
(2002) 12 AP CK 0026
In the Andhra Pradesh High Court
Case No : AA No. 62 of 2002

Muddu Krishna Rangaiah

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-12-2002

Acts Referred:

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

Citation : (2003) 1 ALD 741 : (2003) 1 ALT 272 : (2003) 1 ARBLR 642

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Somanchi Venkateswarlu, for the Appellant; Gouri Shankar Sanghi, SC for Railways, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—This is an application u/s 11(5) and (6) of the Arbitration and Conciliation Act, 1996 (for short, the Act) filed by the applicant praying to appoint sole arbitrator to adjudicate the dispute/claims raised by the petitioner. Be it noted that the applicant was awarded work of construction of Type V Quarters, one Unit for Officers at Guntakal. He entered into agreement No. 33/Co-ord/GTL/97, dated 27.3.1997. The value of the work is Rs. 4,19,641/- which has to be completed within a period of six months. He completed the work by 31.10.1997. A final bill was prepared by the respondents which he alleges to be defective. He therefore signed the final bill allegedly under protest and claims that the same is not settled. Therefore, by letter dated 31.12.2001 he demanded the respondents to pay the alleged dues within fifteen days, or else to refer the dispute/claims to the arbitrator under Clauses 63 and 64 of the General Conditions of Contract (GCC), which were incorporated in the agreement. As no response was received by him, he filed the application. After receiving notice, the first respondent filed a counter-affidavit opposing the application inter alia on the following grounds:

(i) The applicant claimed an amount of Rs. 3,97,800/- vide his letter dated

31.12.2001 and therefore unless he served notice under Clauses 63 and 64 of GCC claiming an amount of Rs. 9,31,981/- this application is not maintainable;

(ii) The applicant submitted no claim certificate to the effect that he has no claims standing against Railways and therefore in accordance with Clause 43(2) read with Clause 63 the dispute if any falls in the excepted categories, it is not arbitrable; and,

(iii) The claims under various heads are false.

2. In the counter-affidavit it is, however, admitted that the final bill for an amount of Rs. 21,000/- is under process of payment and that the same will be paid on receipt of sanction by the competent authority. Likewise, balance of 10% security deposit of Rs. 2,981/- will be released immediately on payment of final bill.

3. Sri S. Venkateswarlu, learned Counsel for the applicant, submits that even if it is assumed that the applicant has given no claim certificate, the dispute does not cease to be arbitrable. Alternatively he contends that on their own admission the applicant has accepted the final bill under protest and therefore the dispute still subsists especially when the amounts under various claims are not settled by the first respondent. He also brought to the notice of this Court a recent judgment of this Court in Y. Chenna Reddy Vs. Union of India (UOI) and Others, , in support of the contention that mere submission of "No Claim Certificate" by a contractor cannot be a ground for refusing Arbitration Application and whether or not a dispute falls in excepted category has to be decided by the arbitrator.

4. Per contra, Sri Gouri Shanhar Sanghi, learned Counsel for respondents, placed reliance on judgment of this Court in Y. Babu Rao Vs. Union of India and others, , and judgment of the Supreme Court in General Manager, Northern Railway v. Sarvesh Chopra, 2002 (2) ST 170 : (2002) 1 Arb. LR 506, in support of the contention whether or not "No Claim Certificate" submitted by the contractor is disputed, when once the dispute falls within the ambit of Clause 43(2) read with Clause 63 of GCC there is no arbitrable dispute and therefore arbitrator cannot be appointed in exercise of power u/s 11 of the Act.

5. Having regard to the rival submissions the only issue that falls for consideration is whether the prayer for referring the dispute for arbitration is maintainable ?

6. It is not disputed or denied that the contract between the applicant and the respondents is subject to binding covenants in GCC. Clause 43(2) of GCC reads as under.

43. (2) Signing of no claim certificate :--The contractor shall not be entitled to make any claim whatsoever against the Railway under or by virtue of or arising out of this contract, nor shall the Railway entertain to consider any such claim, if made by the contractor after he shall have signed a "No Claim Certificate" in favour of the Railway in such form as shall be required by the Railway after the

works are finally measured up. The contractor shall be debarred from disputing the correctness of the items covered by "No Claim Certificate" or demanding a clearance to arbitration in respect thereof.

