

निदेशक (प्रणाली) दि.वि.प्र.
डायरी नं. 2044
दिनांक 21-6-24



उप निदेशक (प्रणाली) दि.वि.प्र.
Dy. Director (Systems) F. D.D.A.
डायरी नं / Dairy No. 3391
दिनांक / Date 25/6/24

Azadi Ka
Amrit Mahotsav

दिल्ली विकास प्राधिकरण
DELHI DEVELOPMENT AUTHORITY
ई.एम. सचिवालय
E. M's SECRETARIAT

No. EM2(3)2024/RZ/145/DDA /499

Dated: 21.6.24

**MINUTES OF THE 887th MEETING OF ASB HELD ON 20.06.2024 IN THE CHAMBER OF
CE(HQ), DDA**

887th Meeting of Arbitration Scrutiny Board (ASB) under the chairmanship of CE(HQ), DDA was held on 20.06.2024 at 01:00 P.M. in the chamber of CE(HQ), DDA to deliberate the Arbitral award in the matter of M/s K P Rana Vs DDA for the following work: -

N.O. W : C/o Community Room at Block G Sector-16 Rohini.
Agency : M/s K P Rana.
Agmt .No. : 14/EE/SD-2/DDA/2013-14.

The agenda note was submitted by CE(Rohini) vide e-file Computer No. 81019 on 19.06.2024. The case was presented by Sh. Deepak Suyal, CE(Rohini).

The meeting was attended by the following officers: -

1. Shri Sanjay Kumar Khare	CE (HQ)	Chairman
2. Shri Deepak Suyal	CE (Rohini)	Executive Member
3. Shri Ajay Gupta	Director (Finance)	Member
4. Shri Vinod Kumar	Dy. CLA-III	Member
5. Shri Amit Singh	Dir. (Works)	Member, Secretary

BRIEF HISTORY OF THE CASE IS AS UNDER: -

The above stated work was awarded to M/s K P Rana vide award letter No. F.60(55)A/S.D.2/2012-13/DDA/120 dated 24.02.2014. The time allowed to complete the work was 365 days. As per agreement stipulated date of completion was 05.03.2015 whereas the work was actually completed on 03.04.2017. The EOT was granted by the competent Authority without levy of compensation. The agency vide his letter dated 15.06.2021 requested to Engineer Member, DDA for appointment of arbitrator. The EM/DDA has appointed Shri C S Prasad (Retd.) D.G., CPWD as a sole Arbitrator vide letter dated EM2(7)2021/Arbn./Vol.VIII/Pt./169/ DDA/550 dated 24.05.2022. The agency submitted 15 Nos claims through their advocate Dr. Ankur Bansal having total amount of claims as Rs. 1,44,29,302/- + Interest.

After completion of the proceedings the Ld. Arbitrator has pronounced the award dt. 24.03.2024 received through e-mail on 02.04.2024 amounting to Rs. 34,98,687/- plus

Release of FDR in favour of claimant. The award was referred to panel lawyer Sh. Vaibhav Agnihotri.

LEGAL OPINION OF PANEL LAWYER

The Award of the Ld. Arbitrator merits to be challenged on the following grounds: -

