
(1999) 09 AP CK 0052
In the Andhra Pradesh High Court
Case No : AA No. 54 of 1998

A. Anand Rao

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 10-09-1999

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 20

Citation : (1999) 6 ALD 118 : (1999) 5 ALT 783

Hon'ble Judges : Krishna Saran Shrivastav, J

Bench : Single Bench

Advocate : Mr. V. Padmavathi, for the Appellant; Mr. T. Ramakrishna Rao, for the Respondent

Judgement

1. This is an application u/s 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator for resolving the disputes between the parties to the application.

2. The admitted facts of the case, in short, are that on 20-12-1996, the petitioner was entrusted with the work of urgently repairing the leaky roofs, ceilings, flooring in old CK. and file colony. The value of the contract was Rs.3,08,762/-. The stipulated date of completion of the contract was 12-4-1997. On 24-2-1997, the Senior DEN/Central/HYB had written to Senior DAO/HYB that during the actual execution of the work, it has been necessitated to operate certain increased quantities of existing SSR items and additional SSR Items and also non/less operation of certain items as per the requirement at site, showing a saving of Rs, 1,07,306/- due to the reduction of work of fixing A.C. plain sheets in the ceiling as also due to the reduction of flooring repairing works. As against the savings, he proposed repairing of the damaged colony roads in CKL old colony at Rs.1,73,022/-and intimated that the proposed changes and variations in the original agreement of Rs.3.09 lakhs would be enhanced to Rs.3.74 lakhs resulting in 24.35 per cent increase over the original agreement value. He requested through this letter to accord financial concurrence to the final variation

statement annexed with the letter. The respondents have paid to the petitioner an amount of Rs.63,937/- through cheque No.462019, dated 17-3-1997 in respect of the work (reduced work) under the original agreement, dated 20-12-1996.

3. The case of the petitioner, in brief, is that the aforementioned additional work was entrusted to him, but it could not be completed within the stipulated time due to the default of the respondents. However, the entire work was completed on 30-4-1997. The petitioner had prepared only one C.C. bill for the additional work. In spite of demands, the respondents did not pay the bill for the additional works resulting in financial loss to the petitioner and, therefore, through notice dated 24-7-1998, the petitioner demanded payment of Rs.5,63,000/- and for referring the dispute to the arbitrator under Clause 64 of the General Conditions of Contract (for short, "GCC").

4. The respondents have denied the claim of the petitioner. It is alleged that the Senior Divisional Engineer/Central/ Hyderabad Division of South Central Railways had proposed variation in the original agreement through letter dated 24-2-1997 and showed the value to be, increased by Rs.96,291/- but the proposal was not approved by the Additional Divisional Railway Manager, Hyderabad Division (ADRM/HYB) who was the accepting authority, that is the competent authority in respect of the original agreement No.24, dated 20-12-1996. The variation statement in question proposing the additional items of work was required financial concurrence. The Senior Divisional Manager, Central/SC Railway was the convenor and the Assistant Divisional Accounts Officer (ADAO) was the finance member of the tender committee. Therefore, the recommendations of the tender committee in respect of the said contract No.24 had been accepted by the Additional Divisional Railway Manager who was the competent authority as per Item No.27 Part A (Works Matters) of Schedule of Powers (SOP). According to Item No.8 of the works matters, variation statement dated 24-2-1997 should also have the approval of the accepting authority, that is ADRM/HYB. In the absence of financial concurrence and approval by the competent authority, the variation statement dated 24-2-1997, the petitioner cannot claim payment for the additional items of work alleged to have been executed by him. It is further alleged that no written contract had been executed between the petitioner and the Railways under Clause 41 of the GCC read with Article 229 of the Constitution of India and, therefore, the petitioner has no legal right to recover any amount from the Railways for the alleged additional works. It is also alleged that the work under the original agreement No.24 was entrusted to the petitioner for urgently repairing the leaky roofs, ceilings, flooring in old CK and file colony. The proposed additional work through variation statement dated 24-2-1997 was in respect of repairs to roads in CKL old colony which is outside the work, in the original agreement No.24 and for this reason, the Accounts Department did not accord financial concurrence for the said additional work. It is lastly urged that the additional work alleged to have been done under letter dated 24-7-1998 is outside the purview of the original agreement No.24 and there is no clause in the

letter dated 24-7-1998 for arbitration and, therefore, no arbitrator can be appointed to resolve the disputes.

5. Relying on Supreme Co-operative Group Housing Society Vs. M/s. H.S. Nag and Associates (P) Ltd., , learned Counsel of the petitioner has urged that the additional work of repairing the road situated in old CKL colony was entrusted in furtherance of the original agreement No.24 which contains an arbitration clause and, therefore, it should be treated as a part of the original contract No.24 and as such the Clause 64 of the original agreement is attracted and the dispute can be referred to the arbitrator.

6. It is not disputed before me that the Railway is empowered to abandon or reduce the work entrusted through the original agreement and it can also entrust additional or extra work, but the additional work or extra work entrusted or to be entrusted must have connection with the original work which has been entrusted to the contractor through the original agreement.

7. The question, therefore, that falls for determination is whether the execution of the additional work is a part of the original agreement No.24 or not?.

