Municipal Corporation Of Delhi

Vs

M/S. Jagan Nath Ashok Kumar and Another

Special Leave Petition (Civil) No. 9524 of 1987

(Sabyasachi Kukharji, G. L. Oza JJ)

17.09.1987

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. Respondent 1 herein was awarded the contract in question for the construction of staff quarters for the Municipal Corporation of Delhi, the petitioner herein and the work had to be completed within the stipulated period mentioned in the contract. Since, however, the work was not being done in the manner as the Delhi Municipal Corporation thought it ought to have been done, the petitioner wrote 29 letters during June 1978 to July 1980 regarding the timely completion of the work. It is alleged that the work was not completed by January 15, 1980 as per the schedule in the contract. Show cause notice was given to the respondent contractor The contractor failed to give satisfactory reply and according to the petitioner, the contract was rescinded. Thereafter several other letters were written which are not material to refer. There was an arbitration clause in the agreement. On November 2, 1982 an application was filed under Section 20 of the Arbitration Act, 1940 (hereinafter called 'the Act') in the Delhi High Court. A learned Single Judge of the said High Court directed reference of the dispute and directed the Commissioner of the Municipal Corporation or anyone nominated by him to enter into reference. The Commissioner on march 17, 1983 appointed one Shri S. M. Hasnain, Arbitrator and Superintending Engineer No II, of the Municipal Corporation of Delhi as the arbitrator. He is respondent 2 in this petition. The said arbitrator entered upon the reference and thereafter on August 21, 1984 submitted his award allowing some claims of the contractor and some counter-claims of the Municipal Corporation. The municipal Corporation filed its objections to the said award. The learned Single Judge of the High Court by his judgment and order dated October 22, 1986 directed that the award be made a rule of the court. A letters patent appeal wash field thereafter but the same was summarily dismissed by a Division Bench of the Delhi High Court on May 25, 1987. The petitioner seeks leave in this petition under Article 136 of the Constitution to challenge the said order. As the learned Division Bench did not give reasons, we must refer to the order of the learned Single Judge.

2. The arbitrator gave reasons in support of the award. The question is whether reasonableness of the reasons in a speaking award is justiciable under Article 136 of the Constitution. We are of the opinion that such reasonableness of the reasons given by an arbitrator in making his award cannot be challenged in a proceeding like the present. It is desirable, however, that we state our reasons for so holding.

3. In order to appreciate this the award of the arbitrator must be looked into. The arbitrator in his award has dealt with various claims, one of the main claims was the claim of Rs. 23,850 out of which Rs. 8300 was in the form of fixed deposit receipt carrying interest and the balance amount of

Rs. 15,520 was deducted as security of 10 per cent from the bills of the claimant. According to the claimant this amount had wrongly been forfeited by the Corporation at the time of rescission of the contract and that the same should be refunded to him. It was held by the arbitrator that there was provision in the agreement for extension of time for completion of the contract, as well as for levy of compensation for delay. Therefore, it could not be taken that time was of the essence of the contract. The arbitrator had opined that according to the respondents' own admission there was delay of nearly four months in the commencement of the work due to giving of the layout etc. There was also delay in the execution of sanitary work by another contractor previously employed by the petitioner and this woke was still incomplete at the time of the making of the award and as such complete site had not been made available to the present contractor in time. Further there was provision in the agreement for extension of time or levy of compensation for delay and, therefore, according to the arbitrator time could not be considered in such a contract to be of the essence of the contract. Furthermore, subsequent to the expiry of the stipulated period of completion, the Corporation did not make time the essence of the contract by directing the claimant to complete the work within a specified period but instead rescinded the contract. In those circumstances it was held by the arbitrator that the that the decision of rescission of the contract was bed, wrongful and hence the claim of Rs. 23,820 was considered to be just. We do not find any lack of reason in the reasons given by the arbitrator. Whether in a particular contract time was of the essence of the contract or not is mixed question of law and fact. But the reasons given by the arbitrator appear to be reasonable and have rational nexus with the conclusion arrived at by him. It was stated that it was admitted on behalf of the Corporation that there was initial delay of four month's. This as controverted by the Corporation. They say that there was no admission. This, in our opinion was a significant factor that there was some delay and in spite of the delay the Corporation gave letters to the contractor to complete the work and in the contract itself there was provision for extension of time. In our opinion, where reasons germane and relevant for the arbitrator to hold in the manner he did have been indicated, it cannot be said that it was unreasonable. Another factor the arbitrator had noted as that the site was not available due to the conduct of another contractor previously employed by the petitioner. This factor is also a relevant factor. The fourth item of the award was a claim for damages for Rs. 60,000. This amount was not granted on the ground that the claimant was not able to prove this amount. The fifth item in the award was a claim for interest at 18 per cent per annum on certain items from the date of rescission of the contract to the dated of payment of doctoral amount. The arbitrator allowed the interest as the amount had been withheld due to justified and wrongful rescission of the contract. Reasons given by the arbitrator appear per se not unreasonable. The arbitrator has not awarded any costs. There were also counter-claims by the Corporation against the contractor. The first counter-claim was forfeiture of Rs. 23,820 on account of the rescission of the contract. Inasmuch as the rescission was held to be unjustified in the facts of this case, the forfeiture was also held to be wrongful. There was a claim of Rs. 32,840 as payment of compensation at 10 per cent of Rs. 3,28,400, but as the time was not the essence of the contract and the rescission of the contract was unjustified, this claim could not be sustained and it was so rejected by the arbitrator. The next claim was for Rs. 85,620 for the execution of the remaining work at the risks and cost of the respondent. The arbitrator found that the contractor had as far as potable discharged his contractual obligation and the rescission of the contract was Therefore, the Corporation's claim for getting the work executed at the risks and costs of the contractor as unjustified and the claim was so officially rejected and no amount was awarded on that score. The next claim was for Rs. 2739 on account of mild steel laying with the contractor. On examination it was found that some quantities of steel had been consumed in the work and as such recovery could only be made for the balance quantity for 1172 kgs. At the recovery rate of Rs. 1.50 per kgs, and the claim was, therefore, allowed in favor of the Corporation for Rs. 1758. The Corporation further