1. The appointment of the Ld Sole Arbitrator was done by DDA. The said appointment being unilateral and done by one party to the litigation, therefore the appointment of Ld Sole Arbitrator may be challenged as per the law laid down in Perkins and subsequent Judgments.
2. No declaration was given by the Ld. Arbitrator under Schedule V & VII of the Arbitration Act.
3. The AT has recorded observation which are contrary to record. The Ld AT has recorded that the parties had agreed to not undertake Oral Evidence. In this respect it is relevant that after completion of pleadings the AT intended to proceed straightaway for arguments. However, in light of the issue involved, this necessitated the filing of an application submitted vide e-mail dated 04.05.2023 to determine the procedure for the proceedings. Subsequent, thereto the Tribunal passed the Order dated 06.05.2023. This aspect has not been considered in its correct perspective that considering the Claimants case of duress and lack of actual evidence being filed, Cross-examination was necessary.
4. **Qua Claim No;1**, the same merits to be challenged on the following grounds :-
 - a) Pg.45 Pr.5 - Ld. Arbitrator failed to consider that claiming contrary to admitted documents i.e. the undertaking given by himself, it was for the Claimant and not the Respondent to substantiate and prove what is was being alleged, contrary to the record and documents, was correct.
 - b) Pg. 49 – The AT conclusion that because the Respondent is required to finally verify the measurements of the Agreement Item, therefore Respondent is responsible for preparing and submitting the Final Bill is a finding which no reasonable person can arrive at. This is for the said reason that the Respondent cannot include basis or amounts for which the Contractor may think himself entitled to, and for which the Arbitration was also filed and relief granted. The said amounts and items can only be claimed by the Contractor and that too in terms of the clauses of the Agreement, including Cl.7, 12.4, 25 culminating in Final under Clause.9. Page 6 of 8.
 - c) Pg. 49 – The observation of the AT that because Respondent was allegedly not demanding abstract of bill under Clause.7, proved that no final bill was required to be submitted under clause 9 is erroneous and contrary to the provision of Clause.9.
 - d) Pg. 49 – The observation of the Tribunal that there was no further requirement for Claimant to submit Final Bill in contradicted by the admission of the Claimant that he did submit a Final Bill on 05.09.2019, which is recorded by the AT itself in the said paragraph. Hence, the essential premise of the Award is not only contrary to record but also self-contradictory.
 - e) The Opinion of the Ld Arbitrator that Deviated Items could be paid on rates based on market Rates Only is contrary to the terms of the Agreement especially Clause.12.
 - f) The amount of Rs. 14,02,221/- allowed by the Ld. Arbitrator under Claim 1 is based on observation which are contrary to the record. The observation of informal admission by the officers are denied. The same is nowhere recorded by the Ld Tribunal during the hearing or in the record.

5. **Qua Claim 2** – The Ld AT has granted interest after noting that the Executive Engineer, SD-2 vide letter dated 01.08.2018 and dated 18.10.2018 intimated that 9th RA Bill was passed about one year back by the office and was pending in CAU (Rohini) due to non-approval of re-appropriation of budget. While, the Claimant has also alleged that th abstract could only be prepared by DDA as the password and User ID was not availabl with him, however, it has not been denied by the Department that the amount was paid after passing of the bill. Considering the finding of the Tribunal, it is advised that claim on is not likely to succeed. However, the Department may challenge the same on the with respect to the rate of interest i.e. 8% granted for the period of delay.
6. **Qua Claim 3** – The relief qua claim 3 merits to be challenged for the following reason :-
- a) Pg.57 - The finding of the Ld Arbitrator as to due date of payment not being capable of being ascertained in contrary to the terms of Clause 7 and 9. Hence, the same is liable to be challenged. If the Ld Arbitrator has imposed interest on the payments made beyond the period provided under Cl.7 and 9, than it could not be said that there was no due date of payment. The Award therefore becomes self-contradictory also.
 - b) The relief of Reimbursement has bene allowed without legally sustainable evidence being produced by the Claimant. Thus, the relief itself merits to be challenged.
7. **Qua Claim 4** – The relief qua claim 4 merits to be challenged for the following reason :-
- a) The Ld Arbitrator himself had observed that the calculation sheet submitted by the Claimant to claim reimbursement had errors in it. Therefore no reliance could be placed on it, especially in the absence of any other evidence.
 - b) The finding of the arbitrator that the Respondent had been paying the escalation amount does not take away the right of the Respondent to ask for relevant evidence in the shape of books of account to ensure that payments were actually made. These were not produced by the Claimant. Hence, no payment can be made for the same.
 - c) The observation of the Ld Tribunal that the Clause under the Agreement does not require the Contractor to procure actual labour bills is in ignorance of the express provision of Clause 10C. Hence, the same merits to be set aside. Even otherwise the law is express that the reliefs in arbitration proceedings cannot be given only on the basis of the formula and the same needs to be supported by some evidence.
 - d) Labor reports referred to at the end of each RA Bills cannot be substitute for proof of the actual amounts paid labourers. Evidence of deployment cannot be substitute of evidence of the payment in respect thereof.
 - e) The Ld Arbitrator has also not considered that having granted market rates to the Claimant for work during the extended period, the grant of escalation in labour fo the work amounts to double benefit.
 - f) It is relevant to state that the Claimant has sought the reimbursement under Sec.73 of the Contract Act.
8. **Qua Claim 5** – The relief qua claim 5 merits to be challenged for the following reason :-
- a) The same has bene allowed solely on the basis of hypothetical calculation. It is established law that claims cannot be allowed on the basis of the formula only, especially without any supporting evidence.
 - b) The Ld Arbitrator has allowed the claims without any evidence. No actual document in support of the alleged escalation in the prices of the material had been price.
 - c) As the Claimant had alleged that there was 'abnormal' increase in the prices, it was incumbent on the Claimant to substantiate and prove the same. The Claimant being in possession of best evidence and choosing not produce the same, the Ld Arbitrator ought to have drawn adverse inference instead of granting relief on the

basis of conjectures and surmises.

