

IN THE HIGH COURT OF DELHI AT NEW DELHI

**O.M.P. No.376/2004**

# Delhi Jal Board ..... Petitioner  
! through : Nemo.

*Versus*

\$ Subhash Pipes Ltd. & Anr. .... Respondents  
^ through: Mr.Raman Kapur, Adv.  
for respondent No.1

% **DATE OF DECISION: 22-09-2006**

\* **CORAM:**  
Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? *no*
3. Whether judgment should be reported in Digest? *no*

: **PRADEEP NANDRAJOG, J. (Oral)**

1. Delhi Jal Board has filed objections under Section 34 of the Arbitration and Conciliation Act, 1996 to the award dated 16.7.2004 passed by Shri B.K.Sharma, IAS (Retd.).

2. I would be noting the relevant facts as I deal with

the objections, but before that backdrop facts may be recorded.

3. Objections filed were not prosecuted with due diligence resulting in the same being dismissed on 24.01.2006 for non prosecution. It may be noted that even on the previous date i.e. 27.9.2005 none appeared for the petitioner.

4. IA No.1691/2006 was filed seeking recall of the order dated 24.1.2006. The application was allowed on 6.7.2006. The petition was restored.

5. None has bothered to appear on behalf of the Delhi Jal Board (DJB) to sustain the objections today.

6. With the help of counsel for the non objector, I have perused the award and have gone through the record of arbitration.

7. Non-objector was awarded contract for supplying PSC pipes of 900/1000 mm diameter including gaskets and MS Specials pertaining to a water treatment plant set up by DJB at Haiderpur. Contract was awarded at a total cost of Rs.1,65,57,008/-.

8. Supply was to commence on 12.4.1992 and was to conclude on 11.4.1993.

9. Design and drawings pertaining to the pipes had to be approved by DJB before non-objector could fabricate and thereafter supply the same. Similar was the position pertaining to MS Specials.

10. There was a delay. Time was extended firstly up to 31.8.1993 and thereafter to 31.10.1993. On both occasions, extension was without levy of any penalty.

11. A fact has been noted by the learned arbitrator that cement had to be supplied by the department to the non-objector and that the contract contained an escalation clause to recompense the contractor the material and labour escalation, but as per the formula provided under the contract.

12. Learned arbitrator has noted that DJB delayed approval to the design and drawings pertaining to the pipes by a period of 1 month and 15 days. Relating to approval to the design and drawings of MS Plates, delay was of 5 months and 15 days.

13. Issue of delay had a bearing on escalation payable. Whereas DJB restricted escalation payable to the original contract stipulated period, non-objector wanted escalation even during the extended period of contract.

14. Pleadings of the parties were completed before the learned arbitrator by 14.12.2002, evidenced by the fact that 5 issues were framed on said day by the learned arbitrator. The five issues read as under:-

"1. Are the Claimants entitled to payment of their outstanding balance amounting to Rs.19,84,147.19?

2. Are the Claimants entitled to get refund of their security deposit amount of Rs.1,00,000/-?

3. Are the respondents entitled to the rebate amount of Rs.8,993.14 deducted from the Claimants bills?

4. Are the claimants entitled to compensation amounting to Rs.14,19,224/- on account of extension of contract?

5. Are the claimants entitled to interest @ 24% p.a. At compound rate as well as simple for pre-ference period, pendent elite and future for all the amounts specified above including delay in payments?"

15. A bare perusal of the issues shows that no counter claim was raised by DJB while responding to the

claim of the contractor. Further, issues reveal that contractor was claiming balance outstanding for the work done and at contract rates, of course, including escalation during contract extended period. Second claim was for refund of security deposit. Third was on account of rebate alleged by the contractor to be wrongly recovered by DJB. Fourth was on account of compensation for overhead expenses stated to have been incurred during contract extended period. Last claim was for interest.

16. After issues were framed, learned arbitrator heard the matter on various dates in the month of July 2003, September 2003, October 2003, November 2003 and December 2003.

17. A hearing was scheduled for 13th December 2003. On said date, DJB moved an application under Section 23 (3) of the Arbitration and Conciliation Act 1996 praying that DJB be permitted to amend the pleadings and raise a counter claim.

18. Counter claim raised by DJB was in sum of Rs.3,10,393.43 alleging that inadvertently said sum, in

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excess, had been released. Counter claim No.2 was for interest on the sum claimed towards counter claim No.1. Interest claimed was @24% per annum. Counter claim No.3 was towards cost of arbitration.