claimed a sum of Rs. 6083.20 on account of non-return of certain steel. After taking into account the steel consumed in the work and edgier allowing for permissible variation and wastage, it was held that recovery claim for Rs. 3862 only was justified. The award was made accordingly. There was another claim of Rs. 6473 on account of penal rate recovery, of mild steel. It was held for good reasons indicated in the award that the claim for Rs. 5620 was justified. The Corporation claimed Rs. 13,578 for penal rate recovery of cement for the quantity in excess of the theoretical consumption. After going in to the material the arbitrator found that the cement issued to the claimant was consumed in the work and the claim of the Corporation for the penal rate recovery was not justified. The next was the claim for Rs. 1400 by the Corporation on account of non-return of 700 empty cement bags to the Municipal store. This was inquired into and found to be justified and a sum of Rs. 1400 was awarded in favor of the Corporation. There was a further claim of Rs. 65 for adjustment of cost of steel on account of three transfer entire. From the documents produced the claim was awarded in favour of the Corporation. The next claim was for interest at the rate of 12 per cent per annum w.e.f. September 1, 1981 on the amount of alleged counter claim preferred against the claimant. As it was held that the rescission of the contract was unjustified and wrongful, the Corporation was at liberty to recover its justified claims from the dues of the claimant at its disposal and pay the balance amount to the claimant within a reasonable time. There was a further claim for Rs. 10,000 as arbitration costs and the claim was rejected. It appears to be very reasonable and fair award.

4. In this case, there was no violation of any principals of natural justice. It is not a case where the arbitrator has refused cogent and material factors to be taken into consideration. The award cannot be said to be vitiated by non-reception of material or non-consideration of the relevant aspects of the matter. Appraisement of evidence by and considers. The parties have selected their own forum and the deciding forum must be conceded the power of appraisement of the evidence. In the instant case, there was no evidence of violation of any principal of natural justice. The arbitrator in our opinion is the sole judge of the quality as well as quantity of evidence and it will not be for this Court to take upon itself the task of being a judge of the evidence before the arbitrator. It may be possible that on the same evidence the court might have arrived at a different conclusion that the one arrived at by the arbitrator but that by itself is no ground in our view for setting aside the award of an arbitrator.

5. It is familiar but requires emphasis that Section 1 of the Evidence Act. 1872 in its rigour is not intended to apply to proceedings bore an arbitrator. P. B. Mukharji, J. as the learned Chief Justice then was, expressed the above view in Haji Ebrahim Kassam Cochinwalla v. Northern India Oil Industries Ltd.(AIR 1951 Cal 230 : 85 CLJ 176) and we are of the opinion that this represents the correct statements of law on this aspect. Lord Goddard, C.J. in Mediterranean & Eastern Export Co. Ltd. v. Fortress Fabric Ltd. ((1948) 2 All ER 186, 188, 189) observed at pages 188-89 of the report as follows :

> A man in the raid who is selected for his experience would be likely to know, and, indeed, would be expected to know, the fluctuations of the market and would have plenty of means of informing himself or refreshing his memory or any point on which he might find it necessary so to do. In this case, according to the affidavit if the sellers, they did take the point before the arbitrator that the Southern African market has "slumped". Whether the buyers contested that statement does not appear, but an experienced arbitrator would know, or have the means of knowing, whether that was so or not and to what extent, and I see no reason why in principal he should be required to have evidence on this point any more than on any other question relating to a particular trade. It must be taken, I think, that in fixing the amount that

> he has, he has acted on his own knowledge and experience. The day has long gone by when the courts looked with jealousy on the jurisdiction of arbitrators. The modern tendency is, in may opinion, more especially in commercial arbitrations, to endeavour to uphold awards of the skilled persons that the parties themselves have selected to decide the questions at issue between them. If an arbitrator has acted within the terms of his submission and has not violated any rules of what is so often called natural justice the courts should be slow indeed to set aside his award.

6. This in our pinion is an appropriate attitude.

7. In this case the reasons given by the arbitrator are cogent and based on materials on record. In Stroud's Judicial Dictionary, Fourth Editions, page 2258 states that it would be unreasonable to expect an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy. But mankind must be satisfied with the reasonableness within reach; and in case not covered by authority, the verdict of jury or the decision of a judge sitting as a jury usually determines what is "reasonable" in each particular case. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. See the observations, in Re a Solicitor (1945 KB 368 at 371).

8. After all an arbitrator as a judge in the words of Benjamin N. Cardozo, has to exercise a desertion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life".

9. Indeed reading the award of the arbitrator, one would say that he acted reasonably and rationally.

10. In the premises the award of the arbitrator was assailed on trivial grounds and the challenge was rightly rejected by the high Court. The respondent is entitled to the costs of the challenge up to the High Court. So far as the costs of this petition to this Court is concerned, parties are directed to bear their respective costs. The petition for leave to appeal is, therefore, dismissed and the leave refused.

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