
(1998) 08 AP CK 0042

In the Andhra Pradesh High Court

Case No : CRP No"s. 161 and 189 of 1994

APSRTC, Mushirabad, Hyderabad

APPELLANT

Vs

P. Venkat Reddy and Others

RESPONDENT

Date of Decision : 11-08-1998

Acts Referred:

Arbitration Act, 1940 — Section 11, 12, 3, 5, 8

Citation : AIR 1999 AP 110 : (1998) 4 ALT 711

Hon'ble Judges : R. Bayapu Reddy, J

Bench : Single Bench

Advocate : Mr. K. Harinath, SC for APSRTC, for the Appellant; Mr. K. Prabhakar, for the Respondent

Judgement

1. These two civil revision petitions are filed by the same party, Andhra Pradesh State Road Transport Corporation, represented by its Chief Civil Engineer-I, Hyderabad question the two separate orders dated 6-8-1993 passed in O.P. No. 491/89 and O.P. No- 492/89 on the file of the IV Additional Judge, City Civil Court, Hyderabad, by which the authority of the named arbitrator in both the cases was revoked and an independent arbitrator was appointed in his place.

2. The first respondent in the present revision petitions is the contractor who entered into separate agreements with the petitioner herein for construction of bus stands at Yerragondapalem and Kanigiri in Prakasam district. As disputes arose between the parties regarding some amounts claimed by the contractor relating to the works done by him as per the contracts, the contractor chose to invoke the arbitration clause in the agreements and requested the General Manager, APSRTC who is the named arbitrator in the contract and who is shown as the second respondent herein to enter into reference and decide the disputes between the parties and submit his award. The named arbitrator on such request made by the contractor, directed the contractor to submit his claim statements and when such claim statements were filed by the contractor the arbitrator directed the revision petitioner (Department) to file its counter statements.

Subsequently, the contractor filed two petitions in OP No. 491/89 and O.P. 492/89 in the lower Court under the provisions of Sections 5, 8, 11 and 12 of the Arbitration Act, 1940 requesting the Court to revoke the authority of the named arbitrator and appoint another arbitrator, preferably a retired Chief Engineer, in the place of the named arbitrator to decide the disputes between the parties contending that even though the claim statement was filed by him before the arbitrator on 27-2-1989, the arbitrator failed to decide the disputes and instead granted nearly eight months time to the Department to file its counter statements, that the arbitrator thereby failed to act promptly and pass his award within four months after entering into reference. that in view of such delay he (contractor) apprehends bias on the part of the named arbitrator and does not expect that justice might be done to him if he is allowed to continue as arbitrator. The revision petitioner, who represents the Department, contested the two O.Ps. before the lower Court contending that there are no valid and justifiable reasons for revocation of the authority of the named arbitrator and for appointing a new arbitrator. After hearing both sides and on the basis of the material before him the lower Court allowed both the O.Ps. and revoked the authority of the named arbitrator and appointed a retired District Judge as arbitrator to decide the disputes between the parties in both the matters. Questioning such Orders the present revision petitions are filed by the Department.

3. As the facts involved in both the cases and the points to be decided are the same they are heard together and are being disposed of by a common order.

4. As seen from the facts of this case the first respondent herein who is the contractor entered into two separate agreements with the revision petitioner which is the APSRTC represented by its Chief Civil Engineer-I, Hyderabad for construction of bus stands at Yeeragondapalem and Kanigiri in Prakasam district and as disputes arose between the parties as per the arbitration clause in the agreements relating to the execution of the said works the first respondent requested the named arbitrator who is the General Manager of the APSRTC to arbitrate the disputes between the parties as per the arbitration clause in the agreements and submit his award. No oral or documentary evidence was adduced before the lower Court. There is no material to show as to when the arbitrator was requested by the first respondent to act as arbitrator to decide the disputes between the parties. But as per the averments in the petitions, the first respondent (contractor) is said to have filed his claim statements before the arbitrator on 27-2-1989 and thereupon the arbitrator requested the Department to file its counter-statements. The two O.Ps. were filed in the lower Court on 16-10-1989 for revoking the authority of the named arbitrator u/s 5 of the Arbitration Act, 1940 and for appointment of a new arbitrator in his place. As seen from the averments in the petitions, the only ground on which the petitions were filed for revoking the authority of the named arbitrator is that the arbitrator granted time to the Department for about eight months to file its counter-statements and that he failed to pass his award within four months after entering into reference and as such his authority is liable to be revoked and a new

arbitrator is to be appointed. It is seen from a perusal of the impugned orders passed by the lower Court that the only ground on which the authority of the named arbitrator was revoked is that he failed to pass the award within four months as prescribed in the Arbitration Act and thus delayed the matter and as such his authority to act as arbitrator shall be revoked. Even though it is alleged in the petitions filed by the contractor that an account of the delay involved in passing the award he apprehends bias on the part of the named arbitrator and does not expect justice from him, no finding was arrived at to that effect by the lower Court as seen from a perusal of the impugned orders. Therefore, it is to be seen whether mere delay in passing the award and failure on the part of the arbitrator to pass the award within four months can be considered as a ground for revoking his authority.

