
(2003) 03 AP CK 0121
In the Andhra Pradesh High Court
Case No : AA No. 95 of 2002

Madhava Hytech Engineers Private Limited	APPELLANT
Vs	
Union of India (UOI) and Another	RESPONDENT

Date of Decision : 07-03-2003

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(6)

Citation : (2003) 3 ALD 60 : (2003) 3 ALT 16 : (2003) 2 ARBLR 417

Hon'ble Judges : Devinder Gupta, C.J

Bench : Single Bench

Advocate : B. Nalin Kumar, for the Appellant; C.V. Vinitha Reddy, for the Respondent

Final Decision : Allowed

Judgement

Devender Gupta, C.J.—This is an application u/s 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitral Tribunal to enter upon reference and resolve the disputes arising out of letter dated 31.3.2001 in accordance with law.

2. The applicant was awarded the contract work by the respondent-South Central Railways through their letter No.AEN/C/ROB/RJY/LC-488/2001 and agreement was entered into on 24.4.1995. The work was completed by the applicant on 30th September, 1997. There was delay in execution of the work which the applicant attributes to the respondents. The applicant submitted its claims through letter MH/ROB-488/Claim/1, dated 31.3.2001 addressed to the Chief Administrative Officer, South Central Railways, Secunderabad.

3. The case of the applicant is that no decision was taken by the respondent on the claim, which it was supposed to take in terms of clause 64(1)(i) of the General Conditions of Contract. As such a legal notice dated 3.10.2002 was got served on the respondents calling upon to refer the disputes relating to payment of final bill for arbitration within a period of one month from the date of receipt of

the notice failing which it would be constrained to approach competent forum for appointment of Arbitral Tribunal. Applicant's further case is that within 30 days of the date of receipt of notice dated 3rd October 2002 Arbitrator was not appointed by the respondents, which led the applicant to file the present application.

4. Respondents in counter-affidavit raised an objection to the maintainability of the application stating that the application is premature. It has been filed before expiry of 120 days, which is the period stipulated in clause 64(1)(i) for the respondents to take a decision and in case decision is not taken within that period, demand for arbitration could be raised thereafter as stipulated in clause 64(1)(ii) of the General Conditions of Contract. Since the applicant got served the notice on 3rd October 2002 and filed the application within a period of 120 days, the application cannot be entertained. Strong reliance, for this submission is placed on a decision rendered by a learned single Judge of this Court in P. Siva Prasad Vs. South Central Railways, . Another objection has been raised that the contractor has not identified the disputes himself. Disputes were raised in the legal notice only. Since respondents could have taken decision within 120 days, the Chief Engineer, Constructions, through his letter dated 28.11.2002 furnished to the applicant a panel of officers from whom applicant was asked to choose an Arbitrator. It is stated that the applicant failed to choose the arbitrator. Therefore, the application is liable to be rejected.

5. In support of the first objection of the respondent, reliance placed upon the decision in P.Siva Prasad's case (supra), is misconceived. In the event of respondent-Railways failing to take a decision in 120 days, a right accrues to the applicant to demand in writing that the differences be referred to arbitration. In the instant case demand was raised by the applicant through its letter dated 31st March, 2001. It was on this demand of the applicant that decision had to be taken by the Railways within 120 days. When the claim referred to in letter dated 31.3.2001 was not accepted by Respondent, the applicant did not approach the Court before expiry of 120 days, rather kept on waiting for the said period to lapse. Only on 3rd October, 2002, the applicant got served legal notice seeking arbitration. In the said legal notice reference has been made to the applicant's claim made by it through letter dated 31st March, 2001. In P.Siva Prasad's case, application seeking appointment of Arbitrator was filed within a period of 120 days though Railways had 120 days' time to take a decision on the demand for settlement of claim. There is a distinction between raising a demand for settlement of claim and raising a demand for appointment of an Arbitrator. In the present case demand for appointment of arbitrator was made in subsequent letter dated 3rd October 2002 whereas demand for settlement of claim was made as far back as on 31st March, 2001. Therefore, the objection raised on behalf of the respondent has no force.

6. In view of the fact that within the period of 30 days from the date of receipt of the letter dated 3rd October, 2002 no decision was taken by the respondents, in

view of Clause 64, the only recourse left open is to get the disputes resolved by way of Arbitration. The Application is, therefore liable to be allowed.

7. Accordingly, I appoint, Shri K. Rama Swamy, a Retired Judge of the Supreme Court of India as the sole Arbitrator to enter upon reference and resolve the dispute(s) between the Applicant and the respondent-South Central Railways. Applicant is at liberty to file any additional claim or documents, or records etc., etc., before the sole Arbitrator. The respondent is at liberty to file its opposition to the claim made by the applicant herein and also submit documents, if any, in support of the same. The Arbitrator is at liberty to fix his fee and other expenses in consultation with both parties. The Arbitrator is requested to enter upon the reference as early as possible. The Arbitration Application is accordingly disposed of.