

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

+ **O.M.P. 1391/2014**

Judgment reserved on: 12.11.2014

Judgment pronounced on: 05.12.2014

DELHI URBAN SHELTER IMPROVEMENT BOARD

..... Petitioner

Through: Mr. Parvinder Chauhan, Advocate

versus

CHET RAM SINGH THR LRS

..... Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. By way of the present petition under Section 34 of the Arbitration and Conciliation Act (hereinafter referred to as 'the Act') the petitioner has challenged the award dated 09.07.2014 passed against them. Vide that award the arbitrator has awarded a sum of Rs.70,62,530/- which included Rs.25 lakhs towards security deposit and Rs.45,62,530/- towards value of work done by the claimant along simple interest at the rate of 8% per annum with effect from 01.04.2005 till such time the petitioner pay this amount to the respondent claimant.

2. The petitioner vide this petition has challenged the said award on two counts, first that the claim was barred by limitation and secondly a sum of Rs. 45,62,530/- had been awarded to the respondent despite the fact that the respondent had failed to produce any evidence in support of his claim.

3. The brief facts of the case are that the claimant Late Sh.Chet Ram Singh was running a business of security agency under the name and style of “Security and Investigation Agency (SIA)” and was a successful bidder and awarded a contract by the petitioner for engagement of 43 Security Guards and 196 Resident Care Takers at various sites of the petitioner. An agreement dated 20.02.2003 was entered into between the parties and initially the contract was for one year from 20.02.2003 to 19.02.2004 but was extendable for further period of one year. The respondent continued to provide the men power beyond 19.02.2004. Approval/sanction letter was issued by the petitioner only on 10.03.2005. Vide letter dated 13.09.2005, the respondents raised the demand for salaries of the security guards and Resident Care Takers deployed, at various sites of the petitioner during this extended period. Vide this letter a request was also made

to clear the final bill and release the amount of security deposit lying with the petitioner. However, finalisation of the final bill and the release of the security deposit was kept on hold and a letter dated 25.06.2007 was written by the petitioner to the respondent claimant whereby the petitioner claimed that in view of clause 27 of agreement the security deposit could not be released till the finalization of the final bill. It was also disclosed to the respondent that the investigation into the entire matter had been pending with the vigilance department of the petitioner and till its finalisation, the final bill could not be sanctioned and the security deposit also could not be released. A similar letter dated 12.07.2007 was also issued by the vigilance department of the petitioner.

4. The petitioner however has contended in the present petition that pursuant to the said vigilance enquiry, seven officials of the Slum and J.J. department had been inducted with minor and major penalties. It is contended that the respondent was not eligible for the contract but he fraudulently obtained the contract by submitting fabricated documents which had resulted into this vigilance enquiry. The respondent had filed a writ petition being W.P.(C)

No.10578/2009 titled as Chet Ram Singh vs. MCD & Another seeking directions to the petitioner to release the amount lying with them towards security deposit and also for appointment of an arbitrator. The said writ petition was dismissed on the grounds that it involved disputed questions of facts. The respondents, however, was permitted to invoke the arbitration agreement and the procedure for appointment of the arbitrator. The court also observed that the lis would also raise the question of limitation as the work was concluded on 31.03.2005 while the writ petition was filed after more than four years in July, 2009. Thereafter the respondent filed a petition under Section 11 of the Act as Arbitration Petition No.330/2010 for appointment of an arbitrator which was disposed of on 24.02.2012 and the arbitrator was appointed.

5. In the background of these facts the petitioner has challenged the award mainly on two counts, firstly that the claim of the respondent before the arbitrator was barred by limitation and secondly that the arbitrator has passed the award without any evidence on record.

