

(2005) 04 AP CK 0031

In the Andhra Pradesh High Court

Case No : Arbitration Application No. 41 of 2004

Golkonda Engineering Enterprises Limited

APPELLANT

Vs

Assistant Director General (MP), Bharath Sanchar Nigam Ltd.,
Govt. of India Enterprises

RESPONDENT

Date of Decision : 25-04-2005

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(5), 11(6), 2, 42, 9

Citation : (2005) 4 ALT 247 : (2006) 1 ARBLR 368 : (2005) 4 BC 95

Hon'ble Judges : S. Ananda Reddy, J

Bench : Single Bench

Advocate : B. Chandrasen Reddy, for the Appellant; R.S. Murthy, for the Respondent

Final Decision : Dismissed

Judgement

S. Ananda Reddy, J.—This is an application filed u/s 11(5) and (6) of the Arbitration and Conciliation Act, 1996 read with the Scheme to Appointment of Arbitrators, 1996, seeking to appoint an independent Arbitrator for adjudication of the disputes between the parties.

2. It is stated that the applicant Company is a Limited Company, incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacturing various sizes of Polyethylene Insulated Jelly Filled Cables (PIJF Cables). The respondent-Bharat Sanchar Nigam Limited is the successor to the Department of Telecommunications, a Government of India Enterprise. The respondent called for tenders by a notification dt. 7-8-2002 for the supply of PIJF cables. The applicant was the successful bidder in respect of the part of the tendered quantity. Accordingly, the applicant was called upon to supply PIJF cables under 2002-2003 tender by placing an advance purchase order dt. 5-9-2002, followed by a purchase order dt. 29-11-2002 issued by the BSNL, Gujarat Circle. It is stated that pursuant to the said tender, purchase orders are placed by the respondent, and the applicant Company supplied part of the

quantity of PIJF Cable. But, however, the entire quantity could not be supplied due to the National Wide Transport strike between 9-4-2003 to 23-4-2003, which was followed by the Workers strike at the applicant's factory between 20-5-2003 and 18-7-2003. In view of the above, the applicant could not supply the entire quantity of the cable within the stipulated period. Therefore, the applicant sought for extension of time under Force Majeure Clause without liquidated damages, as per Clause No. 17 of General (Commercial) Conditions of Contract. But, however, though the respondent granted extension of time, but the said extension was by imposing liquidated damages, and therefore, there was correspondence and the applicant could not supply the left over quantity of the cable. The respondent, therefore, unilaterally short-closed the purchase order and forfeited the bank guarantee of Rs. 5,13,948/- submitted by the applicant to the respondent as per the terms of the advance purchase order and under the terms of the tender. Therefore, the applicant issued a notice to the respondent addressed to the Assistant General Manager, Office of the Chief General Manager, Gujarat State Circle, Ahmedabad seeking reference of the dispute to the arbitration in terms of Clause 20 of the General Conditions of Contract by letter dated 4-11-2003. As there was no response, and, on the other hand, as the respondents tried to encash the bank guarantee, the applicant filed O.P., before the Chief Judge, City Civil Court, Hyderabad, u/s 9 of the Arbitration and Conciliation Act, 1996 obtained interim injunction against the respondent restraining it from encashing the bank guarantee till the disposal of the present petition. According to the petitioner, as there is a provision in the terms of the General Conditions of Contract for reference to the arbitration, and as the respondent failed to refer to the arbitration, this Court has got jurisdiction to refer the matter for adjudication after appointing an Arbitrator.

3. A counter is filed on behalf of the respondent disputing and denying the allegations of the applicant. One of the stands of the respondent is that this Court has no jurisdiction to entertain the application, as the entire transaction took place at the place of the respondent i.e., in Gujarat Circle, which issued the tender notification as well as received and accepted the tenders, and placed the purchase orders from the office of the respondent. Therefore, none of the part of the contract had concluded within the jurisdiction of this Court. Therefore, this Court has no jurisdiction.

4. The learned counsel also referred to Section 2(e) and Section 42 of the Arbitration and Conciliation Act, 1996 and contended that the Principal Civil Court, as defined u/s 2(e), is entitled to adjudicate upon the dispute within whose jurisdiction the cause of action has arisen. According to the said provision, it is contended by the learned counsel that it is only the Gujarat High Court, which has got the jurisdiction and not the Andhra Pradesh High Court. Alternatively, even on merits also the learned counsel contended that even as per Clause 20 of the General Conditions, which provides for the arbitration, a reference to the arbitration is only to the disputes other than those, which are specifically provided under the terms of the agreement. According to the learned

counsel, Clause-15 provided for short closure as well as cancels the purchase order by the respondent for the delayed supply. Therefore, when the contract or the purchase order has been short-closed, it is a matter provided under the terms for which there is no provision for reference to arbitration. Therefore, according to the learned counsel, it is not even a case for reference to the arbitration.

5. The learned counsel for the applicant relied upon the following decisions in support of his contentions:

Bhagyanagar Metals Limited Vs. Bharath Sanchar Nigam Limited, ; Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, ; National Textile Corpn. Ltd. and Others Vs. Haribox Swalram and Others, ; Union of India and Others Vs. Adani Exports Ltd. and Another, .

