

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**OMP 635/2008**

Reserved on: February 07, 2012

Decision on: February 24, 2012

M/S BRIJ LAL & SONS

....Petitioner-in-person

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. R.V. Sinha, CGSC with  
Mr. A.S. Singh, Advocate.

**CORAM: JUSTICE S. MURALIDHAR**

**JUDGMENT**

**24.02.2012**

1. The Petitioner, M/s Brij Lal & Sons, a registered partnership firm through, one of its partners, Mr. Tilak Raj, has filed this petition under Section 34 of the Arbitration & Conciliation Act, 1996 ('Act') challenging an Award dated 1<sup>st</sup> August 2008 of the learned sole Arbitrator in the dispute between Respondent No.1, the Union of India through the Central Public Works Department ('CPWD') and the Petitioner, arising out of the award by CPWD of development works at RLA college, New Delhi, comprising the approach road, water supply, sewer line and underground tank in favour of the Petitioner by an agreement No.29/EE/CD-XIV/92-93.

2. The commencement date of the work as per the contract was 13<sup>th</sup> February 1993. The stipulated date of completion was 23<sup>rd</sup> August 1993. According to the Petitioner, the work could not be completed within the stipulated time and was ultimately completed on 16<sup>th</sup> September 1995. However, the Respondent did not release the final payment against the bill

dated 23<sup>rd</sup> October 1995. The Respondent rescinded the contract on 31<sup>st</sup> May 1996. The Petitioner submitted its claims on 2<sup>nd</sup> April 1996 and on 24<sup>th</sup> December 1996 the Respondent appointed the sole Arbitrator.

3. The Petitioner submitted eleven claims and the Respondents filed four counter claims. Claim No. 1(a) was for a sum of Rs.9,42,652.10 being the balance amount short measurement after payment of the 6<sup>th</sup> Running Account ('RA') Bill by the Respondent. The learned Arbitrator after undertaking a site inspection on 8<sup>th</sup> December 2006, held that the report of the Local Commissioner ('LC') was based on the measurement taken on 2<sup>nd</sup> November 1999 and could not be relied upon. The learned Arbitrator held that the Petitioner was entitled to additional payment over and above the payment made against the 6<sup>th</sup> RA Bill. There were 16 items under the work contract concerning the approach road, which was discussed item-wise, with the Arbitrator awarding some and rejecting others. Likewise, the agreement items in respect of water supply, drainage, sewage line and underground tank were also discussed. In view of the above findings, the learned Arbitrator held that the Petitioner was entitled to Rs.90163 against Claim No.1 (a).

4. Claim No.1(b) was for a sum of Rs.75,000 towards short measurement left after submitting the running bill dated 23<sup>rd</sup> October 1995 for item – Plaster neat punning i/work etc. The learned Arbitrator held that this claim was not established and accordingly rejected it. Likewise, Claim No. 1 (c) for a sum of Rs.68,874 on account of earthwork done, Claim No. 2 for Rs.63,000 on account of use of 12 mm plaster instead of 6 mm and Claim No. 3 were rejected. Claim No. 4 in regard to hard soil was also rejected.

5. Claim No. 5 for a sum of Rs.3,00,000 for extra work done and deviation item of RCC pipe, road gully grading etc., Claim No. 6 for a sum of Rs.3,00,000 towards extra expenditure on site staff salaries during the extended period contract and Claim No.7 towards loss of profit, were rejected for absence of any documentary evidence. Claim No. 9 for Rs.15,000 towards aggregating 10 mm normal size used instead of 100 mm in premix carpeting was also rejected. As against Claim No. 10 for Rs.90,000 on account of security refund, a sum of Rs.81,641 that was forfeited was directed to be paid to the Petitioners. The claims for costs were also rejected.

6. The counter claims of the Respondent were rejected. Finally, the learned Arbitrator awarded the Petitioner Rs.1,71,804 together with simple interest at 10% per annum with effect from 16<sup>th</sup> January 1996 till the date of payment.

7. After the Award was published, the Petitioner filed an application under Section 33 of the Act. The Respondent too made an application under the same provision. After hearing the parties again, the learned Arbitrator issued the following amendments on 15<sup>th</sup> October 2008.

“The 3<sup>rd</sup> line of the award to this claim after the words as such I award may be read as under:

Rs.31,640/- which was in the form of FD with interest as given by the bank and an amount of Rs.5,000 incurred as 1% p.a. expenses getting the BG valid upto 30.09.2005 to the claimant against this claim.

The 3<sup>rd</sup> line of para 6.1 of award where an amount of Rs.1,71,804 (Rs.90,163 + Rs.81,641) may be read as under Rs.1,21,804 (Rs.90,163 + Rs.31,641).

Para 1.71 of the award in the first line after the word I award Rs.1,71,804/- may be read as Rs.1,26,804/-

(Rs.1,21,804/- + Rs.5,000/-) to the claimants.”

8. The partner of the Petitioner appeared in person. The first grievance was that in the supplementary Award dated 15<sup>th</sup> October 2008, the learned Arbitrator had accepted the Respondent’s application under Section 33 of the Act, whereas the Petitioner’s application was rejected. A perusal of the said order shows that in his application, the Petitioner had asked for interest at a rate higher than that awarded and this was rightly rejected by the learned Arbitrator as not being within the purview of Section 33 of the Act. In the application of the Respondent, it was pointed out that a bank guarantee in the sum of Rs.50,000 that was issued had expired on 30<sup>th</sup> September 2005. Therefore, the Respondent was discharged from the liability on that score. The Petitioner was awarded 1% per annum as the expenses that he had incurred for keeping the bank guarantee alive from 31<sup>st</sup> July 1995 to 30<sup>th</sup> September 2005 in the sum of Rs.5,000. The security deposit in respect of waterproofing had already been released on 23<sup>rd</sup> September 2008 and it was also admitted by the Petitioner the said issue was not adjudicated. Consequently, the correction made to the Award by the learned Arbitrator by the supplementary Award dated 15<sup>th</sup> October 2008 was justified. This Court is unable to find any illegality having been committed by the learned Arbitrator in this regard.

9. The next grievance is as regards interest in relation to refund of security amount under Claim No.10. The learned Arbitrator has already awarded *pendente lite* interest, as noticed hereinbefore. The failure to award interest separately under Claim No.10 cannot be said to be illegal or perverse so as to warrant interference.

10. The award as regards the claim towards the expenses for the approach road cannot be said to be either contrary to the provisions of the contract

or law. In challenging the award in respect of individual claims the Petitioner seeks to invite the Court to re-appreciate the evidence and sit as a court of appeal. This is beyond the scope of the present proceedings under Section 34 of the Act. The grievance made about the measurement taken on site also cannot possibly be considered by this Court at this distance in time and that too under Section 34 of the Act. There was a dispute between the parties as regards the measurement and a Local Commissioner was also appointed for the said purpose. Further, the learned Arbitrator himself appears to have undertaken a site inspection. It appears that the Petitioner did have several opportunities to produce documents in support of its claims but failed to do so. An application filed by the Petitioner on 17<sup>th</sup> December 2006 was rejected by the learned Arbitrator on 5<sup>th</sup> February 2007 on the ground that it was premature. The Petitioner has been unable to persuade the Court to hold the reasoning or conclusion of the learned Arbitrator to be perverse or warranting interference. Learned counsel for the Respondent informed the Court that the impugned Award of the learned Arbitrator has been accepted by the Respondent and the awarded amount has been paid to the Petitioner.

11. The petition is dismissed, but in the circumstances, with no order as to costs.

**S. MURALIDHAR, J.**

**FEBRUARY 24, 2012**

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