
(1998) 09 AP CK 0040
In the Andhra Pradesh High Court
Case No : A.A. No. 1 of 1998

M.V.V. Satyanarayana

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 02-09-1998

Acts Referred:

Arbitration Act, 1940 — Section 21, 43(1)
Arbitration and Conciliation Act, 1996 — Section 11, 12(2), 5
Limitation (Amendment) Act, 1962 — Article 137
Limitation (Amendment) Act, 1963 — Article 137, 3

Citation : (1998) 5 ALD 582 : (1998) 5 ALT 262

Hon'ble Judges : Krishna Saran Shrivastav, J

Bench : Single Bench

Advocate : Mr. Padmavathi Vemulapalli, for the Appellant; Mr. R.S. Murthy, SC for the Railways, for the Respondent

Judgement

1. The short but interesting question involved in this application is whether the application u/s 11 of the Arbitration and Conciliation Act, 1996 (for short, "the Arbitration Act" is barred by limitation?

2. The applicant was entrusted the work of unloading of 1108.56 MTs of Rails on SC-WD Section, between Gullaguda - Chittigidda and Nagalapalli Sankarapalli Stations in connection with doubling of track between Telapur - Gullaguda and Gullaguda-Vikarabad stations in the year 1988 and the applicant had completed the work in the same year. The letter of acceptance was issued by the respondents on 20-9-90 and the agreement for the aforesaid work already done was entered into between the applicant and the respondents on 28-2-1991. The value of the work was Rs.88,684/-. The applicant had submitted his bill dated 2-6-1991 for payment to the respondents. The applicant submitted a no-claim certificate and thereafter, the final payment was made on 20-5-1994. The security deposit of Rs.8,640/- was released vide sanction letter dated 15-6-94. The applicant had raised a dispute on 18-8-1994 and had asked the respondents to refer the dispute to Arbitrator as per Clauses 63 and 64 of the General

Conditions of Contract (for short, "GCC").

3. The claims in respect of which arbitration is sought are of the value of Rs.20,74,875/- for the recovery of which amount the applicant has invoked the clauses of 63 and 64 of GCC.

4. The case of the applicant is that on 9-2-95 and again on 25-6-96, the applicant had asked the respondents for referring the dispute to the arbitrator for adjudication, but the respondents did not pay any heed to it and, therefore, an independent arbitrator may be appointed for adjudicating the dispute between the parties to the application.

5. The respondents have resisted the application inter alia on the ground that the application is not maintainable u/s 43 read with Section 2 of the Arbitration Act because the dispute was first raised by the applicant on 18-8-1994 after receiving the final payment on 20-5-1994 without protest and the claims are excluded under Clause 62(2) (a) of GCC read with the Railway Board Circular No.96/CE-1/CT/29 dated 6-8-1997.

6. Relying on The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, , it has been held in the case of Major (Retd.) Inder Singh Rekhi Vs. Delhi Development Authority, , that it is now well settled that Article 137 of the Limitation Act, 1963 would apply to any petition or application filed in a Civil Court.

7. An application for appointment of an arbitrator may be filed u/s 11 of the Arbitration Act for adjudication of the dispute in the event of a difference between the Parties to the agreement. For invoking the provisions of Section 11 of the Arbitration Act, an arbitrable dispute must be in existence. Section 43(1) of the Arbitration Act says that the Limitation Act, 1963 shall apply to arbitrations as it applies to proceedings in the Court, while Sub-section (2) says that an arbitration shall be deemed to have been commenced on the date referred to u/s 21. Section 21 of the Arbitration Act lays down that unless and otherwise agreed by the parties, the arbitral proceedings in respect of any particular dispute commence on the date on which a request for the dispute to be referred to arbitrator is received by the respondents.

