

IN THE HIGH COURT OF DELHI AT NEW DELHI
(Not reportable)
OMP No.375/2006

Reserved on: March 15, 2012
Decision on: March 30, 2012

MUNICIPAL CORPORATION OF DELHI Petitioner
Through: Mr. Nalin Tripathi with
Mr. Anurag Sharma, Advocates.

versus

SH. JAGBIR SINGH SHARMA Respondent
Through: Mr. Sandeep Sharma with
Ms. Kanika Singh, Advocates.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT
30.03.2012

1. In this petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act'), the Municipal Corporation of Delhi ('MCD') challenges an Award dated 3rd May 2006 of the learned Sole Arbitrator in the disputes between it and the Respondent in respect of the award of work of widening and improvement of road from Outer Ring Road to APJ School, Malviya Nagar by an agreement dated 4th January 2002.

2. The start date of the work was 6th January 2002. The work was completed on 24th December 2002 even before the stipulated date of completion of 5th January 2003. The Respondent states that after completing the work of the value of Rs.21.5 lakhs on 29th October 2002 he

submitted his first Running Account ('RA') Bill for a sum of Rs.21,36,500.40. The bill was passed for a sum 41.41% below the billed amount i.e. for a sum of Rs.12,51,775,61. Thereafter a net amount of Rs.10,61,761, after deducting income tax, surcharge and sales tax, was paid. After completing further work of the value of more than Rs.18 lakhs, the Petitioner submitted his second RA bill on 20th February 2003 in the sum of Rs.29,86,471.91. Again, the bill was cleared only after deducting 41.41%, for a sum of Rs.17,49,774. After deductions including for security deposit, a sum of Rs.3,82,624/- was paid. According to the Respondent, of the total work of the value of Rs.61,22,119.27, after accounting for the amount paid to him, a sum of Rs.38,45,492 was payable by the MCD.

3. It was submitted by the Respondent that the work was performed under the supervision of MCD's engineers and there was no dispute about its completion on 24th December 2002. The defect liability period expired on 23rd December 2003. Thereafter, the security deposit of Rs.2,98,647 also became refundable. Additionally, it was claimed that Rs.1 lakh towards earnest money, and Rs.1,98,647 recovered from the first and second RA bills, were also payable. According to the Respondent, despite his visiting the office of the MCD on several occasions, the payment was not made. A letter dated 18th September 2004 demanding payment was delivered by him personally to the office of the Executive Engineer ('EE') of the MCD on 20th September 2004. When despite several reminders no payments were

forthcoming, the Respondent invoked the arbitration clause on 4th January 2005. Thereafter, he filed a petition in this Court under Section 11 of the Act. By an order dated 20th May 2005, this Court appointed the sole Arbitrator.

4. Claim No.1 was for a sum of Rs.21,02,454 in respect of the work done and not paid for. Claim No.2 was for a sum of Rs.3,78,457 being the interest for the period from 24th December 2003 to 31st December 2004 at 18% per annum. Claim No.3 was for a sum of Rs.2,98,647 towards refund of security deposit. Interest thereon at 18% per annum from 24th December 2003 to 31st December 2004 in the sum of Rs.64,560 was claimed under Claim No.4. Claim No.5 was for interest on Claim Nos.1 to 4 from 1st January 2005 till payment at 18% per annum. Claim No.6 was for a sum of Rs.1 lakh being the cost of the arbitration proceedings.

5. As regards Claim No.1, the case of the MCD was that while the work of widening of carriage way was awarded to the Respondent, the work of widening/improvement of road from S-Bend to the nearby entry of Swami Nagar was got constructed from another agency, M/s. Sharma Construction. Therefore, widening of this stretch of the road was beyond the scope of the work of the Respondent.

6. In order to resolve the controversy, the learned Arbitrator took a site visit on 28th December 2005. Despite the learned Arbitrator requiring the

MCD to produce the drawings only a sketch was produced. It was concluded that the work on both the roads, except the portion of 200 metres in respect of the work under the Work Order dated 31st October 2001 had been executed by the Respondent under the supervision of MCD's engineers. After deducting the contractual work amount of Rs.3,13,484, the learned Arbitrator awarded to the Respondent a sum of Rs.17,88,970 under Claim No.1 and under Claim No.2 awarded interest thereon at 12% per annum. Claim No.3 for refund of the security deposit in the sum of Rs.2,98,647 was allowed and interest thereon at 12% from 1st April 2004 upto 31st December 2004 was awarded. Post-Award interest was granted at 12% per annum. The counter claims of the MCD were rejected.

7. It is submitted by the learned counsel for the Petitioner that under Clause 25 of the contract, the claim had to be made within 120 days, whereas the Respondent preferred the claim beyond the said date. A perusal of the petition under Section 34 of the Act shows that no such ground has been urged therein. This Court, therefore, does not permit it to be raised at this stage.

8. It is next submitted that under Clause 7 of the Contract, the Engineer In-charge ('EIC') had to prepare the final bill. In the absence of such a step, no claims for bills or for interest were maintainable. It is pointed out by learned counsel for the Respondent that EIC never fixed any date for the preparation of the final bill and, therefore, no final bill as such could be

prepared. This submission was unable to be countered by the learned counsel for the Petitioner. The objection in this regard is rejected.

9. It is then submitted by counsel for the Petitioner that the claim of the Respondent was beyond the scope of the Work Order as well as the agreement. Further, the Respondent never disputed the measurements recorded by the MCD in the Measurement Book ('MB'). It is pointed out by learned counsel for the Respondent that no plan or drawings were given indicating the locations of the road where the work was to be executed. There was no question of performing the work beyond the scope of the contract. It was only under the supervision of the engineers of the MCD that the entire work was undertaken and completed on 24th December 2002. There was no justification for withholding the amounts from the RA bills.

10. With the learned Arbitrator having undertaken the site visit, this was a purely factual issue about the extent of the work performed by the Respondent. The Respondent also filed an affidavit dated 22nd August 2005 with regard to the amounts to be payable for the work already performed. The relevant portion of the Award which talks of the site inspection reads as under:

“During inspection respondent pointed out that from the entry of the Outer Ring Road upto Dust Bin (M.C.D.'s flats in the middle) upto 200 metres. The work was executed as per the work order dated 31st October 2001 by M/s. Sharma Construction. On enquiry about the agency, which executed

the work beyond Dust Bin (M.C.D.'s Flats) upto Dust Bin (Naalah) Chirag Delhi, The respondent could not name any such agency.”

11. The findings of the learned Arbitrator are based on his observations during the site visits undertaken by him. This being a pure question of fact and appreciation of evidence, no interference under Section 34 is called for. There was no justification for disallowing the amount withheld from the bills of the Respondent.

12. The plea that the work was not upto the requisite quality and had to be got completed through another agency was not believed by the learned Arbitrator. Moreover, the Respondent had never been informed of any defect. Even after the defect liability period expired, no such defect was pointed out.

13. This Court is satisfied that the amount awarded is based on the correct appreciation of the evidence and is not contrary to any of the provisions of the contract. The rate of interest at 12% also cannot be said to be excessive. No grounds have been made out for interference with the impugned Award.

14. The petition is dismissed.

S. MURALIDHAR, J.

MARCH 30, 2012

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