

(1987) 04 AP CK 0015

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No's. 224 of 1984 and 3000 of 1986

Andhra Pradesh State Electricity Board, Hyderabad

APPELLANT

Vs

Sarathi Engineering Corporation and Another

RESPONDENT

Date of Decision : 22-04-1987

Acts Referred:

Arbitration Act, 1940 — Section 2, 33

Citation : AIR 1988 AP 371

Hon'ble Judges : Jagannadha Rao, J

Bench : Single Bench

Advocate : V.R. Reddy, for the Appellant; Y. Sivarama Sastry and Y. Venkata Sastry, for the Respondent

Judgement

Jagannadha Rao, J.—These two revisions are preferred by the A.P. State Electricity Board against orders passed by the 4th Additional Judge, City Civil Court, Hyderabad. C.R.P. No. 224/87 is directed against the order dt. 23- 10-86 in O.P. No. 313/86 whereas C.R.P. No. 3000/86 is directed against the order in the O.P. No. 89/86 dt. 15-7-1986. The A.P. State Electricity Board has filed two O. Ps. under S. 33 of the Arbitration Act for a decree Declaring that there is no agreement to refer disputes arising out of or touching the order dt. 19-4-78 in one case and 7-3-80 in the other to arbitration and for removing the 2nd respondent in each of the O. Ps. as an arbitrator and granting consequential injunction restraining the respondents from proceeding with the arbitrations in question.

2. The learned Additional Judge rejected the, said O. Ps. under the order above mentioned. He came to the conclusion that a reading of the respective conditions of the contract or the general conditions did not result in abrogation of the arbitration clause and that the said clause continued to apply in both the cases. He refused to accept the contention of the Electricity Board that there was no agreement to refer the disputes to arbitration.

3. In these revisions, it is contended by Sri V. R. Reddy, the learned counsel for

the Board that the view taken by the learned Judge is erroneous. Reliance is placed upon Cl. 1.30 of the specification (General S. 1) and it is argued that the said clause does not enable any reference to arbitration. It is argued that that clause only enables the matters to be decided only by courts or Tribunals and not by, Arbitrators. It is argued that an arbitrator is not a Tribunal. It is further contended that Cl. 38 of the General Conditions of Contract cannot be invoked by the respondents in the face of Cl. 1.30 of the specification above-referred to.

4. On the other hand it is contended by "Sri Y. Sivarama Sastry, the learned counsel for the respondent that the view taken by the Lower Court is correct and does not call for any interference.

5. For a proper appreciation of the point arising in the two cases it is necessary to refer to the relevant portion of Clause 38 of the General Conditions of contract

"Clause 38 : If at any time in question dispute or difference whatsoever shall arise between the purchaser or the Engineer and the other party upon or in relation to or in connection with the, contract either party may forthwith give, to the other notice in writing of the existence of such question, dispute or difference and the same shall be referred to the arbitration of two persons, one to be nominated by the purchaser and the other by other party or failing agreement between these two to an umpire appointed by them. Such submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act, 1940 or at, .statutory modification thereof. The award the arbitrators or umpire shall be final and binding upon the parties."

6. I shall now refer to Cl. 1.30 of the Specification relied upon by the petitioner. It reads as follows:-

"1.30 Jurisdiction:- All and any dispute or differences arising out of or touching the order based on this specification shall be decided only by court or Tribunal situate in Hyderabad or Secunderabad cities. In suit or legal proceedings shall be institute elsewhere."

The contention of the learned counsel of the petitioner is that Cl. 1.30 requires the disputes to be decided only by Courts in Tribunals and that an Arbitrator is not Tribunal. It is therefore contended that clause 38 of the General Conditions is not attracted.

7. In my opinion, this contention cannot be accepted. Clause 38 of the General Conditions is a comprehensive arbitration clause "which includes a decision on any question, disputes or difference arising. Obviously the parties did intend that such disputes or difference should be decided on by an arbitrator. But so far as Cl. 1.30 concerned the intention of the parties incorporating such a clause in the specification is totally different.

8. It is well-known that when a cause, action arises at more than one place, it open to the parties to enter into a by-later agreement restricting the right, of the aggrieved party to approach a Court of law or a Tribunal only at one of the places

when the cause of action arises and not at other places. In other words, it is open to the contracting parties to agree by-laterally that suit or legal proceeding should be institute only at one of the places where the cause action arises and not at other places. In n view, Cl.13 of the specification was intend to be such an agreement and nothing more. All that it provides is that the parties can only to the Court or Tribunal situated Hyderabad or Secuncterabad and that a suit or other legal proceeding shall not be instituted elsewhere. The parties never intended that Cl. 130 should have the result of abrogating the arbitration clauses., Clause 138 of the general Conditions of thee contract.

9. In the present case, it is not in dispute of that in both the cases the arbitrator, nominated by the respondent are in Hyderabad or Secunderabad cities. Therefore. Cl. 130, is amply satisfied.

10. The contention of the petitioner that the effect of Cl. 1.30 of the specification is to permit institution of a suit or legal proceeding only before the Court or Tribunal is no correct. The purpose of that clause is only to restrict the place of fling of the suit or legal proceeding. If the word "Tribunal"- in that clause is to be interpreted as not including an arbitrator as contended for by the petitioner result would be that the parties can appoint an arbitrator who is even outside Hyderabad or Secunderabad cities. The clause, as already stated, has no impact on the arbitration clause as such. If the word "Tribunal" is to be interpreted as including an arbitrator it will be necessary to appoint an arbitrator in the twin cities of Hyderabad or Secunderahad.

11. In any event, Cl. 1.30 does not have the effect of abrogating Cl. 30 of the General Conditions. Further the purpose of Cl. 1.30 is limited to the question of territories of jurisdiction. In the present case, the arbitrator in both the cases nominated by the respondent is from Hyderabad or Secunderabad cities. It is not therefore necessary to decide the question as to whether the arbitrator included in the meaning of the word of "Tribunal".

12. For the aforesaid reasons, the view taken by the lower Court is correct and there are no merits in the revisions.

13. The Court below, however, stated that the Board should be given an opportunity to appoint its own arbitrator in accordance with Cl. 38 of the General Conditions. For that purpose the Board is given six weeks time from today to appoint its own arbitrator in both the cases.

14. Subject to the above directions the revision petitions are dismissed. No costs.

15. Order accordingly