

(2016) 02 SC CK 0120

In the Supreme Court Of India

Case No : Civil Appeal No. 3699 of 2006

Rashtriya Ispat Nigam Ltd.

APPELLANT

Vs

Prathyusha Resources and Infra Private Limited and Others

RESPONDENT

Date of Decision : 12-02-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, Section 37
Limitation Act, 1963 - Schedule, Schedule

Citation : (2016) 160 AIC 206 : (2016) AIR(SCW) 861 : (2016) AIRSC 861 :
(2016) AII SCR 848 : (2016) 2 AIIWC 1684 : (2016) 2 AndhLD 135 : (2016) 1
ApexCourtJudgments(SC) 681 : (2016) 1 ARC 834 : (2016) 121 CutLT 808 :
(2016) DNJ 267 : (2016) 2 JCR 171 : (2016) 2 JLJR

Hon'ble Judges : Pinaki Chandra Ghose and R.K. Agrawal, JJ.

Bench : Division Bench

Advocate : Chander Uday Singh, Sr. Adv., Pratap Venugopal, Surekha Raman, Anuj Sarma, Niharika, Advocates for K.J. John & Co., for the Appellant; Mohan Parasaran, Sr. Adv., K. Raghavacharyulu, Sridhar Potaraju, Kailash Pandey, Gaichang Pou Gangmei, Ranjit Singh, Arjun Singh, A. Mukunda Rao Angara and Arunima Pal, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. The present appeal is filed by the Appellant challenging the judgment and order dated 16.12.2005 passed by the Division Bench of the High Court of Judicature for Andhra Pradesh at Hyderabad, whereby the order dated 6.7.2004, passed by the learned District Judge, Vishakhapatnam, was set aside and the arbitration award was confirmed.

2. The Appellant-Rashtriya Ispat Nigam Ltd., which is popularly known as Visakhapatnam Steel Plant, is a Government of India Undertaking, inter alia, engaged in manufacture and sale of steel products and pig iron in the domestic and export markets. Respondent No. 1 is a transporter, stevedoring, clearing & forwarding agent at Visakhapatnam. The Appellant floated a tender vide Notification dated 31.03.1992 for transportation of pig iron etc. from its

Visakhapatnam Steel Plant to the Visakhapatnam Port area. Respondent No. 1 being the successful bidder, was awarded the work order on 28.07.1992. An Agreement was entered into between the Appellant and Respondent No. 1 on 24.02.1993 which was to expire on 31.03.1993. But owing to circumstances, the work was extended several times and the contract was finally completed on 23.10.1997. Issues arose as to the rate of escalation based on the base year 1992 or 1994. Respondent No. 1 submitted final bill having three annexures out of which first two were admitted, however, the Appellant rejected the third one which was as to deciding the base year for calculating escalation.

3. The Arbitration Tribunal (consisting of a retired Judge of the High Court) decided the five issues framed in favour of the Respondent/claimant whereby the base year was adjudged as 1992, the bar of limitation was negated and the calculations made by the Claimant were upheld. The Appellant challenged the said award under Section 34 of the Arbitration Act, 1996 before the Ld. District Court which set aside the award as the relief was barred by limitation. Upon appeal Under Section 37 of the Act by the Respondent/claimant, the High Court set aside the order of the District Judge and upheld the award of the Arbitrator.

4. The Appellant/Employer herein have challenged the said Order of the High Court. The bone of contention in this appeal is the question of relief being barred by the law of limitation. The Appellant submits that the High Court has arrived at a wrong conclusion by invoking Article 137 of the Limitation Act, 1963, and since the contract was in the nature of work contract, Article 18 would apply. This Article would thereby provide that the right to sue accrued when the contract was completed i.e. 23.10.1997 and hence notice for arbitration was beyond the period of limitation. The Respondent/claimant also argued that the dispute as to determination of base year for calculating escalation arose vide letter dated 15.7.1996 and hence the notice for arbitration was issued beyond the period of limitation. Either ways the cause of action in favour of the Respondent/claimant accrued, if any, is an imperfect right.

5. We shall now consider the settled law on the subject. This Court in a catena of judgments has laid down that the cause of action arises when the real dispute arises i.e. when one party asserts and the other party denies any right. The cause of action in the present case is the claim of the Respondent/claimant to the determination of base year for the purposes of escalation and the calculation made thereon, and the refusal of the Appellant to pay as per the calculations.

6. We find that the view taken by the High Court is correct as to when the real dispute arose between the parties to be adjudicated by the Arbitrator. It is nobody's case that the contract came to an end on 23.10.1997, but the difference on determination of base year first arose in the letter dated 15.7.1996. The said letter is already controverted as the service of the same was seriously contested before in Arbitration. However, the said letter was there even before completion of the work and prior to that the Respondent/claimant had reserved his right to claim money later since the contract was still subsisting

then. In light of the above reservation by the Respondent/claimant, bills were raised in 1998 vide letter dated 4.9.1998, which actually resulted into exchange of letters which formed the base of dispute between the parties. It is an admitted fact that the bills were not finalized as could be seen from the letters dated 7.2.2000 and 9.5.2000. Therefore, we find that the findings of the learned Arbitrator and concurrently affirmed by the High Court are correct on the point that the cause of action arose on or after 4.9.1998. Hence, the said letter by the Respondent/claimant to the Appellant to initiate arbitration was not barred by the law of limitation.

7. Accordingly, the civil appeal is dismissed with no order as to costs.