

IN THE HIGH COURT OF DELHI AT NEW DELHI

OMP No. 367 of 2005

Reserved on: 22nd August, 2012
Decision on: 13th September, 2012

MUNICIPAL CORPORATION OF DELHI Petitioner
Through: Mr. Mukesh Gupta, Advocate.

Versus

M/S. HARCHARAN DASS GUPTA Respondent
Through: Mr. V.K. Sharma, Advocate.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT
13.09.2012

1. The challenge by the Petitioner Municipal Corporation of Delhi ('MCD') in this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') is to an impugned Award dated 26th June 2005 passed by the sole Arbitrator in its disputes with the Respondent-Contractor M/s. Harcharan Dass Gupta arising out of an award of the work of construction of underground pedestrians sub-way across Lal Bahadur Shastri Marg near Defence Colony Flyover, by the MCD in favour of the Respondent, by a work order dated 30th August 1991.

2. The aforementioned work order was a lump sum contract for a sum of Rs. 45,49,500. The work was to be completed in 12 months. The stipulated date of start was 8th September 1991. The actual date of completion of work was 14th August 1993.

3. A final bill was prepared on a running bill account form and was accepted for payment in the sum of Rs. 4,12,662. It is stated that after

withholding Rs. 20,000, the MCD paid the said sum on 14th June 1994. This was followed by 10th and final bill with respect to final payment of escalation under Clause 10-CC of the agreement again on the running bill account form. This was passed for payment of Rs. 6,71,096 by the MCD and paid to the Respondent on 14th June 1994. The security amount of 1 lakh was released and paid to the Respondent by MCD on 25th January 1995. The withheld amount of Rs. 20,000 was paid to the Respondent on 23rd March 1998. According to the MCD, all these payments were accepted by the Respondent without protest.

4. By a letter dated 29th August 1997, addressed to the Executive Engineer of the MCD, the Respondent claimed that the entire amount owing to it was not paid. It set out the details of the complete payments that were legitimately due to it. The Respondent asked the MCD to treat the said letter as a notice in terms of Clause 25 of the contract. A total sum of Rs. 12,13,810 together with interest @ 24% per annum and costs of Rs. 10,000 was claimed. By a letter dated 29th January 1998 addressed to the Commissioner, MCD, the Respondent requested for appointment of an Arbitrator in terms of the arbitration clause. Thereafter, the Contractor filed Arbitration Application No. 88 of 1998 in this Court. Pursuant to the order passed by this Court on 11th February 1999 the Commissioner, MCD by notification dated 17th March 1999 appointed a sole Arbitrator. The said Arbitrator upon superannuation was substituted by another Arbitrator on 4th June 2001 and he continued with the proceedings thereafter.

5. The preliminary objection as to limitation raised by the MCD was rejected by the sole Arbitrator in the impugned Award dated 26th June 2005. It was submitted by Mr. Mukesh Gupta, learned counsel appearing

on behalf of MCD that the mere payment by MCD of Rs. 20,000 to the Respondent on 23rd March 1998 would not extend the period of limitation. According to him, the limitation period had already expired on 13th August 1996 or latest by 13th June 1997 i.e. within the period of three years after the payment of the final bill was made on 14th June 1994.

6. In terms of Section 21 of the Act, the date of invocation of the arbitration clause would be the date of commencement of arbitration proceedings. In the instant case the letter dated 29th August 1997 of the Respondent was admittedly the date of invocation of the arbitration clause. The question of limitation *vis-à-vis* each of the claims had to be tested with reference to the said date.

7. As was noticed earlier the MCD made payment both of the final bill for the work in the sum of Rs. 4,12,662 as well as the payment for the 10th and final bill for escalation under Clause 10-CC in the sum of Rs. 6,71,096 on 14th June 1994. Both the payments were accepted by the Respondent without protest. Even assuming that with reference to both these payments the Respondent could have claimed any further sum, it had to make such claim within three years thereafter. In other words, the period of limitation as regards claims arising out of the settlement of the final bill and 10-CC bill began to run on 14th June 1994.

8. Under Claim No. 4, as against a sum of Rs. 1,66,815 for damages due to delay in completion of the work, the learned Arbitrator has awarded Rs. 1,65,000. Under Claim No. 5, as against a sum of Rs. 5,53,976 on account of damages due to delay in payments of the running account bills, the learned Arbitrator awarded Rs. 81,448. As explained hereinbefore, the period of limitation for both Claim Nos. 4 and 5 began to run on 14th June

1994 itself. The invocation of the arbitration clause by the Respondent *vis-à-vis* both Claim Nos. 4 and 5 on 27th August 1997 was clearly time barred. Claim Nos. 4 and 5, therefore, should not have been entertained. The impugned Award as regards Claims 4 and 5 is therefore unsustainable in law.

9. Claim No. 6 was for interest on the sums awarded under Claim Nos. 3, 4 and 5. Inasmuch as Claim Nos. 4 and 5 have been rejected, the interest on the aforementioned amount awarded in Claim Nos. 4 and 5 also cannot be paid. To that extent, the impugned Award in respect of Claim No. 6 is modified by rejecting the claim of interest for Claim Nos. 4 and 5.

10. Claims 1 and 2 have been rejected by the learned Arbitrator. Claim No.3 was for a sum of Rs. 10,224 on account of illegal withholding of Rs. 20,000 that was ultimately released by MCD on 29th March 1996. The said claim was within time. The award of Rs. 2,200 in respect of Claim No.3 does not suffer from any legal infirmity and is therefore upheld. The grant of simple interest @ 12% per annum on the said sum is also upheld. The award of costs of Rs. 10,000 and the fees of the learned Arbitrator also does not call for interference. The counter-claims of MCD were also barred by limitation. Even on merits they were unsubstantiated. Their rejection by the impugned Award is also upheld.

11. In conclusion, the impugned Award dated 26th June 2005, to the extent it has entertained and partly allowed Claim Nos. 4 and 5, and awarded interest on the said sums, under Claim No. 6, is hereby set aside. The impugned Award in all other respects is upheld.

12. The petition is disposed of in the above terms with no order as to costs.

S. MURALIDHAR, J.

SEPTEMBER 13, 2012

AK