6. The scope of challenge under Section 34 of the Act to an

Award is very limited one. An award can be challenged only on the grounds enumerative under Section 34 (2) of the Act. One of the grounds to challenge can be that the award is against Public Policy. The meaning of the expression 'Public Policy' has been defined by the Supreme Court in (2003) 5 SCC 705 titled as ***Oil & Natural Gas Corporation Ltd. vs. Saw Pipes Ltd.*** In para 31 the court has observed as under:

31. Therefore, in our view, the phrase 'Public Policy of India' used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term 'public policy' in Renusagar's case (supra), it is required to be held that the award could be set aside if it is patently illegal. The result would be - award could be set aside if it is contrary to: -

- (a) fundamental policy of Indian law; or*
- (b) the interest of India; or*
- (c) justice or morality, or*
- (d) in addition, if it is patently illegal.*

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court. Such award is opposed to public policy and is required to be adjudged void.”

7. Also in view of Section 28 (1) (a) of the Act, the arbitrator is bound to follow the substantive law of the land while passing an award. The question before this court is whether the findings of the learned arbitrator that the claim of the petitioner is not barred by time is as per substantive law of the land or not. If the findings of the arbitrator is not as per substantive law then the award is patently illegal and liable to be set aside. There is no dispute to the fact that the final contract which was valid till 19.02.2004 was extended for a further period of one year from 20.02.2004 to 31.03.2005. There is no dispute to the fact that during this period the respondent had worked under the terms of the agreement. Clause 27 of the Agreement requires that the final bill shall be paid within 90 days on the completion of the contract, on submission of the bill by the Agency, the Security Deposit shall only be released after finalization of the final bill. The respondent had submitted the final bill. Thereafter vide his letter dated 13.09.2005 he made a request to clear

the final bill and release of security deposit lying with the petitioner in terms of Clause 27 of the agreement. The petitioner was to clear the final bill within 90 days on the completion of the contract. But the petitioner did not clear the final bill within 90 days and kept the same and payment of security amount on hold pending vigilance enquiry. The petitioner has contended that in terms of Item 18 of Schedule 18 of the Limitation Act the period of limitation in respect of the price of work done, where no time is fixed for payment is three years and it starts running from the date when the work is done. It is argued that three years period thus starts from the date the work was completed.

8. Item 18 of the Schedule of the Limitation Act is reproduced as under:

Description of suit	Period of limitation	Time from which period begins to run
18. For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment	Three years	When the work is done.

This section deals with period of limitation where no time is fixed for payment.

9. In the present case under the terms of the contract time for payment of the bill was fixed as 90 days and the petitioner was to

clear the final bill within 90 days on the completion of the contract. It is submitted that the final bill was submitted immediately after the completion of the contract and the petitioner was required to make the payment within 90 days but the petitioner had kept it on hold pending vigilance enquiry. It is apparent that the demand for payment of final bill was raised by the petitioner within three years from the date of completion of work. It is clear that till the claim was filed by the respondent before the arbitrator, the petitioner had not cleared his final bill. The petitioner vide its letter dated 25.06.2007 and 12.07.2007 has also acknowledged in writing their liability to make the payment against the final bill but has shown their inability to do so on account of pendency of the vigilance enquiry. It, therefore, is clear that there is an acknowledgement of the liability by the petitioner vide its letters dated 25.06.2007 and 12.07.2007. Section 18 of the Limitation Act clearly stipulates that when a liability has been acknowledged before the expiry of the period of limitation, a fresh period of limitation starts running from the date of such acknowledgement. In this case, therefore, a fresh period of limitation had begun to run from the date of acknowledgement of the payment

of final bill and refund of security deposit with effect from the dates 25.06.2007 and 12.07.2007. The respondent had filed the W.P.(C) No.10578/2009 in 2009 seeking refund of the security deposit and appointment of an arbitrator. It therefore is clear that vide this writ petition the respondent had invoked the arbitration clause. Section 21 of the Act clearly stipulates that unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent. The filing of the writ petition therefore amounts to beginning of the arbitration proceedings. The writ petition was filed in 2009 and the notice of the writ was duly received by the respondent. This shows that the respondent had invoked the arbitration clause within a period of three years from 25.06.2007 and 12.07.2007, on which date petitioner had acknowledged their liability to pay and thus it cannot be said that the claim of the respondent was barred by limitation. The findings of the Arbitrator that claim of the respondent was not barred by limitation is thus as per the substantive law.

