
(2001) 11 AP CK 0032

In the Andhra Pradesh High Court

Case No : Arbitration Application No. 46 of 2001

P. Siva Prasad

APPELLANT

Vs

South Central Railways

RESPONDENT

Date of Decision : 07-11-2001

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Citation : (2002) 2 ALT 216

Hon'ble Judges : J. Chelameswar, J

Bench : Single Bench

Advocate : Ch. Ramesh Babu, for the Appellant; C.V. Vinitha Reddy, for the Respondent

Final Decision : Dismissed

Judgement

1. Chelameswar, J.—This is an application filed u/s 11 of the Arbitration and Conciliation Act, 1996.

2. The respondent-Railways invited tenders for execution of certain works viz., BG Track on St/Wooden PSC Sleepers, leading of Ballast from stacks and dumping on the Track from Ch.22700 to Ch.23390 in Dharur Yard at Vikarabad (Doubling on Secunderabad-Wadi Section). In response to the said tenders, the applicant herein submitted his offer on 21st August 1998. The said offer of the applicant was accepted on 15th October 1998 by the respondent-railways. According to the letter of the respondent dated 15th October 1998, the value of the works is Rs. 41,82.920/-.

3. Thereafter, an agreement came to be executed on 20th November 1998 by reducing the terms and conditions of the contract into writing. Admittedly, the General Conditions of the contract framed by the Engineering Department of the respondent-railways, are applicable to the contract. Clauses 63 and 64 of the General Conditions of the contract, are relevant for the purpose of the present case, Clause 64 provides for the resolution of the disputes between such

contracting parties by way of arbitration. During the course of the execution of the work, it appears, the applicant was entrusted with certain additional works (the details of which are not available either on the record or in the application or even in the demand notice of the applicant addressed to the respondent-railways dated 15th March 2001.)

4. Complaining that certain amounts are due to the applicant from the respondent and the respondent-railways are not making the necessary payment, the applicant herein got issued the above said demand notice dated 15th March 2001 through his counsel. Even the said demand notice is bereft of any details as to the nature of the dispute between the applicant and the respondent-railways, except making a bald claim that the applicant herein is entitled to receive an amount of Rs. 17,97,726.20 ps., from the respondent-railways.

5. Thereafter the present arbitration application is filed on 26th April 2001 invoking the jurisdiction of this Court u/s 11 of the Arbitration and Conciliation Act, 1996.

6. The respondent-railways are served and filed a counter- affidavit. The learned Counsel for the respondent-railways Smt. V. Vinitha Reddy argued that according to Clause 63 of the General Conditions of the contract, if there any disputes or differences arose between the parties to the contract in connection with the contract, the contractor shall refer the same to the railways and the railways shall notify its decision within a period of 120 days from the date of receipt of the reference by the contractor about the said disputes or differences.

7. Clause 63 of the General Conditions of the Contract reads as follows:

"All disputes and differences of any kind whatsoever arising out of or in connection with the 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 120 days 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 provisions have been made in Clauses 8(a), 18, 22 (5), 39, 43(2), 55, 45(A), 55-A (3), 57, 57-A 61(2) and 62 (1)(b) of the General Conditions of contract or in clause of the special conditions of the contract shall be deemed as "excepted matters" and decision of the Railway authority, 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 not be referred to arbitration."

8. Clause 64 of the General Conditions of the contract provides for the arbitration in the event of any dispute between the parties to the contract. Obviously, having regard to the scheme of the General Conditions of the contract, it must be understood that Clause 63 comes into operation only after the final decision is taken by the respondent-railways. Under Clause 63 of the General Conditions of the contract, for taking such a decision, the respondent-railways have 120 days"

time from the date of receipt of the reference by the contractor. From the date of the notice i.e., 15th March 2001 referred to above, till the date of filing of the present arbitration application, the requisite period of 120 days did not lapse; therefore, the respondent-railways were-prevented from making any decision within the prescribed period of 120 days.

9. In the circumstances, I am of the opinion that applicant did not comply with the procedure contemplated under the contract in seeking the resolution of the dispute by way of arbitration.

10. The arbitration application is premature; and the same is therefore, dismissed.