

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

+ **FAO No. 304/2007**

% **18th July, 2017**

M/S BRIJ LAL & SONS Appellant

Through: Appellant in person.

versus

UNION OF INDIA & ANR. Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') impugns the judgment of the court below dated 13.4.2007 by which the objections filed by the appellant under Section 34 of the Act have been dismissed against the Award of the arbitrator dated 10.8.2006. The only dispute raised before this Court with respect to the objections under Section 34 of the Act is with respect to item no.4 of the extra work done. It may be noted that appellant was awarded the work of doing cross drainage at Road No.57 near subway in East Delhi.

2. After completion of work appellant/contractor claimed payment for extra items of work done, and one such payment claimed is with respect to item no.4. This item no.4 has been decided by the Arbitrator against the appellant by holding that the work done of Cement Concrete (C.C) in the ratio of 1:5:10 is not of 94.23 cum as was the case of the appellant/contractor, but the work of Cement Concrete of 1:5:10 was only of 2.15 cum. The relevant portion of the Award with respect to item no.4 reads as under:-

“Item 4: Against 52.92 cum of C.C. 1:3:6 paid by Department, contractor has claimed Nil. Against 2.15 cum of C.C. 1:5:10 paid by Department, contractor has claimed 94.23.cum. Respondent pointed out that contractor has quoted Rs.1,400/- per cum for C.C. 1:5:10 but Rs.900/- per cum for C.C. 1:3:6 and there is no reason for Department to go in for C.C. 1:5:10. However, the calculations of cross-sectional area in MB do not appear to be in order since Respondent agreed that C.C. work was projecting above pipe surface. Approximate calculation for sectional area of C.C. around pipe is as follows:

Base: $2.1 \times 0.3 = 0.63$ sqm

Overall up to center of pipe: $2.1 \times 0.75 = 1.575$

Above center of pipe: $22/7 \times 1.05 \times 1.05/2 = 1.732$

Deduct for pipe $22/7 \times 0.75 = (-) 1.768$

Net area= 2.169 sqm

Quantity for pipe length = $45.11 \times 2.169 = 97.84$ cum

Add for manhole $2.60 \times 1.5 \times 0.3 = 1.17$ cum

Total quantity = 99.01 cum.

As such, total quantity of 94.23 cum claimed by contractor is accepted.

Amount of C.C 1:5:10 = $2.15 \times 1400 = 3,010$

Amount of C.C. 1:3:6 = $92.08 \times 900 = 82,872$

Total amount= Rs.85,882/-

Payment already made = Rs.50,638/-

Additional payment worked out= Rs.35,244/-.”

3. Arbitrator is a technical person as admittedly he was an engineer. The Arbitrator has held that though there is no dispute that total quantity of work done under item no.4 was of 94.23 cum but the work done of the Cement Concrete of 1:5:10 was only 2.15 cum and not 94.23 cum inasmuch as the balance work of 92.08 cum out of the total of 94.23 cum was done in the ratio of 1:3:6. This Court cannot sit as an appellate court over the findings and conclusions of the Arbitrator and it is not even pointed out to this Court that there is any measurement book of the work showing that work done of 94.23 cum is done in the ratio of 1:5:10 instead of only 2.15 cum work done at 1:5:10 as recorded in the Award. I therefore do not find any error in the Award which makes the Award illegal or perverse or in violation of the ingredients of Section 34 of the Act.

4. The court below has also held that the Arbitrator after considering respective cases, when he takes a view, a civil court hearing objections under Section 34 of the Act is not to sit as an appellate court to re-appraise the findings of facts and conclusions of the Arbitrator. I agree.

5. Though appellant relies upon a theoretical statement, however, a theoretical statement prepared and submitted during the course of work done by Union of India cannot change the fact that the final measurements recorded for the work show the work of Cement Concrete work done in the ratio of 1:5:10 only of 2.15 cum.

6. There is no merit in the appeal and the same is therefore dismissed.

JULY 18, 2017/ib

VALMIKI J. MEHTA, J