5. The contention of the first respondent (contractor) appears to be that as per para 3 of the First Schedule of the Arbitration Act, 1940 which shall be deemed to have been included in the Arbitration Act in view of the provisions of Section 3 of the said Act, the arbitrator shall make his award within four months after entering on the reference, that in the present case the named arbitrator failed to make his award within such period of four months by granting time to the revision petitioner to file his counter-statements for over eight months and that therefore he has neglected to perform his job and his authority shall therefore be revoked and a new arbitrator shall be appointed. But such contention cannot be accepted in view of the facts and circumstances of this case, and the lower Court has erred in accepting such contention without giving any valid reasons except stating that the named arbitrator failed to produce his award within four months and thereby caused delay and as such his authority shall be revoked. The authority of the named arbitrator cannot be revoked on the mere ground that he granted eight months time to the Department to file its counter-statements and could not pass the award within four months time. The lower Court does not even mention in the impugned orders about the provisions under which the award is to be passed within four months about the commencement of the date from which such four months time is to be reckoned. It does not also give any finding that on account of such delay caused in making the award the arbitrator can be said to be guilty of negligence in acting as an arbitrator as contemplated u/s 8 of the Act. As per the provisions of para 3 of the I-Schedule of the Arbitration Act, four months time for making the award is to be counted from the date of entering on the reference by the Arbitrator. The lower Court does not even refer as to whether the arbitrator had entered on the reference in the present cases so as to say that the provisions of para 3 of 1st Schedule are violated in the present case. The main ground urged in the present revision petitions as seen from the grounds 2 and 3 is that the arbitrator in the present cases had not even entered on reference and that therefore the question of passing award within four months as contemplated in para 3 of the I-Schedule of the Act did not arise and that therefore the lower Court has erred in revoking the authority of the named arbitrator. Such contention of the revision petitioner is to

be accepted in view of the facts of this case. As already stated above, when the first respondent (contractor) requested the named arbitrator to arbitrate the disputes between the parties as per the arbitration clause in the agreements, the arbitrator accepted such request and the first respondent filed his claim statements before the arbitrator on 27-2-1989 and thereupon the arbitrator granted time to the petitioner to file his counter-statements and the counter statements were not yet filed. In the meanwhile, the first respondent filed the two petitions before the lower Court on 16-10-1989 on the ground that the named arbitrator granted about eight months time for the petitioner to file his award that the award was not passed by him within four months from the date of entering on the reference and that therefore his authority shall be revoked. It is clear from these facts and circumstances that the arbitrator had not yet applied his mind to the points in dispute between the parties inasmuch as the petitioner had not yet filed his counter-statements and that therefore he cannot be said to have "entered on the reference" as contemplated under the provisions of para 3 of the I-Schedule and as such it cannot be said that the arbitrator had failed to make his award within such period of four months as contemplated in para 3 of the 1st Schedule. Such view is clearly held by various High Courts.

6. In the Full Bench decision of the Calcutta High Court reported in Ramanath Agarwalla Vs. Goenka and Co. and Others, , the said question arose for consideration as to when the arbitrator can be said to have entered on the reference in a particular case and it was observed by the Full Bench, after referring to various decisions of their own High Court as well as other High Courts, as follows:

"Entering on reference, therefore refers to the first step that the arbitrator takes in the reference that is to say when he begins to deal with the reference. The arbitrator, under the Act, may have to do various ministerial acts but the doing of any of the ministerial acts is not entering on the reference. It is only when he first applies his mind to the dispute referred to him that he enters on the reference. When, however, in a particular case, he first applied his mind to the dispute would depend on the facts and circumstances of the case."

In a subsequent Division Bench decision of the same High Court reported in Bharati Mukherjee Vs. Shiva Trading Co. and Others, , which followed the above cited judgment of the Full Bench, it has been observed as follows:

"Schedule 1, para 3 requires the arbitrator to make the award within four months after entering on the reference. In this case the arbitrator issued a notice on 18-4-1980 but that was only a ministerial act. The arbitrator was called upon to enter on reference and the statement of claim in triplicate was given to the arbitrator by the applicant on 16-4-1980, On receiving that application the arbitrator sent a notice to the other party calling upon her to file her counter statement. That did not amount to entering on the reference as contemplated by Sch. 1, para 3 of the Act. An arbitrator enters on a reference when he first applies his mind to the dispute or controversy before him depending on the facts

and circumstances of each case."

The Calcutta High Court following the above said earlier decisions of the same Court in a subsequent decision of the Division Bench reported in Food Corporation of India Vs. Hari Prasad Kanoria and others, , wherein also it was observed that when the parties had filed their claim statements and counter claim before the arbitrator and a date for hearing was given by the arbitrator to enable the parties to lead evidence and make their submissions it cannot be inferred that the arbitrator had applied his judicial mind to the dispute referred to it and as such it cannot be said that he entered upon the reference as contemplated in para 3 of the Schedule I.

