

Uoi vs Jasbir Singh on 8 April, 2025

Author: Prateek Jalan

Bench: Prateek Jalan

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:

+ O.M.P. (COMM) 291/2020

UOI

Through: Mr. Akshay Amritanshu,
Counsel with Ms. Drisht
Ms. Pragya Upadhyay, Ad

versus

JASBIR SINGH

Through: Mr. Vivekanand and Mr.
Semwal, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN
JUDGMENT

1. By way of this petition under Section 34 of the Arbitration and Conciliation Act, 1996 [hereinafter, "Act"], the petitioner- Union of India [hereinafter, "UoI"] seeks to assail an arbitral award dated 01.10.2014, by which a learned sole arbitrator has adjudicated disputes between the parties under an agreement dated 02.09.2005, bearing No. 24/ee(E)/FCED/2005-06. By way of the impugned award, a sum of 23,09,504/- has been awarded to the respondent- Jasbir Singh, sole proprietor of M/s Kalsi Engineers.

A. Facts:

2. The petitioner invited tenders in the year 2005 for the execution of electrical work at the Regional Labour Institute at Sector- 47, Faridabad, Haryana. The tender was awarded to the respondent under a letter of award dated 18.08.2005. The contractual value of the work was 24,91,256/-, and the period for completion of work was stipulated as nine months, calculated from the 22nd day after the award of the work, i.e., 10.09.2005 to 10.06.2006. UoI issued a letter of commencement to the respondent on 02.08.2005. The time for completion of the work was extended on 09.06.2006 until 10.08.2006, and again on 07.08.2006 until 09.10.2006. The work was ultimately completed on 30.05.2008, and a completion certificate was issued on 08.12.2008.

3. The respondent raised demands for additional amounts, predicated upon loss suffered due to non-availability of work front, delays in approvals, payments, etc. After certain correspondence

between the parties, the respondent invoked arbitration by a communication dated 18.05.2009, addressed to the Chief Engineer.

4. The learned arbitrator was appointed by an order of this Court dated 27.10.2009 in a petition filed by the respondent under Section 11 of the Act [Arb.P. 310/2009].

5. The respondent filed a Statement of Claim on 12.02.2010, enumerating his claims as follows:-

"CLAIM NO. 1: Losses suffered, and additional expenses incurred due to increased rates of Labour and material over and above quoted rates on the value of the work done after stipulated period i.e. 10.6.2006, Rs. 21,00,072/-.....

CLAIM NO. 2: Losses suffered, and additional expenses incurred on account of staff, overheads and establishment expenses beyond stipulated period i.e. 10.6.2006 to the date of completion i.e. 30.5.2008. Rs. 5,01,507/-.....

CLAIM NO. 3: Losses suffered due to idle skilled labour Rs.3,42,520/-.....

CLAIM NO. 4; Refund of Security deposit including earnest money Rs.1,31,238/-.....

CLAIM NO. 5: Less payment/no payment and wrong payment for substituted item of the Agreement item no. 21 to 24 - Rs.41,865/-

CLAIM NO. 6: interest on the above payments @18% p.a. from 4.11.08 till actual date of payment.....

CLAIM NO. 7: Cost of Arbitration proceedings as per actual estimated at Rs, 2,00,000/-.....

It is, therefore, respectfully prayed that the Ld. Arbitrator be pleased:

i) to award the amounts claimed under claims No. 1 to 3 and 5;

ii) to award the interest at the rate of 18% per annum on all the claimed amounts 1-3 and 5 and also on delayed payment of claim No. 4 as claimed under claim No.6;

iii) to award the cost of the proceedings of Rs.2,00,000/- as claimed under claim No.7 to the claimant."

6. The UoI filed a statement of defence on 20.08.2010.

7. The learned arbitrator first made an award dated 28.03.2013, awarding a sum of 23,09,504/- in favour of the respondent.

8. The award was challenged by UoI before this Court in O.M.P.(COMM) 846/2013, and was set aside with the consent of learned counsel for the parties vide order dated 24.10.2013. The disputes were remitted to the arbitrator for fresh consideration.

