

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

+ **OMP 273/2008**
OMP 274/2008

Reserved on : 10th November, 2017

Date of decision: 22nd November, 2017

M.C.D.

..... Petitioner

Through: Ms.Mini Pushkarna,
Ms.Vasundhara Nayyar
and Ms.Anushruti, Advs.

versus

RAVI KUMAR

..... Respondent

Through: Ms.Anusuya Salwan,
Ms.Renuka Arora,
Ms.Nikita Salwan and
Mr.Sumit Rana, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

1. These petitions under section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') have been filed by the petitioner, Municipal Corporation of Delhi challenging the arbitration award dated 10th January, 2008 passed by the Sole Arbitrator. Though the disputes between the parties arise out of two separate Work Orders and separate reference of the same were made by this Court in petitions filed under Section 11 of the Act, the Sole

Arbitrator has adjudicated such disputes by way of a common award dated 10th January, 2008. The challenge to the same is also on common grounds and, therefore, both these petitions are being taken up together for adjudication.

2. The facts noted in the order are from OMP no.273/2008 only to give a brief background as to how the disputes have arisen.

3. The petitioner had awarded the work of construction of Community Toilet Complex at various sites to the respondent vide Work Order No.EE-III/SPZ/TC/2001-02/256 dated 19th October, 2001. The other relevant details of the work order are given as under:-

- (a) *Date of start of work : 28.10.01*
- (b) *Date of completion : 6 months i.e. 27.4.2002*
- (c) *Actual date completion : 26.4.2002*

4. As Running Bill and Final Bills of the respondent were not paid by the petitioner and disputes with regard to the same arose, the respondent filed applications under Section 11 of the Act before this Court and the Sole Arbitrator was appointed for adjudication of these issues vide orders dated 22nd August, 2005 and 12th December, 2005. The claim before the Arbitrator was primarily for non-payment of the running bill and the final bill. The following issues were framed by the Sole Arbitrator:-

“(i) Whether claim is barred by limitation OPR.

(ii) Whether there is no dispute what so ever to be entertained by this forum.

(iii) Whether respondent had made payment to the claimant as per agreement, claimed by them in reply OPR.

(iv) Whether respondent is liable to make payment for extra work done by claimant without sanction OPC.

(v) Whether claimant is entitled to relief with interest OPC.”

5. The Arbitrator vide impugned award, has granted certain claims in favour of the petitioner while rejecting the others, details of which are not relevant for the present adjudication inasmuch as, the objection against the same have been confined only to two aspects;

(i) whether in absence of a formal agreement/contract awarding additional works to the respondent, the respondent is entitled to make a claim for such work?

(ii) Whether under the Work Order, the respondent was entitled to claim additional amounts towards demolition of the existing structures at the sites where the Community Toilet Complex was to be constructed?

6. The Arbitrator has allowed the claim of the petitioner on both the above heads and, therefore, the petitioner has challenged the same by way of the present petition.

7. As far as the first issue with respect to the award of claim of the respondent on account of additional works is concerned, counsel for the petitioner submits that in absence of a formal contract executed in accordance with Section 201 to 203 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the ‘DMC Act’)

between the parties, no claim for such additional work could have been granted by the Arbitrator in favour of the respondent. She places reliance on the judgment of this Court in ***Municipal Corporation of Delhi vs. Sahil Agencies*** ILR (1981) (II) Del 607 and the judgment in ***K.G.Bhandari vs. Delhi Jal Board & Ors.*** (2003) 102 DLT 938 to contend that in view of the contract not having been executed in accordance with Section 201 to 203 of the DMC Act, there cannot be said to be any concluded contract between the parties with respect to such additional works.

8. On the other hand, counsel for the respondent submits that such additional work was done by the respondent at the asking of the petitioner and in fact, the bills for the same had also been approved by the petitioner, who thereafter, for *mala fide* reasons failed to honour the same.

9. The Sole Arbitrator relying upon the statements of the witnesses produced by both the parties before him has concluded that there is no dispute regarding extra work done by the respondent. The Sole Arbitrator, further relying upon the statement of the witness of the petitioner in his cross examination and a copy of the Office Noting dated 3rd January, 2002 (Ex.CW1/R1) holds that sanction for such additional work had been obtained from MCD House and administrative sanction had to be obtained by Planning Department of MCD; it was for the petitioner to get such sanction and the respondent is not supposed to play any role in that process; as the claim of the

respondent is for the work done by it, the petitioner is bound to pay for the same.

10. I find no merit in the objection raised by the petitioner against the above finding of the Sole Arbitrator. It is not denied before me that the additional work for which the claim was made by the respondent and was granted by the Sole Arbitrator had in fact been carried out by the respondent. From the pleadings of the petitioner, it is clear that this payment was not released to the respondent only because the work under the scheme exceeded the amount sanctioned by the Government of India and additional amount was not released to the petitioner by Government of India. However, the respondent cannot be denied payment for the work done only because of this reason, this being a matter between Petitioner and Government of India alone.

11. As noted above, the only objection raised to deny this payment to the petitioner is that there was no formal contract executed between the parties for the award of such additional work. In my opinion, absence of execution of the formal agreement in the present case, will be of no consequence and the claim of the respondent cannot be denied only on this ground. Section 70 of the Indian Contract Act, 1872 provides as under:-

“70. Obligation of person enjoying benefit of non-gratuitous act.—Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof,

the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.”

