
(1996) 08 AP CK 0039

In the Andhra Pradesh High Court

Case No : Appeal against order No"s. 770 and 907 of 1988 and civil Revision
Petition No"s. 3716 of 1988 and 1129 of 1993

R. Dwarakanath Reddy

APPELLANT

Vs

Government of Andhra Pradesh

RESPONDENT

Date of Decision : 30-08-1996

Acts Referred:

Citation : (1996) 4 ALT 879

Hon'ble Judges : Lingaraja Rath, J;K.B. Sidhappa, J

Bench : Division Bench

Advocate : R. Ramanujam, for the Appellant; Govt. Pleader, for the Respondent

Judgement

Lingaraja Rath, J.—All these four cases arise out of the common judgment delivered in O.S. No. 731 of 1985 and O.P. No. 342 of 1985 in relation to one arbitration award and hence are disposed of by this common judgment.

2. An award was made by the arbitrator on 30-5-1985 allowing only claim Nos. 1, 2 and 5 of the claimant-Contractor in respect of the earth work excavation and forming embankment of Kakatiya canal from K.M. 181/0 to K.M. 182/0. O.P. No. 342 of 1985 was filed by the State to set aside the award and O.S. No. 731 of 1985 was filed by the contractor to make the award the rule of the Court. Common judgment was delivered by the learned I Additional Judge, City Civil Court, Hyderabad setting aside the award so far as claim No. 2 was concerned and upholding it so far as claim Nos. 1 and 5 were concerned. Both the cases were thus partly allowed and decreed. C.M.A. no. 770 of 1988 has been filed by the contractor against the judgment in O.P. No. 342 of 1985 and he has also filed CRP No. 3716 of 1988 against the judgment in O.S. No. 731 of 1985. Likewise, C.M.A. No. 907 of 1988 has been filed by the Government against the judgment in O.P. No. 342 of 1985 so far as it went against them and C.R.P. No. 1129 of 1993 has also been filed by the Government as against the judgment in O.S. No. 731 of 1985 so far as it went against them.

3. In the present judgment the parties are referred to in the same description as they are found in C.M.A. No. 770 of 1988, the claimant-contractor being referred as the appellant and the Government being referred as the respondent.

4. The case of the parties, in each case, is confined to Claim Nos. 1, 2 and 5 only. While it is argued by the appellant that the arbitrator's award in respect of Claim No. 2 should have been also made the rule of the Court, it is the case of the Government that the award should have been set aside in its entirety rejecting not only Claim No. 2, but also in respect of Claim Nos. 1 and 5.

5. So far as Claim No. 2 is concerned, the award shows the claim as "payment of extra rates of work done beyond the agreement time". The claim on that count had been advanced as Rs. 12,63,629/-. The arbitrator admitted the claim partly and made the award in that respect for sum of Rs. 3,37,505/-. The learned I Addl. Judge considered the claim of both the parties and found the facts relating to the claim as being that the appellant had not completed the work within the agreed time for which it had been extended twice by the Department. Through his letters of 27-3-1980 and 22-6-1981, the appellant had sought extensions of time on the grounds that due to skylab scare the labourers brought by him from outside had left the work spot about one and half months earlier than their scheduled departure, that due to shortage of fuel oils the progress was affected and that due to the limited supply of explosives the appellant could not progress earnestly which affected the progress of the work. In his second request for extension of time he mentioned the reasons as being the skylab scare and that the reach from K.M. 181.00 to 181.500 was involved in rock excavation for which the required profiles took unduly long periods. On the first request, extension of time had been granted till 31-8-1980 through letter of 4-7-1980 wherein it was specifically stated that the grant of extension of time had no financial implication whatsoever. The second extension was granted through letter of 13-5-1983 also specifically mentioning that the grant of extension of time had no financial implication whatsoever to the Government. The learned I Addl. Judge rejected the claim of the appellant and set aside the award for Claim No. 2 taking the view that in the very orders of extension it had been made clear that it would have no financial burden on the Government and that if the appellant was not agreed, he should have stopped the work and should not have executed it. Evidently, the learned Judge was of the view that having accepted the condition of not charging the Government with additional financial liabilities, a claim in that regard was not sustainable. He also held that the grounds of extension sought for did not justify extension and that the Government had never committed any delay in supplying the explosives.