9. On the basis of the pleadings, the following issues were framed, as recorded by the order of the learned Arbitrator in the impugned award dated 01.10.2014:-

"i. Whether the claimant is entitled to the claims or any of them or part thereof? If so the amount against each claim. OPC ii. Who is entitled to what cost.

iii. Final Relief."

10. Evidence was led by the respondent herein. UoI chose not to file any evidence.

11. After hearing the parties afresh, the learned arbitrator passed the impugned award dated 01.10.2014, once again awarding the sum of 23,09,504/- in favour of the respondent. The details of the awarded amounts are contained in the following table:

Sl. No.	Particulars of Claim	Amount Claimed
1.	For losses suffered & additional expenses incurred due to increased rates of labour & material over and above quoted rates on the value of the work done after stipulated period, i.e., 10.06.2006.	21,00,072/-
2.	For losses suffered and additional expenses incurred on account of staff, overheads, and establishment expenses beyond stipulated period, i.e., from 10.06.2006 upto the date of completion, i.e., 30.05.2008.	5,01,507/-
3.	For losses suffered due to idle skilled labour.	3,42,520/-
4.	For refund of Security Deposit including earnest money.	1,31,238/-
5.	For less payment/no payment & wrong payment for substituted items of the Agreement Item No. 21-24	41,865/-

6.	Interest on payments	the above @ 18% p.a. from 04.11.2008 till actual date of payment.
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7.	Cost of proceedings	Arbitration	2,00,000/-
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B. Analysis:

12. I have heard Mr. Akshay Amritanshu, learned counsel for the petitioner- UoI, and Mr. Vivekanand, learned counsel for the respondent.

13. The respondent's claims arose out of a contention that the UoI had delayed in providing Distribution Boards ["DBs"] and caused changes in drawings and cable routes, due to which work could not be commenced. It was further alleged that payments had been delayed. As a result of these hindrances, work was prolonged beyond the stipulated period, which was brought to the notice of UoI from time to time. The respondent, therefore, claimed that he had suffered losses on account of increased rates of labour and material, as well as additional expenses on staff, overheads, and establishment for the prolongation period from 10.06.2006 to 30.05.2008. The respondent relied upon the fact that extension of time had been granted until the date of completion.

14. In the statement of defence filed by the petitioner, the contentions of the respondent with regard to the delay were disputed, and it was contended that the delay was on account of the respondent's own deficiencies in planning and execution of the work. It was further contended that the respondent was not entitled to escalation as he had failed to maintain accounts and documents, as required by Clause 10C of the General Conditions of Contract for Central Public Works Department Works, 2005. The UoI relied upon correspondence between the parties to show that it had raised issues of slow progress of the work with the respondent. UoI further contended that, assuming the site had not been handed over to the respondent, there was no occasion for him to incur expenses on staff, overheads, or establishment.

C. Finding on delay:

15. The principal question to be considered relates to the finding of the learned arbitrator with regard to delay. The various claims urged by the respondent are, in fact, predicated upon the finding on this aspect.

16. As far as the question of delay is concerned, the finding of the learned arbitrator in favour of the respondent is based upon reading of the correspondence and evidence placed before him, including the following:-

A. Letter dated 14.11.2006¹, showing that the site for fixing the rising main was not ready as the sub-main had not been fixed by other agency, and plaster work had been delayed.

B. Letter dated 15.01.2007², including photographs of the site, which made it clear that a workable site had not been handed over to the respondent even at that stage.

C. Letter dated 10.11.2006³ does not show that the site was ready and handed over to the respondent.

Exhibit C-11, referred to in paragraph 47 of the impugned Award.

Exhibit C-12, referred to in paragraph 47 of the impugned Award.

Exhibit R-6, referred to in paragraph 55 of the impugned Award.

