

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

% *Judgment Reserved on: January 30, 2013*
Judgment Pronounced on: February 18, 2013

+ **OMP No.1180/2012**

TILAK RAJ GOGIA Petitioner
Through Petitioner in person.

versus

UNION OF INDIA & ORS. Respondents
Through None.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. This objection petition under Section 34 of the Arbitration and Conciliation Act, 1996 has been filed by the petitioner against the award dated 3^{0th} July, 2012, 1^{6th} August, 2012 passed by the learned Arbitrator.
2. As per the petition, during the period of 2009-2010, the petitioner was awarded the contract No. 17/EE/FCD-I/2009-10 for execution of work, (A/R & M/O GOI Office Building and other allied building at NH-4, Faridabad.
3. The date of commencement of work was 15th August, 2009 and the stipulated date for completion of work was 14th December, 2009.
4. During the execution of work, a letter No.54-CGO/AE-II/ FCD-I/247 dated 12th November, 2009 was issued by the respondent pointing out certain issues.
5. By letter No.42 dated 1st February, 2010 the said contract was

rescinded and EMD and PG were forfeited.

6. Feeling aggrieved, the petitioner filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 in the Court of ASJ, New Delhi, Saket seeking direction for the respondents to measure the work. By order dated 29th August, 2011 the respondent was directed to measure the work of the petitioner within one month from the issue of the said judgment. Thereafter, as per the instructions of the Court the inspection was carried out on 16th September, 2011.

7. The Chief Engineer, Zone-IV, CPWD had appointed Shri Divakar Garg as the Sole Arbitrator to decide the disputes between the parties however, he resigned as Arbitrator on 23rd May, 2011. Thereafter, Shri Rajiv Kumar was appointed as Arbitrator in the matter but, he also resigned on 5th May, 2011. Thereafter, on 19th December, 2011 Shri V.K. Malik was appointed as the Sole Arbitrator, who pronounced the impugned award dated 30th July, 2012, 16th August, 2012.

8. Before the learned Arbitrator, the submission of the petitioner was that he is entitled for payment of final bill of ₹13.3 lac.

9. After considering the documents and rival submissions of the parties, the award was passed on 30th July, 2012. The petitioner thereafter sent the letter dated 31st July, 2012 requesting the learned Arbitrator for correction in award raising two issues which were also dealt by the arbitrator and passed his order under Section 33 of the Arbitration and Conciliation Act, 1996 on 16th August, 2012. Relevant portion of the said order reads as under :

“1. At the time of submission of tender for the work on page 6 of CPWD-8 of tender document, claimant had clearly written that FDRs of Rs.9600/-, Rs.9600/- and Rs.7500/- are for two tenders opening on 10.07.2009. Respondent had forfeited EMD of Rs.13069/- against

the work in subject. As per detail submitted by respondent vide R-7 (Transfer Entry of Feb. 2010) a sum of Rs.13069/- had only been adjusted in revenue head. It appears a case where claimant had submitted EMD for two works i.e. for the work under subject in present arbitration case and for some other work but seeking refund of the EMD of other work through arbitration of present case which has no relation with other work. Respondent had forfeited EMD of Rs.13069/- in present case and the same has been awarded to claimant under additional claim No.1.

2. The agreement item No.1 pertains to exterior paint on walls applied in two or more coats @ 1.67 litre per 10 sqm on new work and agreement item No.4 pertains to exterior paint on walls applied in one or more coats @ 0.90 litre per 10 sqm on old work.

As per the bill submitted by claimant (C-51), he had executed quantity of 1500 sqm against agreement item No.1 but item No.4 as provided in the agreement had not been executed. As per own submission of claimant, quantity of 20000 sqm had been executed for applying exterior grade paint on walls with two or more coats on old work and not as one or more coat as provided in the agreement item. It simply means substitution of agreement item of one or more coat to two or more coats. Claimant had quoted rate of agreement item No.4 (exterior grade paint in one or more coat on old work) as Rs.13 per sqm but in the final bill submitted by claimant rate of Rs.48 per sqm had been claimed for applying two or more coats @ 1.67 litre as per EE request.

