible limit, were also rejected. He also rejected DDA's Claim No.4 for the sum of Rs.9,000 on account of non-deployment of graduate engineer and Claim No.5 for the sum of Rs.3,69,578 towards the compensation levied under Clause 2 of the agreement were also rejected.

5. It is contended by the DDA that the site for work had been handed over to the Claimant on 23rd June 1994. The Claimant was to construct a godown for the stocking of cement, steel etc. and to make arrangement of water for drinking and construction purposes. The architectural and structural drawings were made available to the Claimant. However, the Claimant failed to show the required progress of the work. Despite directions of the Executive Engineer ('EE') on 2nd September 1995, the Claimant did not

submit a programme for completion of the work. The inspection by the Chief Engineer (Quality Control) revealed that the work was extremely poor. The work performed was highly defective. These were communicated to the Claimant by the letter of the EE dated 29th February 1996. The Engineer In-charge ('EIC') inspected the site on 5th October 1995. According to the DDA on 1st December 1995, the Claimant abandoned the work site and had by then completed only 10% of the work. On 13th March 1996, the EE issued a show cause notice to the Claimant as to why the work should not be rescinded and got executed at the risk and costs of the Claimant. A final notice was served on 12th April 1996. Finally, the contract was rescinded on 15th May 1996.

6. The above facts are, however, disputed by the Claimant. It is pointed out that no site was handed over to the Claimant and only a site was shown on 23rd June 1994. Even till 25th January 1995 a clear site was not handed over. Therefore, there was a wastage of six months. There was no possibility of starting the work before 3rd December 1994. According to the Claimant the provisional extension of time granted to it was unilateral without any request made in that behalf by it to the DDA. It was denied that the Claimant had abandoned the work site. The receipt of the letter dated 21st March 1996 is also denied.

7. The learned Arbitrator observed that the work had to be executed as

multi-storey building and single storey stalls. The failure on the part of DDA to issue to structural drawings of the site resulted in non-completion of the work. Consequently, the original time limit of 15 months for completion of the work could not be adhered to. The record also showed that provisional extension of time was granted by the DDA to the Claimant just to keep alive the contract so that it could ultimately terminate the contract.

8. As regards Claim No.1, the learned Arbitrator held that DDA failed to issue the complete structural drawings in good time and this resulted in the non-completion of the work. This is a finding of fact. The DDA has been unable to show when the complete structural drawings were ultimately issued, if at all, to the Claimant. The Award cannot be said to be contrary to the evidence on record or to the contractual provisions. The reliance placed by the DDA on Clause 13 of the agreement was misconceived, since the question was not one of change of drawings but non-supply of the complete structural drawings. As there had been extension of time granted by the DDA till 31st May 1996 it could not be said that time was still the essence of the contract. As regards Claim No.1, it was on the basis of the admission of the DDA that the sum of Rs.21,125 was withheld from the Claimant's bill. After rescinding the contract, the DDA failed to undertake joint measurement of the work done in the presence of the Claimant. The measurements were recorded by DDA unilaterally. In the circumstances,

while the DDA's claim in this regard was rejected, the admitted sum of Rs.21,125 was awarded to the Claimant. The above findings are factual, based on the evidence on record, and do not call for interference.

9. Claim No.2 was awarded on the basis of an admission by the DDA that Rs.30,208 was due to the Claimant. Claim No.3 for part rates in extra items was allowed only to the extent of 11,493 to the extent admitted by the DDA. Claim No.4 towards refund of security deposit had to follow the finding that the termination of the contract by the DDA was illegal. As Regards Claim No.5 on account of Clause 10-CC, DDA objected only to the index adopted by the Claimant. However DDA did not supply the correct index. The learned Arbitrator found that the Claimant was entitled to Rs.79,347. The award of Rs.4,17,263 against Claim No.6 (loss of profit) and Claim No.7 (damages) was also based on a proper analysis of the evidence on record. The reasons given are cogent. This Court, therefore, does not find any ground having been made to set aside the impugned Award to the extent it allows the claims of the Claimant.

10. As regards the claim of the DDA, Claim No.1 for the differential increase of balance work had to be rejected in view of the finding that it was the DDA which was in breach of the agreement and had illegally terminated the contract. As regards claim No.2 for defective work, the learned Arbitrator found that the inspection was carried out by the SE on 16th

August 1995 and the reduction item was approved by the SE on 22nd September, 1999. It was conveyed to the Claimant on 8th October 2008. DDA failed to justify the claim and even in the demand notice it was not mentioned. Rejection by the learned Arbitrator of this claim cannot be held to be unjustified. DDA's Claim Nos.3(a) & (b) about the Claimant not handing back for steel used it was held that the notice required to be issued under Clause 42 of the agreement was in fact not issued. Consequently, the rejection of this claim also cannot be held to be unjustified. As regards Claim No.4 of the DDA, the learned Arbitrator found that the site order book did not record anything about the non-deployment of a graduate engineer and, therefore, not recorded in the 4th R.A. bill which was paid. As regards Claim No.5, since it was concluded that the termination of the contract was illegal, the question of awarding compensation to the DDA did not arise. This finding too does not call for interference.

11. This Court finds no ground having been made out by the DDA for interference with either of the impugned Awards. Both petitions are accordingly dismissed but in the circumstances, no order as to costs.

S. MURALIDHAR, J.

MARCH 27, 2012

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