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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 5th September, 2019

+ **FAO 329/2011**

MUNICIPAL CORPORATION OF DELHI Appellant

**Through: Ms. Shobha Gupta & Mr.
 Krishnan Agarwal, Advs.**

versus

ANIL BHASIN

..... Respondent

**Through: Mr. Ankur Bhasin, Adv. with
 respondent in person.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The respondent was awarded four work orders for providing and fixing of sign boards at different locations by the appellant Municipal Corporation of Delhi (MCD), the work orders having been referred to as work orders no. 158 dated 23.12.2004; no. 159 dated 23.12.2004, no. 160 dated 23.12.2004 and no. 226 dated 27.01.2005 respectively. The copies of the work orders which are available on record would show the time for completion of the work thus awarded was three months, two months, two months and three months respectively from the date of the award.
2. Dispute arose after bills were raised by the respondent (the contractor) and pursuant to arbitration clause it was referred to adjudication by a sole arbitrator.

3. The arbitrator, in the course of his proceedings, identified the issues which were to be addressed and besides calling upon the parties to adduce evidence also appointed a local commissioner. The local commissioner gave a report on 16.08.2007, on the basis of visits to the four places where the works were to be executed, she also having taken certain photographs in support of the observations recorded.

4. The arbitrator passed the award on 24.06.2009 granting the reliefs thus:-

(a) *The respondent is directed to pay to the claimant a sum of Rs. 7,58,393/- being the principle amount for the work done by him along with interest thereon @ 12% per annum w.e.f. 17.04.2006 – the date when the claimant invoked the arbitration clause, to the date of Award and at the same rate from the date of Award to the date of payment.*

(b) *Respondent is further directed to pay a sum of Rs. 24,100/- to the claimant being the amount deposited by him as earnest money. The claimant would be entitled to interest thereon @ 12% per annum w.e.f. 17.04.2006 –the date when the claimant invoked the arbitration clause, to the date of Award and at the same rate from the date of Award to the date of payment.*

(c) *The respondent is further directed to return all the four FDRs to the claimant furnished by him as performance guarantee, after getting them renewed up till date and duly discharging the same in favour of the claimant, within a period of 30 days of the receipt of the signed copy of the Award. In case the respondent fails to return the renewed and duly discharged four FDRs within a period of 30 days of receipt of the sign copy of the Award, it shall be liable to pay interest @ 12% per annum w.e.f. 17.04.2006 – the date when the claimant invoked the arbitration clause, to the date of Award and at the same rate from the date of Award to the date of payment.*

(d) *The respondent also pay costs of arbitral proceedings to the claimant which are assessed at Rs. 41,500 (Rs. 20,000/- being the claimant's share of Arbitrator's fee as fixed by the Hon'ble Court, Rs. 20,000/- as counsel's fee and Rs. 1,500/- being the cost of stamp papers on which this award is drawn".*

5. The MCD, feeling aggrieved, filed objections under Section 34 of Arbitration and Conciliation Act, 1996, its petition (MCA 22/2010) being eventually decided by the court of Additional District Judge, by judgment dated 05.04.2011. The objection petition of MCD was dismissed, the prime conclusion reached by the court being that the award had been passed by the sole arbitrator on the basis of evidence, his view not being unreasonable, such decision not being open for review, it being impermissible for the court to sit in judgment over the award as if it were appellate court.

6. Feeling aggrieved by the rejection of the objections, the MCD filed the appeal at hand reiterating its prime contention that the works awarded had not been completed and, therefore, the contractor was not entitled to receive any payment thereagainst.

7. Having heard both sides at length and having gone through the record, this Court finds no merit in the appeal. The reasons may be set out hereinafter.

8. As said before, the work orders were for providing and fixing of sign boards. The work order no. 158 (Ex.C-1) clearly shows the location to be "*P/F Gantory Name Board at Aggarwal Sweet Shop (Brijpuri Road) and Gali No. 6, Dayalpur village in C-98*". The work order no. 159 (Ex.C-2) similarly describes the work to be "*P/F*

Cantilever Board at Fateh Singh Marg Gamri Road in C-93, Sh.N.Zone". The work order no. 160 (Ex.C-3) on the same lines, relates to "*P/F Cantilever Board at Ghonda Chowk in C-93, Sh. Zone*". The work order no. 226 (Ex.C-4), on the other hand, vaguely described the location as "*P/F Retro Reflective Sign Board in Ward no. 97, AC-52*".