D. Hindrance Register⁴ clearly shows that the site was not ready for handing over.

E. Letters⁵ to support the conclusion that the delay in the work was attributable to the UoI alone.

17. The aforesaid conclusion of the learned arbitrator is thus based upon the evidence before him. The UoI, by a letter dated 10.11.2006⁶, requested the respondent to expedite the progress of work of providing and installation of rising main board, DBs and laying cable. In response, the respondent wrote a letter dated 14.11.2006⁷, in which he clearly stated that the work could not be started, as the civil agency was still working on the site. It was mentioned that civil materials were still lying in the route of the cable, impeding the laying of the cable. The respondent stated that the DBs in the building were issued in phases at a gap of 45 days and were not provided at one time, as a result of which the respondent incurred costs due to idling labour. It was specifically contended that joint inspections were held on 30.09.2006 and 06.10.2006, and it was decided that it was not possible to execute electrical work for a period of three months as per site conditions.

18. The communication dated 15.01.2007⁸, addressed by the respondent to the UoI, also refers to delays in handing over of the site by the UoI. Several photographs were also enclosed therewith. Before the Arbitral Tribunal, a Hindrance Register⁹ was also exhibited, in which Exhibit C-18, referred to in paragraph 63 of the impugned Award.

Exhibit R-3 to R-12, referred to in paragraph 59 of the impugned Award.

Supra (Note 3).

Supra (Note 1).

Supra (Note 2).

Supra (Note 4).

several entries have been made relating to non-availability of the site for various periods ranging from 5 days to 262 days at a time, coming to a total of 722 days.

19. On the basis of such documentary evidence, the learned arbitrator attributed the delay in completion of the project to the UoI, and not to the respondent. Such evidentiary assessment is not open to challenge under Section 34 of the Act, except if found to be entirely lacking in evidence, or perverse and arbitrary, in the sense that no reasonable tribunal could arrive at the same conclusion. In the present case, I do not find the UoI's arguments to meet that high standard. The arguments call for a reappraisal of evidence, which is beyond the scope of setting aside proceedings.

20. Each of the individual claims asserted on behalf of the respondent must be considered in the light of these findings.

21. The learned arbitrator has considered the respondent's claim for escalation for the following hindrance period:

"63. The aforesaid correspondence leaves no room for doubt that the delay in completion of the work was not on the part of the claimant but on account of non availability of site, non approval of drawing in time, non supply of DBs to the claimant. The hindrance register Ex. C-18 itself shows that the site has not been made available to the claimant from time to time for e.g., hindrance started on 11.09.2005 and continued for 145 days till 02.02.2006. Again, for the same reason the Hindrance started on 21.03.2006 and continued for 262 days till 07.12.2006. Again site was not available for installation of rising main and hindrance started on 30.01.2007 and continued for 30 days till 28.02.2007 and again for 5 days from 27.03.2007 to 31.03.2007. Again site was not available for installation of rising main and hindrance started on 09.05.2007 and continued for 84 days till 31.07.2007. Again hindrance started on 14.08.2007 and continued for 79 days till 31.10.2007. Cable trenches were not ready for lay out of cable and the hindrance which started on 07.11.2007 continued for 115 days till 29.09.2007. Hindrance again continued for 2 days on 30.03.2008 and 31.03.2008 due to finishing work from the civil side. This way the hindrance continued for 722 days and that is why extension of time was granted till 30.05.2008 without levy of compensation. The claimant then sent notice dated 26.12.2008 stating how claimant has suffered losses due to hindrances for 722 days. The claimant had to incur additional expenses on account of increased rates of material and wages of labour for prolonged period from expiry of stipulated period from 08.06.2006 to 30.05.2008 for about 23 months. Claimant even attended meeting in the office Chief Engineer (E)NZ on 16.04.2009 and 23.04.2009 but there was no settlement of the claims. The Claimant again raised his claims before Chief Engineer (E)NZ vide letter Ex. C-2 dated 25.09.2009."10

22. For these periods, the respondent had placed details of the items, their rates under the agreement, and the increased rates incurred, by way of Exhibit C-2311. The claim was supported by invoices and goods receipts, which the arbitrator found that the respondent was unable to controvert. For some of the items, amounting to 6,20,154.40/-, the arbitrator found the claims unsupported by details and computation and, therefore, disallowed them. He also reduced the claimed rate of contractor's profit from 15% to 10% and declined labour cess of 1%.

