
(2004) 02 AP CK 0110

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No's. 866 and 879 of 2002

C. Venkateswara Rao

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 03-02-2004

Acts Referred:

Arbitration Act, 1940 — Section 15, 17, 30
Limitation Act, 1963 — Article 119

Citation : (2004) 3 ALT 620 : (2004) 2 ARBLR 300

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : A. Ramalingeswara Rao, for the Appellant; C.V. Vinitha Reddy, SC, for the Respondent

Final Decision : Dismissed

Judgement

T. Ch. Surya Rao, J.—In as much as the above two Civil Revision Petitions arise out of a common Judgment dated 28.11.2001 passed by the learned III Senior Civil Judge, Secunderabad, in O.S. No. 55 of 1994 and OP. No. 11 of 1999, they can be disposed of together.

2. The unsuccessful first defendant-respondent is the revision petitioner. He was a contractor who entered into an agreement bearing No. 1/CE/C/SC/85 dated 18.06.1985 with the Union of India, the respondent herein, agreeing inter alia to complete the work within 12 months from the date of the acceptance letter dated 05.01.1985. However, he could not complete the work in time despite the extension of time, time and again, and, therefore, the contract was terminated on 26.04.1988 with the risk and costs of the contractor. The work having been entrusted to some other contractor that was completed by him on account of which the Union of India incurred higher rates of expenditure. In view of the dispute between the Union of India and the contractor, it was referred to two Arbitrators by the General Manager, South Central Railway representing Union of India. The Arbitrators entered upon the reference and eventually passed an

Award dated 02.02.1994 whereunder the claim of the contractor to a tune of Rs. 1,50,000 was allowed and the counter claim made by the Railways was allowed for a sum of Rs. 5,06,710. After having adjusted the claim of the contractor, the Railways were held to be entitled to recover a sum of Rs. 3,56,710 from the contractor. Thereafter, the Railways filed O.P. No. 11 of 1999 to make the Award as rule of the Court and to Award interest from the date of the Award till the date of payment at the rate of 18% per annum.

3. In the meanwhile, the two Arbitrators filed O.S. No. 55 of 1994 to make the Award as rule of the Court.

4. Under the impugned common judgment, the Award was made as rule of the Court and the Court granted interest at the rate of 12% per annum from the date of decree till the date of payment or realisation, as the case may be, in favour of the Union of India. Assailing the said common judgment these two Civil Revision Petitions have been filed.

5. Sri. A. Ramalingeswara Rao, learned counsel appearing for the revision petitioner, raises the only point that there has been no application of mind by the Court below since it has not adverted to or addressed itself to the objections raised by the contractor-revision petitioner in its judgment.

6. It is discernible from the impugned judgment that the reasons mentioned by the Court below in making the Award as rule of the Court are two fold--firstly that the Court after having gone through the Award noticed the reasons given in support thereof by the Arbitrators as valid and reasonable and as it was not sitting in appeal over the same it was of the firm view having regard to the settled legal position that the Award passed by the Arbitrators could only be set aside on any of the grounds specified inter alia in Sections 30 and 33 of the Arbitration Act, 1940 (for brevity "the Act") and there appears no such ground to interfere with the Award ; and secondly the contractor who filed O.P. No. 47 of 1994 on the file of the self-same Court seeking to set aside the Award allowed it to be dismissed for default and his subsequent application in LA. No. 1372 of 1997 seeking to set aside the default order passed in the said O.P. also stood dismissed and, therefore, there was no other legal impediment to make the Award as rule of the Court.

