

(1989) 03 KL CK 0052
In the High Court Of Kerala
Case No : M.F.A. No. 575 of 1983

Government of Kerala and Another

APPELLANT

Vs

M. Kunha Abdulla

RESPONDENT

Date of Decision : 21-03-1989

Acts Referred:

Arbitration Act, 1940 — Section 20

Citation : AIR 1990 Ker 150 : (1989) 2 ILR (Ker) 672

Hon'ble Judges : P.C. Balakrishna Menon, J; P. Krishnamoorthy, J

Bench : Division Bench

Advocate : M.C. John, Govt. Pleader, for the Appellant; K.P.V.B. Ejman, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna Menon, J.—This appeal by the State is against the decision of the Court below declining to set aside the award of the arbitrator and passing a decree in terms thereof. The contractor had entered into an agreement with the Government on 14-11-1979 for the construction of a masonry drain at Iritty town. The probable amount of the contract was fixed at Rs. 1,86,356/-. the work was to be completed on or before 13-4-1980. According to the contractor he could not complete the work within the stipulated lime for reasons beyond his control. The work was, however, completed on 20-11-1980.

2. Disputes arose between the parties relating to the amount payable to the contractor. According to the contractor he is entitled to extra payment for escalation of cost for the work done after 13-4-1980. The agreement between the parties contained a clause for arbitration of disputes between them by the Chief Engineer (arbitration). The dispute was accordingly referred to the named arbitrator who entered upon the reference and passed an award on 2-11-1981. It is a non-speaking award, the operative portion of which reads:

"A. Claims:

Claim No. 1. The claimant shall be paid a fifteen (15) per cent increase in the rates for all items of work done after C.C. I. and part, such increase being reckoned on the value of the work excluding cost of materials supplied by the respondents.

Claim No, 2. The claim for interest is declined. The parties shall suffer their respective costs in these proceedings.

B. Counter Claims :

The counter claim for the costs of the respondents is also dealt with under the Award Claim No. (2) supra.

All other claims and counter-claims are rejected."

3. The objection that there was no dispute for decision by the arbitrator for the reason of the acceptance of the final bill by the contractor was rejected by the Court below on the ground that the arbitrator should be deemed to have overruled the said objection when he passed an award directing payment as aforesaid.

4. The learned Senior Government Pleader appearing on behalf of the appellant has urged the same point before us. According to him on acceptance of payment of the amount due under the final bill, there is a final settlement of accounts between the parties and there was no dispute to be settled by arbitration. We see no merit in this contention. The question whether there is an arbitrable dispute between the parties is also a matter for decision by the arbitrator and when he passed a non-speaking award, it should be held that the arbitrator has overruled the objection raised at the instance of the State that there is no arbitrable dispute. In *Damodar Valley Corporation Vs. K.K. Kar*, it is stated at page 160 :

"It appears to us that the question whether there has been a full and final settlement of a claim under the contract is itself a dispute arising "upon" or "in relation to" or "in connection with" the contract. These words are wide enough to cover the dispute sought to be referred. The respondent's contention is that the contract has been repudiated by the appellant unilaterally as a result of which he had no option but to accept that repudiation because if the appellant was not ready to receive the goods he could not supply them to him or force him to receive them. In the circumstances, while accepting the repudiation, without conceding that the appellant had a right to repudiate the contract, he could claim damages for breach of contract. Such a claim for damages is a dispute or difference which arises between himself and the appellant and is "upon" or "in relation to" or "in connection with" the contract."

It is further stated at page 161 :

"A contract is the creature of an agreement between the parties and where the parties under the terms of the contract agree to incorporate an arbitration

clause, that clause stands a part from the rights and obligations under that contract, as it has been incorporated with the object of providing a machinery for the settlement of disputes arising in relation to or in connection with that contract. The questions of unilateral repudiation of the rights and obligations under the contract or of a full and final settlement of the contract relate to the performance or discharge of the contract. Far from putting an end to the arbitration clause, they fall within the purview of it."

In Union of India (UOI) and Another Vs. L.K. Ahuja and Co., it is stated at page 1175 :

"In order to be entitled to ask for a reference u/s 20 of the Act, there must be an entitlement to money and a difference or dispute in respect of the same. It is true that on completion of the work, right to get payment would normally arise and it is also true that on settlement of the final bill, the right to get further payment gets weakened but the claim subsists and whether it does subsist, is a matter which is arbitrable."

5. We are therefore clear in our minds that the question whether there was a dispute arbitrable between the parties is also arbitrable and the arbitrator had the jurisdiction to pass the award.

We see no merit in the appeal. It is accordingly dismissed. No costs.