23. The UoI's challenge is based upon its contention that the delay was not attributable to it at all. As discussed above, the learned Arbitrator's finding on this point is not liable to be set aside, and the discussion on Claim No. 1 is also based upon due consideration of the evidence, which does not call for interference under Section 34 of the Act.

Emphasis supplied.

24. In the context of this claim, the learned arbitrator has also considered the applicability of Clauses 10C and 10CC of the General Conditions of Contract for Central Public Works Department Works, 2005. The UoI had contended that Clause 10C required the respondent to have given notice of any contemplated escalation after submission of the tender. The learned arbitrator relied upon several judgments, including the judgments of the Supreme Court in the cases of K.N. Sathyapalan v. State of Kerala and Anr.¹², T.P. George vs. State of Kerala & Anr.¹³, and several judgments of this Court, to hold that the obligations thereunder would not be operative after the maximum period had elapsed.

25. With regard to Clause 10CC, the learned arbitrator found that no escalation was provided if the item stipulated for completion was less than the time provided in Schedule 'F' (18 months). No evidence was led by UoI, and no cross-examination of respondent's witness was conducted on these points, despite opportunity. In the statement of defence, this contention was also not raised, and only Clause 10C has been discussed.

26. In the cases of K.N. Sathyapalan and Associated Construction v. Pawan Hans Helicopters¹⁴, the Supreme Court has held that in the event of delay on the part of the employer in execution of the work, the contractor is entitled to damages by way of escalation.

27. For these reasons, I am of the view that the award of the sum of 13,91,122/- by the arbitrator, on this account, as against the claim of Referred to in paragraph 64 of the impugned Award.

(2007) 13 SCC 43 [hereinafter, "K.N. Sathyapalan"].

(2001) 2 SCC 758.

AIR 2008 SC 2911.

approximately 21 lakhs is not liable to interference under Section 34 of the Act.

28. The learned arbitrator has returned a finding that the expenses of approximately 5 lakhs claimed by the respondent on account of staff and overhead were directly attributable to the prolongation of the contract. The expenses were supported by details provided in Exhibit C-2415, including vouchers for the expenses. The deployment of an engineer and supervisor until conclusion of the contract were also thus accepted. The learned Arbitrator has, therefore, awarded a sum of 4,74,158/-, after deducting the amount against telephone and stationary expenses.

29. The only ground urged by the UoI is that such expenses ought not to have been incurred by the respondent if the site was not available to him. As far as this aspect is concerned, the learned Arbitrator has found in favour of the respondent on evidence, and I see no reason to interfere with the same.

30. This claim on account of payment to unskilled labour has also been allowed upon consideration of the vouchers and evidence filed by the respondent as Exhibit C-25(1) to C-25(48)16.

31. UoI's challenge is based upon the delay not being attributable to it, which had already been rejected above.

32. No award was made under this Claim.

Referred to in paragraph 66 of the impugned Award.

Referred to in paragraph 70 of the impugned Award.

33. The claim pertains to substitution of some items in the contract which resulted in additional payments being made. The Arbitral Tribunal awarded a sum of 39,353/- on this account, holding that the UoI had erroneously proposed lower rates than those provided in the agreement. This claim has also been awarded on the basis of cogent evidence and does not call for interference.

34. This claim concerns the award of interest, which the arbitrator has awarded at 9% per annum on the claimed amounts from 10.02.2010, which was the date of filing of the claim. Interest has thus been awarded for pendente lite period and future interest. No interference is called for with regard to the rate of interest, which appears to be quite reasonable.

35. The arbitrator has awarded the respondent a sum of 60,000/- towards costs, as against a claim of 2 lakhs. Of this amount, 37,500/- was paid by the respondent by way of arbitrator's fees alone. The award, therefore, does not appear to be perverse or arbitrary in any manner.

D. Conclusion:

36. Resultantly, I do not find any ground to interfere with the impugned award in exercise of the Court's jurisdiction under Section 34 of the Act. The petition is, therefore, dismissed.

PRATEEK JALAN, J APRIL 8, 2025 pv/Bhupi/Jishnu/