6. The learned Counsel for the Respondent relied upon the following decisions in support of his case:

Kamala Solvent Vs. Manipal Finance Corporation Ltd., Manipal and Others, ; National Textile Corporation, Ltd. v. Haribox Swalram (3 supra); Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, ; K. Sasidharan Vs. Kerala State Film Development Corpn., ; Executive Engineer, R.E.O. Vs. Suresh Chandra Panda (Dead) Through Lrs, ; M/s. Prabartak Commercial Corporation Ltd. Vs. The Chief Administrator Dandakaranya Project and another, ; B.R. Electricals v. The Chairman and Ors., 2003 (1)Arb.LR. 375.

7. In fact, in the present case, it is not necessary to refer to all the catena of decisions relied upon by both sides. The leading decision was rendered in Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, , where the Apex Court, in fact, reiterated its stand with reference to the territorial jurisdiction. According to the ratio laid down by the Apex Court, the bundle of facts stated have to be considered to find out whether any part of the jurisdiction had arisen within the jurisdiction of the Court, which was approached seeking the relief. Without going into the merits or otherwise of the facts stated therein, if no part of the cause of action had arisen within the jurisdiction of the Court, which was approached, the Court has to decline to entertain the lis. In fact, in that case, the respondent had approached the Calcutta High Court seeking certain relief, alleging that in respect of an advertisement issued by the appellant calling for the tenders for setting up of a Kerosene Recovery Processing Unit at the Hazira Complex in Gujarat, it sent its tender from its registered office at Calcutta and the acceptance of the tender was received at Calcutta. Therefore, it was claimed that the Calcutta High Court has got jurisdiction to adjudicate upon the lis raised by the respondent. The Apex Court after referring to the decision in Chand Kaur v. Pratap Singh (1889) Cal 98) observed as under:

"Therefore, in determining the objection of lack of territorial jurisdiction the Court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or

otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a Writ Petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the Writ Petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5,7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court."

The Court, after referring to the facts stated in that case, concluded as under:

"From the facts pleaded in the writ petition, it is clear that NICCO invoked the jurisdiction of the Calcutta High Court on the plea that a part of the cause of action had arisen within its territorial jurisdiction. According to the NICCO, it became aware of the contract proposed to be given by ONGC on reading the advertisement, which appeared in the Times of India at Calcutta. In response thereto, it submitted its bid or tender from its Calcutta office and revised the rates subsequently. When it learnt that it was considered ineligible it sent representations, including fax messages, to EIL ONGC, etc. at New Delhi, demanding justice. As stated earlier, the Steering Committee finally rejected the offer of NICCO and awarded the contract to CIMMCO at New Delhi on January 27, 1993. Therefore, broadly speaking, NICCO claims that a part of the cause of action arose within the jurisdiction of the advertisement in Calcutta, it submitted its bid or tender from Calcutta and made representations demanding justice from Calcutta on learning about the rejection of its offer. The advertisement itself mentioned that the tenders should be submitted at New Delhi and that a final decision whether or not to award the contract to the tenderer would be taken at New Delhi. Of course, the execution of the contract work was to be carried out at Hazira in Gujarat. Therefore, merely because it read the advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action. So also the mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action. Besides, the fax message of January 15, 1993, cannot be construed as conveying rejections of the offer as that fact occurred on January 27, 1993. We are, therefore, of the opinion that even if the averments in the Writ Petition are taken as true, it cannot be said that a part of the cause of action arose within the jurisdiction of the Calcutta High Court."

Therefore, the Apex Court held that unless part of the cause of action fell within the jurisdiction of the Court, the Court is not entitled to entertain the petition.

8. If we examine the facts of the present case in the light of the above, admittedly, the tender notification was issued by the respondent from its Chief General Manager's Office, Gujarat Telecom Circle, Ahmedabad. The tenders were

received at the same office, pursuant to the tenders submitted by the applicant along with the other tenders, the advance purchase orders as well as the purchase orders were also placed from the same office at Ahmedabad. the petitioner also provided a bank guarantee in favour of the purchaser i.e., Chief General Manager, Gujarat Telecom Circle, Ahmedabad. But, however, the applicant pleaded that it has got a manufacturing unit at Hyderabad and even with reference to the manufactured cable, the same is inspected before dispatch to the respondent at the Industrial Unit of the applicant. Therefore, part of the cause of action would arise within the jurisdiction of this Court. But, in the present case, the dispute is whether the short-closure of the contract and forfeiture of the bank guarantee is the disputed issue and also the extension of time imposing liquidated damages. All these actions have emanated only from the office of the respondent i.e., from the Ahmedabad. No part of it had emanated from outside of that office. Further, the General Conditions of the contract themselves provide under Clause 22 as to the legal jurisdiction, which is as under:

"It is also a condition of this contract that the Court which has territorial jurisdiction upon the place from which the acceptance of tenders is issued shall have absolute jurisdiction for adjudicating any differences or disputes arising of this contract."

A perusal of the above also shows that the Court, which has territorial jurisdiction upon the place from which the acceptance of the tender is issued shall have the absolute jurisdiction for adjudication of any differences or disputes arising by the contract. This concludes that Gujarat High Court alone has got exclusive jurisdiction over the disputes arising out of the contract. In the light of the decision of the Apex Court and also the terms of the General Conditions of Contract, I do not find that there is any merit in the claim of the applicant that this Court has got territorial jurisdiction in respect of the lis raised by the applicant.

9. Under the above circumstances, and on the simple ground of lack of jurisdiction, this Court declines to entertain the present application for want of territorial jurisdiction over the dispute in question as no part of the cause of action has arisen within the jurisdiction of this Court.

10. The application is accordingly rejected.