6. But apart from such considerations of the learned Judge, it is also seen that the Claim No. 2 is specifically barred by preliminary specification No. 59 of the Andhra Pradesh Standard Specifications. It is admitted by the learned Counsel for the appellant that P.S. 59 applies to the contractor in question. The provisions specifically lay down of any claim for compensation on account of delays or

hindrances to the work from any cause whatever as not entertainable. The only relief in that regard is reasonable extension of time which may be allowed by the Executive Engineer or by the competent officer and such extension is to be granted if the cause of delay is beyond the control of the contractor. If the Executive Engineer fails to issue the necessary orders in the matter, the contractor is given the right to claim an assessment of the delay by the Superintending Engineer of the circle, whose decision is final and binding. The further condition is that within 14 days of the occurrence of the delay or hindrance, the claim has to be lodged with the Executive Engineer in writing and otherwise no extension of time is to be allowed. Thus, the only relief available to the contractor for any obstruction to the work because of delay or hindrance, for causes which are beyond his control, is extension of time as assessed by the Executive Engineer, only when a claim is lodged within the stipulated time. The final arbitrator in the matter is the Superintending Engineer and his decision is binding on the parties. The circumstance is thus taken out of the arbitration clause and the arbitrator has no jurisdiction to enter into it. The question was set at rest by the Apex Court in Ch. Ramalinga Reddy v. Supdt. Engineer (1994(5) SCALE 12). The Court considered the scope of clause 59 in the case and held an award for compensation on account of delays or hindrances to the work would not lie as falling outside the exceptions of P.S. 59 and the extension having been granted making it clear that no claim for compensation would lie. The judgment of the Court in P.M. Paul Vs. Union of India (UOI), , was distinguished pointing out that in that case there is no clause in the contract which had provided that the respondent would not be liable to pay compensation on account of delay in work from any cause, nor it had been stipulated, when extension of time was granted to complete the work, that no claim for compensation would lie. It is for such reason we must hold that the learned Addl. Judge rightly set aside the award so far as the compensation in respect of Claim No. 2 is concerned.

7. Claim No. 1 related to "refund of excess recovery on the issue rates of explosives". The arbitrator accepted the case of the appellant and directed the respondent to refund a sum of Rs. 91,094/- as against the claim amount of Rs. 2,30,752/-. Clause 4 of Schedule E of the agreement between the parties made the provision regarding supply of explosives i.e. gelatine, as follows :

"Explosives if any, required for rock blasting will be issued by the Department, if available, at the stores issue rates prevailing time to time and the cost thereof will be recovered from the contractor's bills. Otherwise, the contractor should make his own arrangements for procuring them".

The respondent supplied imported gelatine to the appellant. Admittedly, the value of the foreign explosive is more than indigenous gelatine. Recovery was made from the appellant of the value of the gelatine at the higher rate because of supply of imported gelatine. The arbitrator gave reasons for allowing the claim as follows :

"The claimant signed the agreement agreeing for issue of explosives at the rates

prevailing from time to time vide clause 4 under Schedule E of the agreement. The respondent quoting this clause argued that the claimant is not entitled for any refund of excess recoveries due to issue of imported explosives. But during the arguments the claimants contended that the respondent forcibly issued imported explosives along with the indigenous explosives as no one was willingly coming forward to take imported explosives at much higher issue rates. The above fact is verified by perusing the issue statement of explosives filed by the respondent, pages 11-15 of R. 3. The issue of imported explosives is nowhere mentioned in the agreement. Hence in view of the above circumstances, the claimant is entitled to get refund of excess issue rates charged by the respondent for imported explosives over and above the prevailing issue rates for indigenous explosives at the time of supply of imported explosives".

8. The learned Addl. Judge took the view that the Court cannot sit in appeal over the reasons of the arbitrator and the award in that respect is not liable to be interfered with. The view taken by the learned Judge is in accordance with the settled law and is in no way liable to be interfered with. It is for the arbitrator to judge between the rival claims and if he found that explosives which were not bargained for by the appellant were forcibly supplied to him and that if indigenous gelatine was not supplied by the Department he could have purchased the same in the market and could have utilised them; the Court cannot step in and substitute its own reasons and opinion for that of the arbitrator.

9. Claim No. 5 related to refund of recovery of Rs. 25,000/- and interest at 21% per annum from 1-11-1981 to 30-6-1984 withheld by the respondent from the final bill of the appellant. The facts are that at the request of the appellant the respondent had deleted a portion of the work and had treated the same as authorised deletion. Rs. 25,000/- due to the appellant on the final bill had been withheld till the balance work was completed for adjustment towards any extra financial involvement. The learned Addl. Judge upheld the award, which directed the respondent to refund the amount, taking into consideration the fact that in the proceedings of the 8th meeting held by the arbitrator on 5-5-1985 it was mentioned that the respondents had clarified to the arbitrator that they were completing the balance work without any extra cost to the Department. He further took into account the fact that the respondent had not placed any material whatsoever to substantiate the contention that the work had not been completed till then and that there was also no material to show that the respondent was incurring any extra expenditure which is the condition precedent before the adjustment of the withheld amount. We find the reason to be eminently justified and the award not liable to be interfered with on that account.

10. Because of the conclusions reached, we uphold the judgment of the learned I Addl. Judge, City Civil Court, Hyderabad and dismiss both the appeals and both the revisions with costs.

11. Order accordingly.