

(2005) 11 AP CK 0028

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 3064 of 2001

P. Satyanarayanarao Construction Company

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-11-2005

Acts Referred:

Arbitration Act, 1940 — Section 12, 30, 33, 8, 9

Citation : (2006) 1 ALT 130 : (2006) 3 ARBLR 295

Hon'ble Judges : P. Swaroop Reddy, J;D.S.R. Varma, J

Bench : Division Bench

Advocate : T. Ravi Kumar, for the Appellant; C.V. Vinitha Reddy, for the Respondent

Final Decision : Dismissed

Judgement

D.S.R. Varma, J.—Heard both sides.

2. With the consent of both the parties, the main appeal itself is taken up for disposal at the stage of admission.

3. This appeal is filed by the claimant challenging the order dated 9-10-2000, passed by the court below in O.P. No. 41 of 1995 on the file of III Senior Civil Judge, City Civil Court, Secunderabad.

4. The factual background appears to be that certain works have been undertaken by the claimant and after completion of the work, certain disputes have been raised and arbitrators have been appointed as agreed in the General Conditions of the Contract. The matter was adjudicated. During the process of adjudication, time was extended at the instance of the arbitrator and as agreed by both the parties. This extension had been made from time to time. However, the fact, which is not in dispute, is that the arbitrators could not pass the award within the prescribed period, under the Arbitration Act, 1940. After completion of the extended period, on the ground that the award could not be passed by the Arbitrators, the appellant issued a telegraphic notice dated 4-4-1995 to the

arbitrators stating that the arbitrators became functus officio, and same was responded by the arbitrators on the same day i.e. on 4-4-1995, which was dispatched on 10-4-1995 stating inter alia, that the award had already been passed on 31st March 1995, which obviously was within the extended period.

5. On the ground that the award was not passed within the prescribed period by the arbitrators, seeking appointment of sole arbitrator, O.P. No. 37 of 1995 was filed before the Civil Court, u/s 12 read with Sections 8 and 9 of the Arbitration Act, 1940.

6. The learned Judge considering the said O.P., rejected the same holding that no ground was made out and also that the allegation was not established. The said judgment had become final inasmuch as no further proceedings have been initiated. Yet another O.P No. 41 of 1995 was filed under Sections 30 and 33 of the Arbitration Act, 1940, seeking to set aside the award passed by the arbitrators. The said O.P was also dismissed. Challenging that order, the present appeal is filed.

7. Two important questions have been raised by the learned counsel appearing for the appellant. Firstly, the award was not passed within the time stipulated, hence, the same is liable to be set aside and secondly certain claims were rejected by the arbitrators on the ground that those claims were hit by Clause 17(3) of GCC, consequential rejection of certain claims on the ground that those claims were hit by Clause 17(3) of GCC, therefore, the same is improper and contrary to the GCC.

8. On the first contention, it is to be seen that the appellant already filed O.P. No. 37 of 1995, seeking to appoint a fresh arbitrator on the ground that the original arbitrators did not pass the award within the prescribed/ extended period. The said O.P. as already noticed, was dismissed by the court below and the same was not challenged before the superior court. Hence, the judgment rendered by the Civil Court on that subject had become final.

9. Now the first ground indirectly touches upon the subject matter raised in O.P. No 37 of 1995. Therefore, this ground is not available for the appellant to contest at this stage, inasmuch as the same is attracted to the principles of constructive res judicata.

10. We propose the second contention i.e., disallowing certain claims on the ground that those claims were hit by sub clause (3) of Clause 17 of GCC.

11. It is to be seen that the question is, in our considered view, no longer res Integra. A similar question had already fallen before this court for consideration, in C.M. A. No. 410 of 2005 and batch L. Nagi Reddy Vs. Union of India (UOI) and Others, , wherein, it was held by this court that Clause 17(3) of GCC, makes it abundantly clear that any delay on the part of Railways in any respect cannot be a ground for making any claim towards damages or compensation by the claimant. It was further observed by this court that the Railways may grant

extension of time for completion of work as deemed reasonable.

12. Therefore, having regard to the finding recorded by the arbitrators regarding disallowing certain claims on the ground that they hit by Clause 17 (3) of GCC, we have no other option but to accept with the said finding.

13. We do not find any substantial ground to interfere with the order passed by the court below.

14. Mrs. C.V. Vinitha Reddy, learned counsel appearing for the Railways, for the valuable assistance rendered, is to be paid fee at the rate of Rs. 7,500/- (Rupees Seven Thousand and Five Hundred Only).

15. In the result, the appeal fails and the same is accordingly dismissed, there shall be no order as to costs.