
(2007) 07 AP CK 0002

In the Andhra Pradesh High Court

Case No : Arbitration Application No. 54 of 2006

National Projects Construction Corporation Limited	APPELLANT
Vs	
Chief Administrative Officer, South Central Railway and Another	RESPONDENT

Date of Decision : 13-07-2007

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(4), 11(6)

Citation : (2007) 6 ALD 48 : (2007) 5 ALT 424 : (2008) 1 ARBLR 94

Hon'ble Judges : S. Ananda Reddy, J

Bench : Single Bench

Advocate : B. Chandrasen Reddy, for the Appellant; Vinitha Reddy, for the Respondent

Final Decision : Dismissed

Judgement

S. Ananda Reddy, J.—By this application u/s 11(4) and (6) of the Arbitration and Conciliation Act, 1996 (for short "the Act"), the applicant seeks appointment of an arbitrator for adjudication of the disputes between the applicant and the respondents.

2. It is stated that the applicant is a company, registered under the provisions of the Companies Act, 1956, owned by the Government of India. The respondent is the railway administration. The applicant company was awarded the work of rebuilding of Bridge No. 1123 across river Krishna between Yadlapur and Krishna Stations at Raichur-Wadi section in Guntakal Division. The contract was commenced as per the issuance of a letter of acceptance by the respondents dated 28.06.2004, followed by an agreement entered into between the parties on 07.09.2004. The total value of the work is to the tune of Rs. 15,13,37,863 and the work is to be completed within a period of 24 months from the date of issuance of the letter of acceptance by the respondents.

3. It is stated that as per the contract, the respondents paid an amount of Rs.

79,65,150 as the first mobilization advance to the applicant, which was 5% of the contract value, against the bank guarantees furnished by the applicant. Immediately after receipt of the letter of acceptance, the applicant submitted preliminary designs of PSC girders. Subsequently, on 04.10.2004, the applicant has submitted detailed designs and drawings for PSC girders, etc. for approval of the respondents. On 08.10.2004, the respondents have informed the applicant to attend observations. Thereafter, the applicant has submitted the design calculations of bearings and drawings of reinforcement and bearings on 18.10.2004 and 20.10.2004. The respondents informed the applicant to depute the design consultant for clarification. While submitting and resubmitting the designs for approval itself, the time of 11 months had elapsed. On the premise that the applicant did not commence the work, a 7 days" notice was issued by the respondents, followed by 48 hours" notice and then the contract was terminated on 16.06.2005, invoking Clause 62 of the General Conditions of Contract. Thereafter, the respondents have encashed the bank guarantees, without even a notice, on 20.06.2005. Apart from that, a letter was issued to all the Chief for the Railways, which had resulted in stoppage of all ongoing works at different places Administrative Officers to withhold the amounts payable to the applicant in respect of various works that are being executed, causing heavy loss and hardship to the applicant. Therefore, the applicant has filed a claim petition before the respondents as contemplated under Clause 63 of the General Conditions of Contract for a total amount of Rs. 7,12,74,913. Since the respondents did not take any decision as per the said clause, the applicant has invoked the arbitration clause, by letter dated 04.03.2006. Thereafter, since there was no response even after expiry of 30 days, the applicant has come up with the present application.

4. Detailed counters have been filed on behalf of the respondents, disputing and denying the claim of the applicant. It was stated in the counters that there is a joint inspection on 11.06.2005 and enumerated as to the progress of the work and stated that no work was in progress at the site even after the expiry of 11 months. Therefore, the respondents issued 7 days" notice to start the work, as there was no change, followed by 48 hours" notice and then termination. It is stated by the respondents that since the contract was terminated, invoking Clause 62 of the General Conditions of Contract, there cannot be any arbitration, since the termination under the said clause is an excepted matter, as is referred to under Clause 63 of the General Conditions of Contract, therefore, there is no question of any reference to arbitration with reference to those issues. Therefore, sought for dismissal of the application.

5. Both the parties have elaborately advanced arguments and the matter was heard.

Admittedly, there is a dispute between the parties and the dispute is between the public sector company which is completely owned by the Government of India, while the other side is the Railways of the Government of India. With reference

to the disputes between one department and other department and one public sector undertaking with any of the departments, the Apex Court passed an order in Oil and Natural Gas Commission and Another Vs. Collector of Central Excise, where it was ordered:

We direct that the Government of India shall set up a committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India, Ministry and Public Sector Undertakings of the Government of India and Public Sector Undertakings in between themselves, to ensure that no litigation comes to court or to a tribunal without the matter having been first examined by the committee and its clearance for litigation. Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline.

It shall be the obligation of every court and every tribunal where such a dispute is raised hereafter to demand a clearance from the committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with.

6. In view of the above law laid down by the Apex Court, which is law of the land, the applicant is not entitled to move the present application instead it is expected to approach the Committee of Secretaries, seeking to resolve the dispute or to obtain permission from the said Committee of Secretaries for instituting and prosecuting the proceedings.

7. Under the above circumstances, the arbitration application is dismissed, giving liberty to the applicant to move the Committee of Secretaries and after the decision of the Committee of the Secretaries, it is open to the applicant to take appropriate steps, as decided by the said Committee of Secretaries.