10. The another contention of the petitioner is that the award of Rs.

45,62,530/- to the claimant is without any evidence. It is submitted that the respondent had failed to produce any evidence in support of his claim yet this amount is awarded to him and therefore the award is liable to be set aside. It is apparent that before arbitrator, the claim of the respondent was for the refund of the security deposit of Rs.25 lakhs and payment of salary bills of Rs.2,44,62,565.18 p. There is no dispute to the fact that security deposit of Rs.25 lakhs was payable by the petitioner to the respondent on determination of the contract. The contract had come to an end on 31.03.2005. Clause 27, however stipulates that the security amount would be refunded only on finalization of the final bill. Since the bill was not finalised by the petitioner, so the petitioner did not release the security deposit. It is the admitted fact that this security amount was deposited by the respondent with the petitioner. Thus, it cannot be said that the order of the arbitrator of refund of the security amount is without any evidence on record. It is based on admitted facts. The respondent had also claimed a sum of Rs.2,44,62,565.18p towards payment of the salary bill. This amount has been claimed by the respondent for salaries paid by him to the men power deployed by him on various

centres of the petitioner during extended period of the contract between 20.02.2004 to 31.03.2005. There is no dispute to the fact that the contract was extended for this period. A letter was also issued by the petitioner dated 10.03.2005 (Ex.CW1/10). This letter thus was duly proved on record. It has also come in evidence that the petitioner had not disputed the fact that men power had been provided by the respondent during this period. The only contention raised by the petitioner before the arbitrator was that the tender was secured by respondent on submitting false and fabricated documents and that he had not deployed the personnel in accordance with the conditions of the tender and thus had received excess payment of what was legally due to him. Although the petitioner had contended that excess payment had been received by the respondent but the petitioner had not filed any counter claim before the arbitrator. The arbitrator has rejected the claim of the respondent of sum of Rs.2,44,62,565.18p on the ground that he had failed to produce any evidence on record. It was clear from the award that during the pendency of the arbitral proceedings the respondent had approached this court with an application under Section 27 of the Act seeking directions regarding

production of records by petitioner. The petitioner had informed that its record showing submission of final bill by respondent was not traceable in the absence of any diary number. The said application was disposed of by this court vide order dated 03.07.2013 with directions that the arbitrator would decide the matter and if necessary would draw inferences. Despite that the arbitrator refused to draw any adverse inference against the petitioner on his failure to produce documents regarding the final bills submitted by respondent which fact the petitioner had acknowledged in its letters dated 25.06.2007 and 12.07.2007 and rejected the claim of the respondent of sum of Rs.2,44,62,565.18p. The arbitrator, however, taking cue from the statement of the petitioner in paragraph 9 of the preliminary submissions and also the arguments raised before him that when the contract was extended for one year and came to an end only on 31.03.2005, then somebody must have had worked during this period and asked the petitioner to disclose as to who had performed the work during that period. On this query, the petitioner had disclosed certain facts. It has shown to arbitrator their record according to which during this period the work was carried out by the respondent but it

was carried out only for 459 days and only for the job of Resident Care Takers and no work of deployment of the security guard was done. The petitioner had also disclosed before the arbitrator the fact that no payment had been made to the respondent for the aforesaid work conducted by him. The arbitrator thereafter directed the petitioner to place those facts on record by way of an affidavit. It was on the basis of this affidavit furnished by the petitioner, that the arbitrator has awarded a sum of Rs.45,62,530/- to the respondent for the work done by him during this period.

11. From these facts it is clear that this part of the award of the arbitrator is based on the facts produced before him by the petitioner himself. Thus, the award is based on admitted facts on the part of the petitioner. It, therefore, cannot be said that the award of the arbitrator is without any evidence.

12. In view of the above discussion, it is clear that there is nothing in the award which can show that it is patently illegal and thus is against the public policy. The present petition filed under Section 34 of the Act is therefore liable to be dismissed.

13. The petition is hereby dismissed with no order as to costs.

**DEEPA SHARMA
(JUDGE)**

DECEMBER 05, 2014
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