

(1997) 02 AP CK 0053

In the Andhra Pradesh High Court

Case No : Arbitration Application No. 1 of 1996

G.V. Pratap Reddy

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 13-02-1997

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(5)
Contract Act, 1872 — Section 19

Citation : (1997) 5 ALD 487 : (1997) 2 ALT 796 : (1997) 1 APLJ 246

Hon'ble Judges : M.N. Rao, J

Bench : Single Bench

Advocate : M. Ravindranath Reddy and B.V. Krishna Rao, for the Appellant; A.G. and Govt. Pleader, for the Respondent

Judgement

M.N. Rao, J.—Pursuant to an order made by the Hon'ble Chief Justice u/s 11(5) of the Arbitration and Conciliation Act, 1996 (for short the Act), the matter came up before me for hearing.

2. By this application, the petitioner is seeking appointment of a retired Judge of the High Court or any of the retired Chief Engineers as mentioned in his notice dated 3-4-1996 as Sole Arbitrator for adjudicating the questions mentioned in paragraph 7 of the application which are as follows :

(a) "Whether the action taken by the Executive Engineer, T.G.P. Division No. 1, Velugode, vide his letter No. 482 M dated 24-7-1995 under Clause 61 of P.S. to A.P.S.S. is justified and valid in law ?"

(b) "Whether the consent given by me for extension of time for completing the work, i.e., agreement period, is vitiated by coercion within the meaning of Section 19 of the Indian Contracts Act, 1872, and whether the extension of time so granted is binding on me ?"

(c) "Whether I am entitled to be paid on "quantum meruit" basis for the work done even during the so-called agreement period ?"

(d) "Whether I am entitled to be paid at reasonable rates i.e., prevailing market rates, at the time of execution of such work items which could not be carried out by me during the agreement period due to the failure of the department in giving possession of the site to me plus profit and overheads (without prejudice to the dispute raised under Item (c) above) ?"

(e) "Whether I am entitled to be paid for the item of levelling, watering and consolidation of earthen embankment at estimate rates plus tender premium, or reasonable rates prevailing at the time of execution of the said item plus profit and overheads (without prejudice to the dispute raised under item (c) above)?"

(f) "Whether I am entitled to be paid for the item of forming embankment from El. + 254.00 (in the reach from Km. 3.250 to Km. 4.000) and from El. + 249.00 (in the reach from K. 4.000 to 4.300) of from a level equal to +254.00 plus shrinkage allowance laid by the first agency at 2cms. per metre height of bound formed by him, and from a level equal to +249.00 plus shrinkage allowance respectively in the said two reaches ?"

(g) "Whether I am entitled to be paid for the vertical compression undergone by the earthen embankment (bund) during construction ?"

(h) "Whether I quarried the earth for forming embankment within 500 meters from the upstream toe of the earth dam ?"

(i) "Whether I am entitled to be paid for extra lead i.e., 2 kms. involved in bringing the hearting soils from an alternative quarry i.e., other than that specified in the agreement ?"

(j) "Whether seigniorage charges and cess on seigniorage charges are recoverable from me, i.e., from my work bills in respect of sand, stones, and broken stone metal used on this work."

In para 8 of the application, the valuation of the subject-matter is stated as "about Rs. 280.00 lakhs."

3. The Articles of Agreement concluded, between the petitioner-contractor and His Excellency, the Governor of Andhra Pradesh by paragraph 3 provides :

"(3) Adjudication of Disputes :

"Except as otherwise provided in the contract, any disputes and differences arising out of or relating to the contract shall be referred to adjudication as follows :

(1) (i) Settlement of all disputes upto Rs. 50,000/- in value and below by way of adjudication to be referred as follows :

(a) Claims upto Rs. 10,000/- in value : Superintending Engineer of another Circle in the same department (i.e.), Superintending Engineer, Telugu Ganga Project Circle, Cuddapah.

(b) Claims above Rs. 10,000/- and upto Rs. 50,000/- in value : Another Chief Engineer of the same Department (i.e.) Chief Engineer, Central Designs Organisation, Hyderabad.

The arbitration proceedings will be conducted in accordance with provisions of the Arbitration Act, 1940 as amended from time to time. The Arbitrator shall invariably give reasons in the award.

(ii) Settlement of all claims above Rs. 50,000/- in value :

All claims above Rs. 50,000/- in value shall be decided by the Civil Court of competent jurisdiction by way of a regular suit and not by arbitration.

(2) A reference for adjudication under this Clause shall be made by either party to the contract within six months from the date of intimating the contractor of the preparation of final bill or his having accepted payment.