9. The learned counsel for MCD laid a lot of stress on the report dated 16.08.2007 of the local commissioner to argue that the last said work order (i.e. no. 226) had been executed at a place where it was not intended to be carried out. She submitted that the local commissioner had found that the site chosen by the contractor was five kilometers away from the place where it was meant to be brought into existence.

10. The arguments of the appellant stem from misreading of the report of the local commissioner. All that the local commissioner recorded was the submission of the executive engineer, who was present at the time of inspection, that the work had been executed at wrong place. The evidence shows that the work order in question did not clearly specify the location. On the contrary, the contractor had carried out the work at the location indicated by the instructions of the junior engineer who, it is assumed, in normal course would have been supervising the work all along. The submission that the location of work did not exist within the ward no. 97 of assembly constituency no. 52 is without any foundation. The sign board which was erected for the benefit of public at large (in four official languages of Delhi) describes the place as "Ram Dayal Gothi Marg". There is no dispute that the place where the board was erected is public road named "Ram

Dayal Gothi Marg”. The script for the sign board could not have been imagined by the contractor. In due course of business, the script would have been made available by the municipal authorities only.

11. The other objection relates to the first said three work orders. The prime argument that the time was of essence to the completion of the contract may be accepted on its face. But, it does not turn the conclusion in favour of MCD. There is ample evidence noted, not only by the arbitrator in the award but also by the additional district judge in the order rejecting the objections under Section 34 of Arbitration and Conciliation Act, 1996, that the contractor had fabricated the poles and prepared the ground where the poles were to be erected. He had also prepared the sign boards on which the script provided by the MCD staff had been appropriately painted/printed. The only thing remaining, indeed crucial, was the erection of the poles and the fixation of sign boards. But then, there is also evidence to show that the work by the contractor was held up because the junior engineer was not permitting the contractor to continue with the task. A series of letters were proved on record, during the course of inquiry before the arbitrator, all sent by the contractor, to which there was no response from the MCD. From such material, it is clear that while the contractor was beseeching clearance, the municipal staff was maintaining a stoic silence.

12. One additional issue about a pre-condition of certain tests to be get done was raised before the additional district judge. But then, it was brought out vividly from the material on record and the additional district judge has accepted the explanation of the contractor that in the

work orders there was no such requirement to be met, the circular relied upon by the MCD to raise such issue being subsequent in time.

13. It is trite that in the jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996, the Court is not to adjudicate as if it were sitting as an appellate court. The findings of fact reached by the contractor are based on correct appreciation of evidence and do not call for any interference. The view taken by the additional district judge, being in accord with law, the appeal is dismissed.

14. It is a matter of regret that instead of fairly conceding to the plea of obstruction in work, followed by lack of timely action and responses on their part, the MCD chose to embroil the contractor in a prolonged litigation which has reached the stage of this decision after fourteen years. In the process, the MCD may have spent in this litigation much more public money than was involved, which cannot be justified in any manner.

15. The work orders were given to the contractor in public interest, the expenditure to be made from public funds. The contractor could not carry out the work apparently on account of obstructive and non-cooperative attitude of the municipal officials. No doubt, as a result of the award, the municipal corporation would end up paying to the contractor without securing completion of work of erection of the sign boards and thus would need to spend more for the remainder work. There is no reason why the taxpayers' money should suffer losses on account of neglect of municipal officials. It will be appropriate that the Commissioner of concerned municipal corporation institutes an

inquiry to fix responsibility on the concerned officials and recovers the loss from them. Ordered accordingly.

16. In terms of the earlier interim order, 50% of the amount payable under the award as upheld by the additional district judge was directed to be deposited in the Court, out of which half amount was released to the respondent against an indemnity bond, remainder being kept in fixed deposit receipt. The balance lying in deposit with accrued interest shall be released to the respondent forthwith. The remainder of the liability of MCD in terms of the award shall be satisfied by requisite payment to the respondent within six weeks.

17. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 05, 2019

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