

(2013) 06 AP CK 0062

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1229 of 2007

Rashtriya Pariyojana Nirman Nigam Ltd. and M/s. National
Projects Construction Corporation Ltd.

APPELLANT

Vs

M/s. P.L. Raju Constructions Ltd. and Food Corporation of
India Ltd.

RESPONDENT

Date of Decision : 10-06-2013

Acts Referred:

Arbitration Act, 1940 — Section 17, 30, 33

Citation : (2013) 5 ALD 18 : (2013) 6 ALT 272

Hon'ble Judges : V. Bhatt, J;L. Narasimha Reddy, J

Bench : Division Bench

Advocate : A. Sudershan Reddy, for the Appellant; J. Prabhakar for the Respondent No. 1 and Sri M. Ratna Reddy for the Respondent No. 2, for the Respondent

Final Decision : Disposed Off

Judgement

L. Narasimha Reddy, J.—The 1st petitioner is a Government of India Undertaking, involved in the activity of construction and the 2nd petitioner is one of its branches. For the sake of convenience, both of them are commonly referred to as the petitioner. The petitioner undertakes the construction of various projects all over the country, particularly those taken up by the Government Departments or State-owned Corporations. In the year 1984, the Food Corporation of India, the 2nd respondent herein, intended to construct godowns at three places in the State of Andhra Pradesh, namely Cherlapally in Hyderabad, Rajahmundry in East Godavari District and Gudivada in Krishna District. A tender notice was issued. The 1st respondent emerged as the highest bidder, quoting Rs. 3,83,39,735/-. After several rounds of discussions and deliberations, the amount was reduced to Rs. 2,81,10,628/-. Accordingly, an agreement was entered into.

2. The work was commenced on 09.12.1984. It was supposed to be completed within seven months. However, the work could not be completed and the period

was extended. Ultimately, the construction of godowns was completed by 08.04.1987.

3. The 1st respondent presented several claims to the petitioner, by citing various reasons and clauses in the contract. As provided for under the agreement, the 1st respondent appointed one Sri C.T. Kumar, a retired Chief Engineer of Central Water Commission, the 4th respondent herein, as the sole Arbitrator. The 1st respondent claimed a sum of about Rs. 1,10,00,000/- under as many as 36 claims. The petitioner resisted the claim of the 1st respondent.

4. Through award, dated 01.12.1994, the 4th respondent allowed the claim of the 1st respondent to the extent of Rs. 53,15,871/-. Interest was awarded at 16% per annum from the date of entering reference till the date of decree on the award amount except the one covered by claim Nos. 16 and 30.

5. After making an effort to get the award made as Rule of the Court, before the Delhi High Court, the 1st respondent approached the Court of the XI Additional Chief Judge, City Civil Court, Fast Tract Court, Hyderabad by filing O.S. No. 249 of 1999, u/s 17 of the Arbitration Act, 1940 (for short "the Act") for that purpose. The petitioner, on the other hand, filed O.P. No. 2806 of 2003 under Sections 30 and 33 of the Act with a prayer to set aside the award. Through a common judgment, dated 13.04.2006, the trial Court decreed the suit and dismissed the O.P. This revision is filed against the decree passed by the trial Court in O.S. No. 249 of 1999.

6. Heard the learned Advocate General appearing for the petitioner, Sri J. Prabhakar, learned counsel for the 1st respondent and Sri M. Ratna Reddy, learned counsel for respondents 2 and 3.

7. The Arbitration undertaken by the 4th respondent into the claims submitted by the 1st respondent vis-à-vis the petitioner is covered by the provisions of the Act. While the 1st respondent filed the suit with a prayer to make the award as a Rule of the Court, the petitioner filed O.P. No. 2806 of 2003 with a prayer to set aside the same. Naturally, both the matters were dealt with together. The trial Court framed the following issues for its consideration:

1. Whether there is privity of contract between the plaintiff and defendants?
2. Whether the suit is barred by time?
3. Whether the plaintiff has no cause of action against 3rd and 4th defendants?
4. Whether the plaintiff is entitled to make the award the Rule of Court?

No oral evidence was adduced and the documentary evidence placed before the trial Court comprised of Ex. A1, award, dated 01.12.1994 and the record of the Arbitrator, marked as Exs. A2 to A8. The trial Court decreed the suit and as a result, the O.P. came to be dismissed.

8. Extensive arguments are advanced before this Court challenging the award

and thereby, the decree passed by the trial Court. We would have certainly examined in detail, the contentions advanced by the learned counsel for the petitioner, but for the fact that there is a serious impediment for us.

9. It is a settled principle of law that whenever a Court passes a common order or judgment in two or more proceedings between the same parties, exclusively or otherwise, the aggrieved party is under obligation to assail the decrees and the orders, as the case may be, that are passed in all the proceedings to which he is a party, irrespective of the extent of the grievance. Failure to file appeal or revision, as the case may be, against one such order would lead to a situation where the order or decree, which is not challenged, assumes finality and for that very reason, it operates as *res judicata* in the appeal or the revision filed against the decree or the order passed in the other proceedings. This is what exactly happened in the instant case.

10. The petitioner and the 1st respondent are parties to the suit as well as the O.P. referred to above. The petitioner was unsuccessful in both the proceedings. As against the common judgment, the petitioner has chosen to file the revision only against the decree passed in O.S. No. 249 of 2009 and no Civil Miscellaneous Appeal was filed against the order or decree in O.P. No. 2806 of 2003. The principle referred to above gets attracted and the revision becomes barred by operation of *res judicata*.

11. Even on merits, we find it difficult to interfere with the decree passed by the trial Court. The reason is that once a petition filed under Sections 30 and 33 of the Act is dismissed, the trial Court is virtually left with no alternative but to make the award as a Rule of the Court u/s 17 of the Act. That apart, the 4th respondent has dealt with each claim independently and the conclusions arrived at by him are supported by reasons. The scope of interference with the award passed by an Arbitrator is very limited. It is only when the misconduct in the context of conducting proceedings on the part of the Arbitrator is pleaded and established, or where the award is found to be patently illegal, that the Court can interfere with the same. No such facts are pleaded or proved.

12. Hence, the civil revision petition is dismissed. There shall be no order as to costs. The miscellaneous petitions filed in this revision shall also stand disposed of.