
(1999) 03 AP CK 0005

In the Andhra Pradesh High Court

Case No : AA No"s. 8 and 11 of 1998

M.V.V. Satyanarayana, Secunderabad

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-03-1999

Acts Referred:

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

Citation : (1999) 3 ALD 405 : (1999) 4 ALT 761

Hon'ble Judges : Krishna Saran Shrivastava, J

Bench : Single Bench

Advocate : Mr. Prasad Rao Vemulapalli, for the Appellant; Mr. R.S. Murthy, for the Respondent

Judgement

1. These are the applications for appointment of Sole Arbitrator for adjudicating the disputes that have arisen between the parties to these petitions.

2. It is common ground that the petitioner has entered into an agreement with the respondents on 19-02-1990 for doubling of track between Thangundi Chugunta Stations, earth work in formation, construction/ extention of major/ minor bridges as also other miscellaneous works from Ch.39000 to Ch.43200 in M in Rcach-VIII. The value of the contract was Rs.46,22,600/- and Rs.42,48,585/- respectively. The contract was to be completed on 31 -10-1990. But it was extended from time to time upto 30-4-1993. The work was completed on 30-4-1993, The petitioner had written a letter on 11-6-1993 wherein he has lodged certain claims. A qualified no claim certificate was given at the time of submission of the final bill. The "No Claim Certificate" was given under protest. That had been lodged through letter dated 11-6-1993. The payment of final bill was made on 30-4-1994. The security deposit was refunded on 2-12-1994. On 25-6-1996 the petitioner had submitted his claims and notice for arbitration was issued on 25-6-1996. These applications have been filed on 20-2-1998.

3. It is alleged in the applications for appointment of Arbitrator that due to the default of the respondents the work could not be completed in time, and

therefore the petitioner has been put to heavy loss. As shown in the tabular form in Clause G of the written claim filed by the petitioner. The respondents did not appoint the Arbitrator in terms of the agreement and therefore, an Arbitrator should be appointed to adjudicate the disputes.

4. The respondents through the counter denied the claim of the petitioner. It is alleged that at the request of the petitioner extension was granted from time to time, liberally without levying penalty. The work was delayed due to the default of the petitioner. Separate subsidiary agreements were executed and the rates were finalised. The claim is barred by limitation because after the finalisation of the bill on 23-3-1994 he had not submitted his claims within (90) days from the date of measurement in terms of the 64(i)(iii) of G.C.C. The claims are also excluded from arbitration under Clauses 16(2), 17(3) and 62(2Xa) of the General Conditions of Contract, and under Clause 64(5) of the Railway Board's Circular dated 6-8-1997, the petitioner had submitted his claim after about ., two years from the date of payment of the final bill and on this count only the claims are barred by limitation and, as he has accepted the final payment without protest, he cannot reagitate the same-thing again, because he had received the payment in full and final satisfaction of all his claims.

5. As noted above, the petitioner has specifically mentioned in "No Claim Certificate" that it is submitted under protest lodged through letter dated 11-6-1993. In the case of V. Rainana Reddy v. Union of India (1) the Contractor has lodged a protest much prior to the finalisation of the bill. Rejecting the contention of the Standing Counsel for the Railways, it has been held that when the petitioner records his objection as regards the proposed deductions prior to the payment of the final bill, the question of there being an unconditional acceptance of the same final bill does not and cannot arise as there was existing on that date a claim lodged by the petitioner. Therefore, the acceptance of the final bill cannot be said to be a payment received against full and final satisfaction of the claim of the petitioner for the simple reason that he had already lodged a protest vide letter dated 11-6-1993, that is to say, much before the finalisation of the bill. The question whether the claim is barred by limitation, because the contract was completed on 30-4-1993 and whereas the petition has been filed on 20-2-1998 is a question to be decided by the Arbitrator after recording the evidence during investigation.

6. In the case of The Union of India (UOI) and Others Vs. P. Kameswar Rao, Contractor, it has been held that non-filing of the final claim within 90 days of the intimation of the final bill has no legal consequence. It is just a rule of caution and meant for the convenience of the parties. It cannot take away the right of the contractor to prefer his claim if otherwise it is in time according to law.

7. I am in complete agreement with the view taken by the learned Single Judge in the case of Union of India v. P.Kameshwar Rao (supra) and therefore it cannot be said that the applications are barred by limitation, because within 90 days from the date of finalisation of the bills the petitioner had not submitted his

claims.

8. Clauses 16(2), 17(3) and 62(2)(a) of G.C.C. are not excepted matters under Clause 63 of the G.C.C. and therefore, there appears to be no force in the contention of the learned counsel of the petitioner that these clauses are excepted matters and therefore the dispute cannot be referred to the Arbitrator. Clause 64(5) of the Railway Board Circular dated 6-8-1997 does not apply to the case on hand for the simple reason that the work has been completed on 30-4-1993 and the payment of the final bill was made on 30-4-1994 and the claims had been preferred on 25-6-1996, much prior to the issuance of the circular on 6-8-1997. Therefore, clause 64(5) of the Railway Board Circular is not applicable in the case on hand.

9. The petitioner has claimed that the default is due to the respondents, while the respondents put the blame on the petitioner and therefore the dispute became arbitrable dispute. The respondents have not appointed the Arbitrator in spite of service of notice of arbitration dated 25-6-1996.

10. For the foregoing reasons, the applications are allowed. I appoint Sri Justice T.N.C. Rangarajan, a Former Judge of this High Court as the Sole Arbitrator to decide the disputes between the parties to the applications. The remuneration of the Arbitrator is tentatively fixed at Rs.40,000/- (Rupees Forty thousand only) in each case to be initially paid by the applicant. In the circumstances of the case, the parties are directed to bear their own costs of this application.