- d) The Ld Arbitrator has also not considered that having granted market rates to the Claimant for work during the extended period, the grant of escalation in material amount to double benefit.

9. **Qua Claim 8** – The relief granted is premised on the fact that despite the work having been completed a long time ago, DDA has not been able to resolve the issue pertaining to QC. The QC para are the responsibility of the Department to either satisfy the same or get them rectified and claim the amounts of rectification / less value from the Claimant. Thus, it may not be advisable to challenge the said claim.

10. **Qua Claim 12** – The relief qua claim 12 has been allowed as the Department has not raised any counter claim and also as DDA has contractual right to hold the security deposit against such guarantee bond. The guarantee bond was supposed to be valid till 5 years of expiry of Defect Liability Period (DLP) i.e. upto 03.04.2023. (DLP over on 03.04.2018). There is no evidence on record regarding any demand on account of any defect or deficiency in structure till 03.04.2023. Thus, it may not be advisable to challenge the said claim.

11. The grant of Future Interest should be challenged both on the basis of grant of relief itself as also the rate of interest i.e. 8% granted.

Recommendation of Legal Wing/DDA:-

The statement of the SLO/Engg is stated here

“After perusal of. The award I am of the view that award should be challenged and the ground for. Challenge are. Explained by P/L in his opinion (attached opp.) and I am in agreement with the view of P/L.

The appointment of the sole arbitrator was unilateral which was done by one party. The Arbitrator decided the. Claims contrary to clauses of agreement and moreover this award was passed without leading evidence only on the basis of arguments which shows Arbitrator failed to consider the proceedings procedure

In view of above and opinion of P/L. this award may be challenged. However, concerned deptt. May take decision at their own end.”

Recommendation of EE/RMD-8:-

As per the Panel Lawyer opinion and comments of Legal Wing, the appointment of the sole arbitrator was unilateral which was done by one party which may be seen by the department as the appointment was made as per the clause 25 by the EM/DDA. The Arbitrator decided the. Claims contrary to clauses of agreement and moreover this award was passed without leading evidence only on the basis of arguments which shows Arbitrator failed to consider the proceedings procedure. Further on going through the award I am of the opinion that the claim no. 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 18 shall not be challenged and rest of the claims may be challenged for the reasons as mentioned in table containing detailed claim-wise comments.

Recommendation of SE/RCC-3:-

As per the remarks given in the sheet enclosed at correspondence side.

Recommendation of the Chief Engineer (Rohini):-

In view of the comments of the Panel Lawyer, EE/RMD-8, SE/RCC-3 this office is also of the view that award of Arbitrator is challenged.

The case is submitted to the Arbitration Scrutiny Board for consideration.

RECOMMENDATION OF ASB:

After due discussion and deliberation, the ASB unanimously recommended to challenge the award against **claim no. 1, 3, 4, 5, 16, 17** and to accept the award against claim no. **2, 8 and 12**. ASB further recommended to also accept the award against **claim no. 9, 10, 11, 13, 14, 15 & 18** being Nil award. **Claim no. 6 & 7** stand withdrawn by the claimant.

It has been viewed seriously in the ASB meeting that the case was sent only 2-3 days before last date of limitation period to challenge the award.

As per revised delegation of power issued vide no. EM1(10)2018/Del. Of Power/DDA/260 dated 29.01.2019 by CE (HQ) DDA, Hon'ble EM/DDA is the Competent Authority in r/o award amount more than Rs. 25 lacs and upto Rs. 100 lacs in consultation of CAO/DDA with due scrutiny by Arbitration Scrutiny Board headed by CE(HQ)/DDA.


-Sd-
Amit Singh
Dir(Works)
Member Secretary

-Sd-
Vinod Kumar
Dy. CLA-III
Member

-Sd-
Ajay Gupta
Director(Finance)
Member

-Sd-
Deepak Suyal
CE (Rohini)
Executive Member

-Sd-
Sanjay Kumar Khare
CE (HQ)
Chairman


Director(Works)

Copy to: -

1. EM/DDA for kind information.
2. All concerned.
3. Director (System) for uploading on DDA website.
4. EE/RMD-8, DDA Office Complex, Madhuban Chowk, New Delhi – 110085 for information please.


21/06/2024
Director(Works)

dir(SYS)