8. In the case on hand, it is an admitted fact that the entrusted work was completed by the applicant on 13-11-1988. The bill was prepared and submitted on 2-6-1991. No-claim certificate was issued by the applicant and on 20-5-1994 without protest, the applicant had received the final payment. On 18-8-1994 the applicant had claimed from the respondents an amount of Rs.20,74,875/-and had asked the respondents to refer the dispute for arbitration as per Clauses 63 and 64 of GCC. This letter was received by the respondents on 22-8-1994. Under these circumstances, it can be safely inferred that the arbitral proceedings in respect of the aforesaid claim had commenced on 22-8-1994. Right to claim payment had arisen actually on the date when the work was completed and again on 20-5-1990 and finally on 22-8-1994 when the letter demanding the

amount and requesting for appointment of arbitrator was received by the respondents. It is well settled that a party cannot postpone the accrual of cause of action by sending reminders.

9. It is a matter of record that the application for appointment of arbitrator was filed on 20-1-1998.

10. Under Article 137 of the Limitation Act, 1963, such an application should be filed within a period of three years when the right to apply accrues.

11. In the case of Panchu Gopal Bose Vs. Board of Trustees for Port of Calcutta, , the Apex Court has held that:

"...the provisions of the Limitation Act would apply to arbitrations and notwithstanding any term in the contract to the contrary, cause of arbitration for the purpose of limitation shall be deemed to have accrued to the party, in respect of any such matter at the time when it should have accrued but for the contract. Cause of arbitration shall be deemed to have commenced when one party serves the notice on the other party requiring the appointment of an arbitrator. The question is when the cause of arbitration arises in the absence of issuance of a notice or omission to issue notice for long time after the contract was executed? Arbitration implies to charter out timeous commencement of arbitration availing the arbitral agreement, as soon as difference or dispute has arisen. Delay defeats justice and equity aids promptitude and resultant consequences. Defaulting party should bear the hardship and should not transmit the hardship to the other party, after the claim in the cause of arbitration was allowed to be barred. It was further held that where the arbitration agreement does not really exist or ceased to exist or where the dispute applied outside the scope of arbitration agreement allowing the claim, after considerable lapse of time, would be a harassment to the opposite party. It was accordingly held in that case that since the petitioner slept over his rights for more than 10 years, by this conduct he allowed the arbitration to be barred by limitation and the Court would be justified in relieving the party from arbitration agreement under Sections 5 and 12(2)(b) of the Act"

12. In the case of State of Orissa and another etc. Vs. Sri Damodar Das, , it has been observed that Section 3 of the Limitation Act, 1963 enjoins the Court to consider the question of limitation whether it is pleaded or not.

13. In the case of State of Orissa (supra), the first contract was executed in the year 1967 and the contractor had received the payment of his bill in the month of September, 1967 itself. Notice for appointment of arbitrator was sent by the contractor on 15-9-1980. Under these circumstances, the Apex Court found that the claim for the work executed in 1967 was hopelessly barred by limitation. The second contract was for the year 1975-76 and the third contract was for the year 1976-77. With regard to these claims, the Apex Court considered the contention of the learned Counsel of Damodar Das that the State of Orissa had extended the time for execution of the works till 1977 and admittedly had completed the execution of the work of the second contract on 30th December, 1977 but had

abandoned the work for the third contract. Under these circumstances, the Apex Court held that it cannot be laid that there would be no dispute as to whether the claims are barred by limitation and observed that it would be difficult to decide whether the claims are barred by limitation and that it would be a matter for decision by arbitrator.

14. On the strength of the above observations made in the case of State of Orissa (supra) that the question of limitation would be a matter for the decision by the arbitrator, it has been urged by the learned Counsel for the applicant that the arbitrator may be appointed to decide the question of limitation. I am unable to persuade myself to the contention of the learned Counsel for the simple reason that the Apex Court was pleased to make the aforesaid observations in the peculiar circumstances of the case that there was extension of time for execution of the works till 1977. Such is not the case here. On the other hand, as noted above, regarding the claim for the year 1967, the Apex Court has held that the claim being made after more than three years was hopelessly barred by limitation. The aforesaid observation of the Apex Court is of no help to the applicant.

15. For the foregoing reasons, I hold that the application is barred by limitation under Article 137 of the Limitation Act because the right to apply for appointment of arbitrator has accrued to the applicant on 22-8-1994, but the application u/s 11 of the Arbitration Act was filed on 20-1-1998, that is beyond three years.

16. In the result, the application is dismissed. However, in the circumstances of the case, I leave the parties to bear their own costs.