12. Interpreting the said provision, Supreme Court in case of **Mulamchand vs. State of Madhya Pradesh** AIR 1968 SC 1218, held that in the absence of a formal contract between Dominion of India and a private individual not in the form required by Section 175(3) of the Government of India Act, 1935, the same was void and cannot be enforced, however, at the same time, if money is deposited and goods are supplied or if services are rendered in terms of the void contract, the provisions of Section 70 of the Indian Contract Act may be applicable and where a person has lawfully done something for other not intending it to be done gratuitously and the other person enjoys the benefit thereof then such other person shall become liable to make compensation to the former in respect of, or to restore, the things so done or delivered.

13. In **V.R.Subramanyam vs. B.Thayappa & Ors.** AIR 1966 SC 1034, it was held as under:-

“5) Counsel for the appellant submitted that as in the view of the High Court the respondent failed to prove the oral agreement pleaded by him, the suit should have been dismissed, and they should not have awarded compensation quantum merit which was not claimed. It was urged that the respondent must succeed or fail on the case pleaded by him, and not on a cause of action not pleaded. In our view, there is no substance in this contention. As we have already observed, in respect of the additional work done by the respondent, both the parties set up conflicting oral agreements. These were not accepted by the

High Court. If a party to a contract rendered service to the other not intending to do so gratuitously and the other person has obtained some benefit, the former is entitled to compensation for the value of the services rendered by him. Evidently, the respondent made additional constructions to the building and they were not done gratuitously. He was therefore entitled to receive compensation for the work done which was not covered by the agreement. The respondent claimed under an oral agreement compensation at prevailing market rates for work done by him : even if he failed to prove an express agreement in that behalf, the court may still award him compensation under s. 70 of the Contract Act. By awarding a decree for compensation under the Statute and not under the oral contract pleaded, there was in the circumstances of this case no substantial departure from the claim made by the respondent.”

14. The above judgment would squarely be applicable to the facts of the present case.

15. In ***Sahil Agency (supra)***, the question was whether in absence of a formal contract, there could have been said to be an arbitration agreement between the parties. It was in that light that this Court, relying upon provisions of Section 201 to 203 of the DMC Act, held that in absence of a formal contract there could not have been said to be a concluded contract between the parties containing the arbitration clause. The said judgment, therefore, has no application to the facts of the present case.

16. In *K.G.Bhandari (supra)*, the question was whether a Letter of Intent issued by the respondent was valid and a binding document. The Court held that as the Letter of Intent was required to be issued therein after obtaining prior approval of the competent authority, the contract between the parties, therefore, was void having been executed in violation of the provisions of DMC Act.

17. In the present case, as discussed above, the claim of the petitioner was allowed relying upon the principles of Section 70 of the Indian Contract Act and in exercise of my limited jurisdiction under Section 34 of the Act, I find the same to be in accordance with law.

18. As far as the second issue noted above, with respect to the claim of the respondent for the demolition activity of the existing structures at the sites for construction of common Community Toilet Complex, the Arbitrator has allowed the said claim, again relying upon the principles of Section 70 of the Indian Contract Act. The Sole Arbitrator further found that the respondent had failed to produce evidence to show as to how much amount was spent by it in demolition of old structure and, therefore, awarded lump sum amount of Rs.1 lac to the respondent, as far as its claim arising out of Arbitration Case No.4 was concerned and Rs.1,10,000/- in Arbitration Case No.18.

19. Counsel for the petitioner submits that such work of demolition is incidental to the work of construction granted to the respondent and, therefore, the respondent was not entitled to any additional claim in respect thereof. She further submits that once the Arbitrator came to

the conclusion that the respondent had failed to produce any evidence with respect to the amount spent by it on such demolition activity, the Arbitrator could not have granted such claim on mere supposition and without evidence.

20. I do not find any merit in the submission made by the counsel for the petitioner. As noted above, the Arbitrator has come to the conclusion that the work of demolition was not included in the Work Order. It is also not shown before me that how the said work can be said to be incidental to the work of construction at the site. In any case, as held by the Supreme Court in *Associate Builders vs. Delhi Development Authority* 2015 (3) SCC 49, if an Arbitrator construed a term of the contract in a reasonable manner, the award cannot be set aside. Construction of the terms of a contract is primarily for an Arbitrator to decide. Unless the Arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do, the award cannot be set aside.

21. As far as the quantification of the claim is concerned, it is true that the Arbitrator has found that the Claimant/Respondent herein failed to produce any evidence on the amount spent by it. However, the amount eventually awarded by the Arbitrator cannot be said to be unreasonable or fanciful.

22. In view of the same, the award on this finding of the Arbitrator cannot be set aside as being opposed to 'public policy of India'.

23. The counsel for the claimant also sought to challenge the award of interest @15% per month awarded by the Arbitrator as also the costs that have been awarded by the Arbitrator. In view of Section 31(7) as the Act, Arbitral Tribunal is empowered to award interest, at such rate as it appears reasonable. Equally, under the un-amended sub-Section 8 of Section 31, the Arbitral Tribunal is empowered to award reasonable costs. The Arbitrator having exercised his discretion on the award of interest and the costs and the same being not found to be unreasonable in any manner, objection to the same cannot be sustained.

24. In view of the above, I find no merit in the above petitions, the same are accordingly dismissed, however, with no order as to costs.

NAVIN CHAWLA, J

**NOVEMBER 22, 2017
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