19. On 13.12.2003, learned arbitrator passed the following order:-

"BEFORE SHRI B.K.SHARMA, IAS (RTD), SOLE  
ARBITRATOR A-184, SURYA NAGAR, GHAZIABAD-  
11 (UTTAR PRADESH)

In the matter of arbitration between M/s. Subhash Pipes Pvt. Ltd. (Claimants) and Delhi Jal Board (Respondents)

**ORDER**

13th December, 2003

This case was fixed for hearing today at 2.30 PM at my residence (A-184, Surya Nagar, Ghaziabad-11).

The claimants were represented by S/Shri G.S.Agarwala and B.K.Biswas, S/Shri R.S.Saini, Advocate, R.S. Tyagi, E.E. DJB and Anil Sharma, AE, DJB, Delhi put in their appearance on behalf of the respondents.

The learned counsel for the respondents has made his appearance for the first time and put up an application suggesting that he wanted to make amendment in his pleadings. The learned counsel for the claimants having perused the application stated that there was actually no new

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point raised in the application, it could at best a clarification/elaboration of what has already been submitted and discussed. This point would be taken due care of as detailed arguments are presented by the parties.

The learned counsel for the respondents thereafter submitted that being new to the case, he would appreciably seek short adjournment in order to prepare himself fully for arguments. The position being as it was, the learned counsel for the claimants did not object. Accordingly, it was decided to adjourn the hearing which would now be held on 23.12.2003 at 3.30 PM at my residence (A-184, Surya Nagar, Ghaziabad-11). The learned counsel for the respondents would initially submit his arguments covering all the points. Thereafter the claimants, if they wish so, exercise their right of reply.

Let the parties note and attend punctually.

Sd/-  
(B.K.Sharma)  
Sole Arbitrator"

20. In the backdrop aforesaid, objections have to be considered.

C 21. The first objection to the award is that the learned arbitrator has ignored the counter claim. It is stated that this is evidenced by the fact that he has made no reference to the counter claim and has not even framed an issue.

22. I am afraid, objection is frivolous in the teeth of the order dated 13.12.2003 passed by the learned arbitrator. The order records a consent of DJB to the effect that the application raised no new point and that it may be discussed along with the claims of the contractor.

23. Claim No.1 of the contractor was for amount due under the final bill. If any excess payment had been made, obviously the same had to be discussed while finalizing the final bill raised by the contractor.

24. Claim No.1 has been dealt with by the learned arbitrator in para 9 of the award and holding in favour of the contractor that as against claim in sum of Rs.19,84,147.19, Rs.19,17,711.75 is payable, counter claim has been rejected for the reason learned arbitrator has noted that far from any excess payment, deficient payment in sum of Rs.19,17,711.75 was made.

25. Another objection taken to the award pertaining to claim No.1 is that benefit of escalation has been granted by the learned arbitrator for the works done post 12.4.1993.



26. As noted above, stipulated date of completion of the contract was 11.4.1993. Works were extended till 31.10.1993.

27. Learned arbitrator has noted that pertaining to M.S. Specials, 5 months and 15 days delay was attributable to DJB and pertaining to pipes 1 month and 15 days delay was attributable to DJB.

28. Notwithstanding that pertaining to claim No.4, learned arbitrator has held partial delay attributable to the contractor, I find that learned arbitrator has not committed any error in granting escalation to the non objector till 31.10.1993 for the simple reason, DJB extended time for completion of the work till 31.10.1993 without levy of any compensation.

29. As noted above, contract contained a clause to recompense the contractor - labour and material escalation. This, to my mind, would enure till contract was completed.

30. The second objection urged is that the claim of the contractor was barred by limitation and that the

learned arbitrator has misconducted the proceedings, by ignoring the fact that the work was completed in October 1993. Notice of appointment of the arbitrator was served on 4.5.2000.

31. Learned arbitrator has noted in the award that issue of limitation was never raised in the counter statement of facts nor was it pressed at the time when issues were framed but since the issue was raised, he should be dealing with the same.

32. Holding that the claim of the contractor was not barred by limitation, learned arbitrator has noted decision of the Supreme Court reported as 1998 (2) SCC 338, Major (Retd.) Inder Singh Rekhi Vs. DDA. Learned arbitrator has noted that till final bill was finalized and intimation thereof given to the contractor, question of limitation commencing does not arise. Learned arbitrator has noted that even as on date when he dealt with the matter, DJB had not finalised the final bill.