8. The petitioner was entrusted with the following work through the agreement No.24.

S. No.	SSR Code	Approx. Qty.	Description	Unit	Rate Rs.	Amount Rs.
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(1)	(2)	(3)	(4)	(5)	(6)	(7)
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1.	050210/01	600	M2			
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Providing and fixing plain asbestos sheet lining with butt joints and wood screws excluding frame work and cover fillets using (01) ; 5mm thick AC sheet

1	M2 (one square metre)	125-20				
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75120.00	(Rs. Seventy five thousand one hundred and Twenty only)					
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2.	080103/02	600	cudm			
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providing wood work in frames of false ceiling trellis partitions etc., wrought and fixed in position with (02) : other than teak wood of approved quality.

10	Cudm Ten cubic diameter	146.00				
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8784.00	(Rs. Eight thousand seven hundred and eighty four only)					
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3.	050303/01	5000	M2			
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Providing and fixing proofing treatment with bitumen felt over roofs with a final course of stone grit 6 mm and down size or pea sized graded spread at 0.00610.003 cu.m, per sq.m. including preparation of surface and excluding grading complete.

(01) : Four courses treatment consisting of first and third courses of blown and

for residual bitumen applied hot at 1.2 kg. per sq.m, of area of each course and second course of roofing felt type 3 (grade 1} (Hessian base self finished bitumen felt) and fourth and final coat of stone grit/graded spread at 0-008 cum per sq.m.

1 M2 one square metre 62.20

311000.00 (Rs.Three lakhs and eleven thousand only)

4. 040105/01 1500 M2

40 mm thick cement concrete flooring with 25 mm under layer of cement concrete 1:3:6 (1 cement: 3 sand and 6 graded stone aggregate of size 12.5. mm and below) and 15mm wearing coat in cement concrete 12 to 3 (1 cement 2 to 3 graded stone aggregate of size 4.75 mm and below laid integral with base course and finished with a (01) floating coat of neat cement.

1 M2 one square meter 37.20

57300.00 (Rs. fifty seven thousand and three hundred only)

5. 929312/01 400 Extra for using contractor's own cement. 1 bag per one bag 130.00

62400.00 (Rs. Sixty two thousand and four hundred only) .

Total : 5 (five) SSR Items only) Total : Rs. 5,14,604,00

(-) 40% Rs. 2,05,841.60

Rs. 3,08,762.40

9. The relevant portion of clause 64 of the GCC which relates to the settlement of disputes by arbitration, reads as under:

"64(1)(i) In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account, or as to the withholding by the Railway of any certificate to which the contractor may claim to be entitled to, or if the Railway fails to make decision within a reasonable time, then and in any such case, save the "excepted matters" referred to in Clause 63 of these conditions, the contractor, after 90 days but within 180 days of his presenting his final claim on disputed matter, shall demand in writing that the dispute or difference be referred to arbitration."

10. As noted above, the Senior Divisional Engineer, Central/Hyderabad Division/ SCR through the letter dated 24-2-1997 had sought approval for repairing the colony roads in Chikalaguda/cement file colony road alleging that the existing roads had been badly damaged which leads to the Railway colony. Through this letter, the work originally entrusted was also proposed to be reduced. Repairing the leaky roofs of the railway quarters by tarfettitig and/or repairing by changing

the cement concrete flooring is one thing and repairing approach road to the said colony appears to be a different thing. These appears to be no nexus between these two works. Had the additional work been entrusted for replastering the walls having cracks or changing the damaged doors and windows by fixing new doors and windows etc., it could be said to be connected with the original work of repairing the leaky roofs and reflooring the damaged flooring, but constructing a road or repairing a damaged road cannot be said to be in furtherance of the work relating to the repairs of the railway quarters.

11. In the case of Supreme Cooperative Group Housing Society (supra), in the month of September, the contractor was entrusted to execute the work of 7 towers in the first instance and he had agreed to execute the further work of the balance towers that would be entrusted to him within four months of the date of award of the work at the same square feet rates arrived at the lumpsum price for each tower and for the alternate specification. The Contractor had constructed 7 towers and in addition to that, he was entrusted with the construction of three more towers in the month of December and four more towers in the month of March, 1990. The Apex Court observed that reading the aforementioned terms of the agreement and clause 32 relating to the settlement of disputes by arbitration together, clearly indicated that the award of the work during the course of execution was a part of the original agreement entered into. Such is not the case here. In the case on hand, there is no whisper in the original agreement No.24 that work for construction or repairing the approach road to the aforesaid colony may be entrusted to him later. The case of Supreme Co-operative Housing Society (supra) is, therefore, distinguishable on facts, because, as noted above, the additional work entrusted to the contractor in that case was similar to the original work entrusted to him and, there was a specific reference for entrusting the similar work in future in the original agreement, whereas in the case on hand, neither there is any reference of entrusting the work of repairing the approach road to the said colony in future nor the additional work entrusted was similar in nature.

12. The Apex Court in the case of Supreme Co-operative Housing Society (supra) has observed that jurisdiction to arbitrate the dispute is founded upon the agreement entered into with consensus ad idem under which the parties excluded established Courts and submitted to the jurisdiction of the arbitrator for settlement of differences and disputes having arisen thereunder. Otherwise, Court is devoid of jurisdiction to refer such disputes u/s 20 of the Arbitration Act (10 of 1940).

13. For the foregoing reasons, I reach the conclusion that for the additional work, that is to say for repairing the approach road leading to the Chilakalguda/cement file colony does not contain arbitration clause and the dispute regarding the additional work is not covered under Clause 64 of the GCC. Therefore, the application for appointment of arbitrator deserves to be dismissed and accordingly it is dismissed. However, the parties are directed to bear their own

costs.