
(1996) 04 AP CK 0046

In the Andhra Pradesh High Court

Case No : Appeal against Order No. 4 of 1990 and Civil Revision Petition No. 22 of 1990

N.G. Gunani

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 10-04-1996

Acts Referred:

Citation : (1996) 04 AP CK 0046

Hon'ble Judges : Lingaraja Rath, J;C.V.N. Sastri, J

Bench : Division Bench

Advocate : B.V. Ram Mohan Rao, for the Appellant; Gouri Shanker Sanghi, S.C. Advocate, for the Respondent

Judgement

C.V.N. Sastri, J.—These two cases arise out of a common judgment relating to award passed on 21.3.1988 and hence are disposed of by this common judgment.

2. The appellant-petitioner was the contractor of the respondent for the work of construction of road over-bridge at Ghorpuri 1 x 8.0 Msq. (1 x 15. 1 Skew) span R.C.C. Slab at MK. 5/10-11 in lieu of level crossing No. 5 between Ghorpuri and Saswad Road Stations for which agreement was entered on 4th May, 1978, but the site had been handed over earlier on 13th March, 1978. The contract was to be completed within nine months i.e., 12th December, 1978. But it is the case of the appellant that the contract was extended three times last being up to 18th January, 1980 for the reason that the respondent failed to remove obstructions upon the land. Disputes had arisen between the parties even earlier regarding payment, but ultimately, since the efforts made by the respondent for amicable settlement failed, the matter was referred to arbitration on 7.1.1981 by the respondent. The Arbitrator entered upon the arbitration on 20th January, 1987. In the claim filed before the Arbitrator the appellant had laid specific claim for being allowed interest from the date of the dispute. While it is the case of the appellant that no objection was raised to the claim of interest, it is the submission of the learned Counsel for the respondent that objection, in fact, was

taken in that matter. In the award, the Arbitrator, apart from determining the dues payable to the contractor, also allowed interest at the rate of 18% per annum i.e., from the date of original claim i.e., 21st March, 1979 in respect of claim items 1 to 4, from 19th June, 1979 in respect of claim item 5, and from 15th June, 1980 in respect of claim items 6, 7 and 8. Application was made by the Arbitrator himself to make the award the rule of the Court to which the respondent filed O.P. No. 274 of 1988 seeking setting aside of the award to the extent the Arbitrator had granted interest. The application filed by the Arbitrator to make the award the rule of the court was registered as O.S. No. 509 of 1988.

3. The III Additional Judge, City Civil Court, Secunderabad made the award the rule of the Court except so far as the interest was concerned which part of the award was set aside. Aggrieved by the judgment, the present appeal and revision have been preferred.

4. The sole question for consideration is whether, in view of Clause 16(2) of the Standard General Conditions of contract of the respondent-South Central Railway, the Arbitrator had no powers to grant interest.

5. The learned Subordinate Judge has held, as is also strenuously supported by the learned Counsel for the respondent, that the Arbitrator had no jurisdiction to grant interest in respect of amounts payable to the appellant. Clause 16(2) of the Standard General Conditions of Contract is as follows :

"No interest will be payable upon the earnest money or the security deposit or amounts payable to the Contractor under the contract, but Government Securities deposited in terms of Sub-Clause (1) of this clause will be repayable interest accrued thereon."

It is the submission of the learned Counsel for the appellant, who admits that the clause forms part of the contract, that the restriction stipulated therein is only for the departmental officers, but does not bind the Arbitrator, whereas it is the submission of the learned Counsel for the respondent that the terms being general and applicable to the contracts between the parties, they are to be applied without exception for which reason no interest is at all payable to the contractor.

6. A closer analysis of the provision does not show as if the power of the Arbitrator has been taken away to grant interest upon the determination of the amounts payable to the contractor. What the provision means, in the context, that where certain amounts are payable to the contractor, but are not paid in time by the department and are released after laps of time, the department would not pay interest for the delayed payment. It is a restriction on the power of the departmental officers to allow interest because of late payment. But such a provision does not restrict the power of the adjudicator to determine and direct payment of interest. A simple example would expose the fallacy of the submission. No doubt, the contract provides Clause 64 as the arbitration clause under which the dispute between the parties would be referred to arbitration but

in a hypothetical case say where Clause 64 is absent, the disputes between the parties are to be determined by the Civil Court only. In such a case where a civil suit is filed by the contractor claiming all the unpaid dues and also claiming interest, it could not be said that the power of the Court to grant interest is denied because of Clause 16(2), similarly the power of the Arbitrator also cannot be denied to grant interest as the Arbitrator is to go into the entire question of the disputes between the parties, weight all aspects of it, find out the respective rights and liabilities and determine the amount that was actually payable to the contractor and hence may find the necessity also of awarding interest as the amount having remained unpaid inspite of the efforts of the contractor, Clause 63 also makes the matter clear. The clause is in the following words :

"63. All dispute and differences of any kind whatsoever arising out of or in connection with 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 Railway shall within a reasonable time after receipt of the Contractor's presentation 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 18, 22(5) 39, 45(a), 55, 55-A (5), 61(2) and 62(1)(xiii)(B)(e) of the General Conditions of the Contract shall be deemed as "Excepted matters" and decisions 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 shall not be referred to arbitration."

7. It would be seen that the excepted matters under the clause so far as General Conditions of Contract are concerned, do not include 16(2) as an excepted matter. That being so, it is clear that grant of interest is a matter specifically covered under Clause 64 which is the clause for arbitration. Clause 64 also says which are the matters for arbitration saying that except matters covered under Clause 63, all matters are referable to arbitration.

8. In that view of the matter, we are of the view that the judgments impugned in the cases are not sustainable. We find over views also supported by the decision in Board of Trustees for the Master Kartik being Minor rep. by his Father and Others Vs. A.P. State Electricity Board and Another,

9. In the result, the appeal and the revision are allowed. The award, so far as it granted interest, is restored and that part of the award is made the rule of the court.

10. Appeal, Revision allowed.