33. It is settled law that limitation commences when cause of action accrues. In a works' contract, cause of

action would accrue to the contractor when the owner of the work finalizes the final bill. At that stage, if contractor is aggrieved by the finalization of the final bill, in that, disputes the amount certified as payable, cause would accrue to the contractor to take recourse to a legal action.

34. DJB's objection pertaining to limitation is frivolous and has rightly been rejected by the learned arbitrator.

35. As noted above, claim No.1 of the contractor in sum of Rs.19,84,417.19 has been allowed in sum of Rs.19,17,711.75.

36. Objection raised is that learned arbitrator ignored the evidence led which showed that while making payment up to the 12th running bill, excess sum of Rs.14.5 lacs was paid and this was recovered by the department while finalizing the final bill.

37. Learned arbitrator has noted in the award that on 2.8.2003 he had directed the parties to examine the relevant documents for reconciliation of the conflicting figures. Learned arbitrator had noted that parties could not meet and submit a report of joint reconciliation but

contractor submitted a letter on 5.9.2003 detailing the calculations as also the payments received as per which amount payable was Rs.19,17,711.75. Learned arbitrator has noted that copy of contractor's letter dated 5.9.2003 was sent to the executive engineer of DJB who failed to react to the said letter.

38. Learned arbitrator has noted that Shri Saini, who appeared as counsel for DJB made no submissions pertaining to the said letter dated 5.9.2003.

39. Accordingly, learned arbitrator has awarded Rs.19,17,711.75 to the contractor.

40. As a corollary of the said finding, counter claim of DJB in sum of Rs.3,10,393.43 has been rejected.

41. To sustain a challenge under Section 34 of the Arbitration and Conciliation Act 1996 it has to be shown that the learned arbitrator has exceeded his mandate or has acted in violation of his mandate. Additionally it could be shown that the law of the land has been violated by the learned arbitrator.

42. Where finding recorded by the arbitrator is a

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result of appreciation of evidence, it would be impermissible to challenge the award, save and except on the limited ground that a material evidence has been ignored or that on the evidence before him, finding returned is perverse.

43. From the facts noted herein above it is evident that the learned arbitrator has analyzed claim No.1 in relation to the rival claims and documents filed. Learned arbitrator required reconciliation at a joint meeting. Parties could not meet. Contractor submitted his calculations on reconciliation which were not refuted by DJB.

44. Adequate and good reasons have been given by the learned arbitrator to allow claim No.1 of the contractor. I find no merits in the objections.

45. Claim No.2 was for refund of security deposit in sum of Rs.1 lac. Noting that the work was completed, learned arbitrator has rightly directed refund of the said amount.

46. I have perused the objections filed to the award

and do not note any objection taken to the sum awarded under claim No.2.

47. Claim No.3 in sum of Rs.8,993.14 was on account of deductions wrongly made towards rebate offered. Learned arbitrator has noted that rebate was conditional upon timely release of payment, an obligation which was observed in breach by DJB.

✓ 48. I have perused the objections filed. None predicates to claim No.3.

49. Claim No.4 of the contractor has been rejected.

50. The last objection pertains to the interest awarded by the learned arbitrator. Interest awarded is @18% per annum for a certain period and thereafter @12% per annum.

✦ 51. Interest awarded @18% per annum has been compounded monthly.

52. Learned arbitrator has noted that the non objector was a small scale unit and has awarded interest in terms of the Interest On Delayed Payments Of Small Scale and Ancillary Industrial Undertaking Act, 1993.

53. Said Act stipulates that if any sum is payable to a small scale or ancillary industry, interest payable would be  $1\frac{1}{2}$  times prime lending rate of interest charged by State Bank of India and the interest would be compounded monthly.

54. I may note that DJB, for its counter claim, wanted interest @24% per annum.

✓ 55. Objection to the award pertaining to grant of interest is accordingly rejected.

56. OMP No.376/2004 is accordingly dismissed.

57. Costs are awarded against the petitioner and in favour of the respondent in sum of Rs.10,000/-.

*P. N. Jog*  
**(PRADEEP NANDRAJOG)**  
JUDGE

● August 22, 2006  
DK

*fresh 1A 11795706 - for recall  
of above  
order/diz.*