7. In having come to the conclusion on the first aspect, the Court below seems to have adverted to the facts of the case and the reasons given by the Arbitrators in support of the Award after having considered the same by going through the Award it was of the firm view that the reasons mentioned by the Arbitrators were valid and reasonable. The Court below was of the further view that as the competing claims made by the parties before the Arbitrators were based on certain facts and the Arbitrators had arrived at the necessary conclusions basing on the evidence on record, it felt that it could not sit in appeal over the said findings and come to a different conclusion. It is not the case of the revision petitioner that the objections raised by him by filing the written statement in the

suit and the counter in O.P. No. 11 of 1999 do anyway pertain to the grounds as enjoined under Sections 15 and 30 of the Act. The Court can modify by its order any Award passed by the Arbitrators only when the grounds mentioned inter alia, in Section 15 of the Act are satisfied otherwise it shall have to pass a decree in terms of the Award as per Section 17 of the Act. The Court can also set aside the Award when the grounds mentioned inter alia in Section 30 are satisfied. Either way, if the grounds as mentioned in Section 15 or 30, as the case may be, are not satisfied, the Court has no other option except to pass the judgment in terms of the Award.

8. From a perusal of the written statement filed by the revision petitioner in the suit, it is obvious that the grounds mentioned inter alia therein do not pertain to any other grounds as enjoined u/s 15 or 30 of the Act, as the case may be. Various reasons have been given by the revision petitioner for the delay in carrying out the work entrusted to him. That is the reason why, the Court below was of the view that it is purely a question of fact and after having considered the competing claims of the parties, the Arbitrators after having given reasons in support of their conclusions rightly passed the Award. Having regard to the same, it cannot now be said that there has been no application of mind by the Court below to the objections taken by the revision petitioner inter alia in the written statement filed in the suit and the counter filed in O.P. No. 11 of 1999.

9. The law on the point is clear on the aspect. In Union of India and Others Vs. Manager, M/s. Jain and Associates, (SO, the Apex Court after having considered the provisions of Sections 15, 17, 30 and 33 of the Arbitration Act, 1940 in para 12 was of the following view :

"The result is--before pronouncing judgment, the Court has to apply its mind to arrive at the conclusion whether there is any cause to modify or remit the Award. Further the phrase "pronounce judgment" would itself indicate judicial determination by reasoned order for arriving at the conclusion that decree in terms of Award be passed. One of the meanings given to the word "judgment" in Webster's Comprehensive Dictionary [International Edn., Vol. I (1984)] reads thus : "the result of judging ; the decision or conclusion reached, as after consideration or deliberation". Further, Order 20, Rule 4(2), CPC in terms provides that "judgment" shall contain a concise statement of case, the points for determination, the decision thereon, and the reasons for such decision. This is antithesis to pronouncement of non-speaking order."

10. In M/s. Ispat Engineering and Foundry Works, B.S. City, Bokaro Vs. M/s. steel Authority of India Ltd., B.S. City, Bokaro, , the Apex Court held in para 4 thus :

"Needless to record that there exists a long catena of cases through which the law seems to be rather well settled that the reappraisal of evidence by the Court is not permissible."

11. In Madan Lal Vs. Sunderlal and Another, , the Apex Court held that there was

no special form prescribed for making an application u/s 30 of the Act and in an appropriate case an objection to an Award in the nature of a written statement might be treated as an application if it was filed within the period of limitation.

12. Turning to the facts in the instant case, admittedly, the petition in O.P. Np. 47 of 1994 was filed to set aside the Award and that petition having been dismissed ex parte attained finality eventually. The written statement in the suit in this case was filed long after the period of limitation enjoined under Article 119 of the Limitation Act. Even otherwise, the written statement contains only the objections to factual aspects and the reasons for the delay in carrying out the contract work. As discussed hereinabove, no ground whatsoever as enjoined u/s 15 or 30 of the Act, as the case may be, has been taken inter alia in the written statement. In that view of the matter, I am of the considered view that the Court below has not committed any error in exercising its jurisdiction; nor can it be said that it exceeded the jurisdiction that has been vested in it. Therefore, there is nothing to interfere with the impugned common judgment.

13. In the result, both the Civil Revision Petitions fail and are dismissed. Under the circumstances, no separate order as to costs.