7. The same view was expressed by various other High Courts also. In the decision of the Bombay High Court reported in Jolly Steel Industries Pvt. Ltd., Poona Vs. Union of India and Another, , also it was held as follows:

"The arbitration proceedings consists of two stages. One such stage consists of merely ministerial acts while the second stage consists of effective adjudicative acts in furtherance of the work of arbitration, namely of proceedings to decide controversies in between the parties, whether arising out of the main dispute or procedural aspects in the disposal thereof The arbitrator cannot be said to have entered on the reference unless the second stage can be said to have been reached somehow or the other. Looked at from this point of view it is impossible to hold that the arbitrator had entered on reference on 17-11-1971 when nothing had happened on that date beyond the arbitrator issuing notices to the Parties, to file their statement of claims. The resume of events in this case indicates that no effective step was taken by the arbitrator, till the hearing of the dispute commenced on 21-2-1972. Each one of the earlier stages covered merely some or the other of the ministerial acts such as issuing of notices, acceptance of statement of claims and adjourning the case to suit the convenience of the parties, 21st February 1972 must be held, on the facts and in the circumstances of the case to be the date on which the arbitrator entered on reference."

8. In the decision of the Madhya Pradesh High Court reported in Ramsahai Sheduram Vs. Harishchandra Dullchandji and Another, , it is observed that the date on which the arbitrator can be said to have entered on the reference will be the date when he does the first appropriate judicial act in connection with the controversy referred to him by way of examining the witnesses, hearing arguments and the like and not the time when he has received the versions of both parties regarding the subject-matter of controversy between them.

9. It is clear from such views held by various High Courts that an arbitrator can be said to have entered on the reference only, when he applies his judicial mind to the disputes between the parties by taking up the matter for hearing and begins to examine the witnesses and hears the submissions made by both parties and not the time when he calls for the claim statements or counter statements from the parties. In the present case, the arbitrator had only granted

time to the revision petitioner to file his counter statements which were not yet filed. Therefore, it cannot be said that the provisions of para 3 of the I Schedule of the Act are violated in the present case, nor can it be said that the arbitrator had failed to pass his award within four months as contemplated under the said provisions and thereby became functus Officio. The lower Court has, therefore, clearly erred in revoking the authority of the named arbitrator solely on the ground that he did not make his award within four months and that there was delay on his part in making such award. As already stated above, such delay does not amount to negligence in performing his duties and no bias can also be attributed to him on account of such delay. As a matter of fact, the lower Court does not even find that there was any bias on the part of the named arbitrator on account of such delay in making the award.

10. It will also be useful to refer to the observations made by the Orissa High Court in a decision reported in *Srustidhar Mohanty Vs. The Steel Authority of India Ltd. and Others*, in this regard. It is observed therein that the provisions of the Schedule I, P.3 prescribe that the arbitrator must make the award within four months from the date of entering upon the reference, that the said provision unequivocally indicates that the arbitrator is entitled to make his award within such extended time as the Court may allow, that it is an implied term in the arbitration agreement that the award shall be made within four months but the said term is subject to extension with consent of parties like any other terms of contract and that where the arbitrator on request of opposite party granted several adjournments to file his objections and entered upon reference after expiry of implied period of four months, the arbitration proceedings cannot be said to be invalid "ipso facto". In the decision reported in *Shiv Ram v. Ram Rakha Mal*, AIR 1951, Pepsu 45, it is observed that the arbitrator's failure to make his award within four months does not automatically result in the cancellation of the arbitration agreement. In a recent decision of the Supreme Court reported in *City and Industrial Development Corporation of Maharashtra Limited v. Messers Motiram Budharmal*, JT 1993 (3) SC 612, it is observed that the delay caused by the named arbitrator from May 1992 to December, 1992 in taking effective steps for proceeding with the arbitration work was not such delay as to warrant the removal of the arbitrator, nor could it be said on account of such delay that there was lack of reasonable dispatch on his part warranting his removal. In the present case also, as already stated above, after the first respondent contractor submitted his claim statements, the arbitrator is said to have granted time for over a period of eight months to the revision petitioner to submit his counter and the petitions were filed by the contractor to revoke the authority of the named arbitrator only on account of such delay on the part of the arbitrator to proceed with the arbitration work. On account of such delay alone it cannot be said that the arbitrator has neglected his work, nor can it be said that he is guilty of any bias as claimed by the contractor in his petitions and relating to which no finding was given by the lower Court. In view of all these circumstances, the orders of the lower Court revoking the authority of the named

arbitrator and appointing an independent arbitrator cannot be sustained.

11. In the result, both the civil revision petitions are allowed, but without costs, and the impugned orders passed by the lower Court in both the matters in O.P. No. 491/89 and O.P. No. 492/89 on the file of the IV Addl. Judge City Civil Court, Hyderabad are set aside.