(3) The relevant Clauses of Andhra Pradesh Standard Specifications stand modified to the extent provided in this Clause.

(4) xxx xxx xxx (5) xxx xxx xxx (6) xxx xxx xxx

4. Clause 73 of the Preliminary Specifications to Andhra Pradesh Detailed Standard Specifications (for short APDSS) is in the following terms :

"Arbitration : In case of any dispute or differences between the parties to the contract either during the progress or after the completion of the works or after the determination, abandonment, or breach of contract, as to the interpretation of the contract, or as to any matter or thing arising thereunder except as to the matters left to the sole discretion of the Executive Engineer under Clauses 20, 22, 27(c), 29, 36, 37 and 40 of the preliminary specification, or as to the withholding by the Executive Engineer of payment of any bill to which the contractor may claim to be entitled, then either party shall forthwith give to the other notice of such dispute or difference, and such dispute or difference shall be and is hereby referred to the arbitration of the Superintending Engineer of the nominated circle mentioned in the "Articles of Agreement" (hereinafter called the Arbitrator).

5. It is the contention of Mr. Ravindranath Reddy, learned Counsel for the petitioner that as the petitioner-contractor is only seeking interpretation of certain Clauses of the contract, paragraph 3 of the Articles of Agreement concerning adjudication of disputes has no application. I do not agree. Para 3 bears the heading "Adjudication of Disputes". It opens with the words :

"Except as otherwise provided in the contract"

Sub-para (3) specifically lays down that the relevant Clauses of Andhra Pradesh Standard Specifications stand modified to the extent provided in para 3, namely, "adjudication of disputes" involving a sum of Rs. 50,000/- should be by the officers of the Government-Superintending Engineer - and settlement of claims

above Rs. 50,000/- in value should be decided by the Civil Court of competent jurisdiction by way of a regular suit and not by arbitration. By seeking only an interpretation of the Clauses of the Contract, a contractor cannot lay claim in a sum, in excess of Rs. 50,000/- since that is expressly barred by the aforesaid para 3 of the Articles of Agreement. What is expressly forbidden cannot be overcome by resort to an indirect interpretative process. It is undeniable that the claim of the contractor in the disputes raised by him is in the region of 280 lakh rupees. If it is so, as per the Articles of Agreement, the remedy is only by way of a regular civil suit and not by arbitration as explicitly mentioned in para 3 of the Articles of Agreement which bears the heading "Adjudication of Disputes". Mr. Ravindranath Reddy's contention that an Arbitral Tribunal can rule on its jurisdiction as regards its competence u/s 16 of the Act and, therefore, the matter may be referred to arbitration, in my considered opinion, is untenable. When explicitly the Articles of Agreement excludes arbitration in regard to any disputes involving claims above Rs. 50,000/- and the remedy provided is only a regular suit, there is no warrant for appointment of an Arbitrator for the purpose of enabling him to give a ruling as to the limits of his own jurisdiction. I am satisfied that paragraph 3 of the Articles of Agreement over-rides Clause 73 of the Preliminary Specifications to A.P.D.S.S.

6. The aforesaid view derive support from the ruling of the Supreme Court in Vishakhapatnam Urban Development Authority v. V. Narayan Raju 1995(2) SCALE 234, wherein referring to G.O.Ms. No. 430 dated 24th October, 1983, by which paragraph 3 of the Articles of Agreement, extracted supra, was introduced, the Supreme Court held :

"Having perused G.O.Ms. No. 430 dated 24th October, 1983 we have no doubt that it clearly provides for arbitration in respect of claims only upto Rs. 50,000/- and not above that amount, making it clear in paragraph 2 that the claims above Rs. 50,000/- are to be adjudicated by the Court of competent jurisdiction. No doubt the expression "Court of competent jurisdiction" is mentioned under the head "panel of Arbitrators" since the same para deals with "claims up to Rs. 10,000/-" as well as "claims above Rs. 10,000/- and upto Rs. 50,000/-". That is however, in inartistic drafting of the G.O.Ms., but it cannot be construed to mean that claims above Rs. 50,000/- are to be adjudicated by arbitration in which the Judge presiding over the Court of competent jurisdiction is to act as the Arbitrator. It would be absurd to make such a construction of that part of the G.O.Ms., which would oblige the Judge to act as the Arbitrator. The subsequent G.O.Ms. No. 160, dated 1-6-1987 merely clarifies this fact on account of an attempt by some contractors to misconstrue the earlier G.O.Ms. as clearly stated in the subsequent G.O.Ms. The contention of the respondent is wholly untenable."

7. This application, therefore, fails and accordingly dismissed. No cost.

8. Application dismissed.