7. It is also necessary to extract Clause 63 of GCC which reads as under :

63. Matters finally determined by the Railway :--All disputes and differences of any kind whatsoever arising out of or in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract shall be referred by the contractor to the Railway and the Railways shall within 120 days after receipt of contractor's representation make and notify decisions on all matters referred to by the contractor in writing provided that matters for which provision has been made in Clauses 8(a), 18, 22(5), 39, 43(2), 55, 45(A), 55-A(3), 57, 57-A, 61(1), 61(2) and 62(1)(b) of General Conditions of Contract or in clause of the special conditions of the contract shall be deemed as "excepted matters" and decision of the Railway authority thereon shall be final and binding on the contractor provided further that "excepted matters" shall stand specifically excluded from the purview of the arbitration clause and not be referred to arbitration.

8. A plain reading of above clauses together would show that where contractor submits a "No Claim Certificate" as is envisaged in Clause 43(2), the dispute shall be deemed as excepted matter and the same shall stand specifically excluded from the purview of the arbitration clause in Clause 64(1)(i). Needless to point out that the procedure for invoking arbitration clause is contained in Clause 63 and therefore when once contractor submits any claim certificate, he/she cannot invoke arbitration clause notwithstanding any amount of dispute whether or not "No Claim Certificate" is obtained or not obtained genuinely. The same is the ratio of the decision of this Court in Babu Rao's case (supra) wherein His Lordship Justice S.B. Sinha, CJ. (Chief Justice as he then was) observed as under;

As indicated hereinbefore, no claim certificate was filed at the time of preparation of the final bill. Such acceptance was unconditional. Final bill was also prepared after the measurement was taken in presence of the applicant. He signed the final bill and the amount thereunder had been paid. He had received the cheque for the same amount without any protest or demur whatsoever. All other consequential steps pursuant to or in furtherance thereof have been taken. In this situation, having regard to the nature of the claim as referred to hereinbefore, I am of the opinion that as a fresh contract has come into being in terms whereof the applicant had agreed not to lay any further claim in the matter and unless the same is set aside by a competent Court of Law; it must be held that the dispute is not an arbitrable one.

9. In the recent decision of the Supreme Court in Sarvesh Chopra's case (supra) the Apex Court considered extent and scope of power of Civil Court u/s 20 of Arbitration Act, 1940 in appointing arbitrator. Their Lordships having considered

relevant decisions laid down as under:

To sum up, our conclusion are: (i) While deciding a petition u/s 20 of the Arbitration Act, 1940, the Court is obliged to examine whether a difference which is sought to be referred to arbitration is one to which the arbitration agreement applies. If it is a matter excepted from the arbitration agreement, the Court shall be justified in withholding the reference, (ii) to be an excepted matter it is not necessary that a departmental or "in-house" remedy for settlement of claim must be provided by the contract. Merely for the absence of provision for in-house settlement of the claim, the claim does not cease to be an excepted matter, (iii) an issue as to arbitrability of claim is available for determination at all the three stages - while making reference to arbitration, in the course of arbitral proceedings and while making the award a rule of the Court.

10. Sri Venkateswarlu, learned Counsel for the applicant, made a vehement plea to distinguish the decision in Sarvesh Chopra's case (*supra*). He would submit that the case therein arose under Arbitration Act, 1940 and it has no relevance to the case on hand. I am afraid, I cannot agree with the same. Whether it is u/s 20 of the Arbitration Act, 1940 or u/s 11(4), (5) and (6) of the Arbitration and Conciliation Act, 1996, the principle remains the same. It must not be forgotten that either Section 20 of the Arbitration Act, 1940 or Section 11 of the Arbitration and Conciliation Act, 1996, do not lay down any guidelines for appointing arbitrator. While appointing arbitrator either Civil Court or this Court cannot ignore binding covenant or clause between the parties. If the parties specifically agree that a particular matter is not arbitrable, it would not lie in the mouth of a party to urge before this Court notwithstanding the given factual matrix still arbitrator can be appointed. In the considered opinion of this Court, in view of "No Claim Certificate" submitted by the applicant, which is not denied, the dispute is not arbitrable and the application is not maintainable. Reliance placed by the learned Counsel for the applicant on the statement in the counter-affidavit to the effect that the applicant removed the words "Signature under Protest" and initialed the measurements in the concerned measurement book and therefore inference can be drawn that "No Claim Certificate" was not bona fide, has to be rejected for the simple reason that in the Arbitration Application or in the notice purporting to be under Condition No. 64 of GCC no such allegation was ever raised nor made.

11. The application therefore fails and is accordingly dismissed.