The theoretical quantity of exterior paint required for the items as per bill submitted by claimant works out to 3590.5 litre (Item No.1- $1500 \times 1.67 / 10$ + Substituted Item No.4- $20000 \times 1.67 / 10$) as mentioned in the award. My findings under para 1.3.2 on page 7 of the award pertains to condition No.5 on page 25 of the agreement which provides that sample shall be got approved first before start of mass work and submission of full quantity of material brought at site with engineer-in-charge and this condition has no relation with actual consumption of material in the work.

3. It makes no difference whether 8 representatives of different user departments having their offices in the same premise and present at the time of joint inspection were of class III grade or of gazette rank. What matters most to me is the statement made by these employees without any provocation and their statements recorded in presence of claimant is one of the bases and not the sole criteria to come to conclusion that no work was executed by claimant.

4(a) As per Tribunal letter dated 16.01.2012 respondent was allowed to submit their Statement of Defence by 31.01.2012 and first hearing of the case was held on 10.02.2012 and Statement of Defence was submitted by respondent on 10.02.2012. Under Section 19(4) of the Arbitration Act arbitral tribunal has power to decide admissibility of document/evidence. Your objection that respondent has taken abnormally long time to submit their Statement of Defence despite so many opportunities given to them and their Statement of Defence should not be considered was not found of much relevance and it was decided to admit the Statement of Defence filed by respondent.

4(b-i) & 4(ii) Under Para 0.10 on page 3 of award it is mentioned that claimant has filed written synopsis dated 28.05.2012. I have gone through all the citations of various exhibits made by claimant and have considered the submission while making award. At the time of making award it is not necessary to comment on each and every document submitted by claimant and respondent. Relevant exhibits submitted by claimant and respondent had duly been considered and cited in the award.”

10. Thereafter, the present objections have been filed by the petitioner challenging the award dated 30th July, 2012/16th August, 2012.

11. This Court has examined all relevant record and also the award passed by the learned Arbitrator. It appears that before the Arbitrator, the petitioner raised the final bill of ₹13.3 lac submitted by him to the respondent who refuted the claim of the petitioner by alleging that no work was executed by

the petitioner and his claim is totally bogus and was raised by the petitioner without doing any work. Various letters were sent by the respondent to the petitioner to start the work as per documents i.e. R-2 to R-5. As the petitioner failed to start the work, the contract was rescinded vide letter No.42 dated 1st February, 2010 (R-6).

12. By letter dated 8th March, 2010, SE, GCC, Gaziabad, informed CE that no work was executed by the petitioner and actually he had submitted bogus bill of ₹13.3 lac against the contract value of ₹4.1 lac. The petitioner was also asked to attend the site on 16th August, 2012 to verify the work. The inspection was witnessed by three officers of department in presence of the petitioner and eight more officers having their offices in the same premises. All the officers confirmed that no work of external paint had been executed in the building in the last 3 years.

13. It was alleged by the respondent that the claim of the petitioner is totally false statement who had submitted only abstract of bill without any detail of measurement and even the piece of paper submitted does not bear signature of the petitioner. The evidence produced by the petitioner was also considered by the learned Arbitrator in para 1.2.11 of his award who has also given his finding that there is no iota of doubt that no work as claimed by the petitioner was executed and he had raised bogus claim.

14. The petitioner was awarded a ₹33569/- towards EMD-₹13069 + PG-₹20500/-. Claim No.2 was also rejected in view of the finding given in claim No.1. With regard to claim No.3 about the interest @18% claimed by the petitioner from 14th December, 2009 till the date of payment, the Arbitrator has awarded simple interest @9% per annum on the amount of ₹33569/- with effect from the date of invocation of arbitration on 30th

November, 2010 till the date of payment. On claim No.4 i.e. cost of proceedings, the learned Arbitrator has decided that both the parties shall bear their own costs. The net result of the award is that the respondent is to pay a sum of ₹33569/- against the additional claim No.1 to the petitioner with simple interest @9% per annum on the said amount with effect from 30th November, 2010 till the date of payment.

15. It is also clarified by the learned Arbitrator that no future interest shall be paid if the entire awarded amount is paid to the petitioner within 30 days from date of the receipt of award by the respondent.

16. After having considered the submissions made by the petitioner as well as the reasons given in the award, I am not inclined to interfere with the findings given by the learned Arbitrator. The objections are accordingly disposed of. No costs.

(MANMOHAN SINGH)
JUDGE

FEBRUARY 18, 2013