

(1999) 07 AP CK 0039
In the Andhra Pradesh High Court
Case No : AA No. 58 of 1998

Reddy and Company Contractors, Nizambad	APPELLANT
Vs	
APSRTC, Administrative Office, Musheerabad and others	RESPONDENT

Date of Decision : 14-07-1999

Acts Referred:

Arbitration Act, 1940 — Section 20, 8
Arbitration and Conciliation Act, 1996 — Section 11(6)

Citation : (1999) 5 ALD 49 : (1999) 4 ALT 632

Hon'ble Judges : Krishna Saran Shrivastav, J

Bench : Single Bench

Advocate : Mr. B. Krishna Kumar, for the Appellant; Mrs. Nanda R. Rao, SC for APSRTC, for the Respondent

Judgement

1. Heard the learned Counsel of the parties.
2. The applicant-contractor was awarded contract for construction of garage and annexure rooms under agreement No.10/CCE/11/88-89 dated 28-6-1988, construction of certain other items vide agreement No.CCE/EE/KMNR/AGT () 89-90 dated 26-4-1989, and for filling, levelling, soling, metalling and kerbing etc., under agreement No.CEN/EE/Agreement/ (83)-89-90 dated 22-12-1989. The work was to be completed on 1-5-1989, on 25-10-1989, and 21-2-1990 respectively, but time was extended and the works were completed on 31-3-1992.
3. In respect of claim under the agreement for construction of garage and anuexure rooms i.e. under the first agreement, the applicant-contractor, when approached the 3rd Respondent, the same was entered upon reference, and for the other two claims, which were lodged by the applicant-contractor, the named arbitrator refused to adjudicate the disputes on the ground that Executive Engineer, Karimnagar, though was a necessary and proper party, was not made a respondent vide order dated 19-12-1992. The arbitrator did not pass the award within the prescribed period of four months so far as the claim under the first

agreement was concerned. Therefore, the applicant-petitioner filed OP 150/93 for appointment of another arbitrator. The I Additional Civil Judge, City Civil Court, Hyderabad, on 16-4-1996 allowed the petition and appointed an independent arbitrator. It is pertinent to note that the petitioner-contractor did not challenge the impugned order of the arbitrator, whereby he had refused to adjudicate the alleged dispute in respect of the other two agreements. The respondent carried the matter in High Court in CMA 634/97. The CMA was allowed on 24-3-1998 and the Division Bench of this Court observed that the nominated arbitrator shall decide the matter afresh independently without being influenced by his previous award. Thereafter, the case was reopened and the petitioner-contractor again submitted his two claims, for which the arbitrator had declined to adjudicate vide order dated 19-12-1992. This time, the remaining two claims had been disallowed on the ground that they are barred by limitation. The claim under the first agreement was to be decided. But during the pendency of those proceedings, the petitioner-contractor has filed this application for appointment of an independent arbitrator for deciding all the three disputes under all the three agreements alleging the misconduct of the arbitrator. It is alleged that behind the back of the petitioner-contractor, time was granted to the respondent to file counter by extension of period that was fixed for filing counter and only four days time was granted for filing re-joinder.

4. From what is stated above, it appears that the arbitration proceedings had commenced before 19-12-1992, wherein the parties to the petition had taken part, and the same nominated arbitrator was directed to adjudicate the dispute afresh in relation to the claims covered under the first agreement. The question that calls for determination is whether the parties to the petition shall be governed by the provisions of the Arbitration Act of 1940 or the Arbitration and Reconciliation Act of 1996.

5. In the case of Shetty's Constructions Co. Pvt. Ltd. Vs. Konkan Railway Construction and Another, , the Apex Court has held that if the request for arbitration was made prior to 26-1-1996, then the proceedings would be governed under the Arbitration Act of 1940. In this case, after making a request for appointment of arbitrator, a suit was filed before the Bombay High Court on 24-8-1995 invoking the jurisdiction of the High Court u/s 8 read with Section 20 of the Arbitration Act, 1940. The Arbitration and Reconciliation Act, 1996, has come into force on 26-1-1996. The Apex Court has observed that the suit has to be decided under the Arbitration Act of 1940 and not under the Arbitration and Reconciliation Act of 1996.

6. On the authority of Shetty's case (supra), I find that the present application for appointment of the sole arbitrator is not maintainable in this Court u/s 11 of the Arbitration and Reconciliation Act, 1996.

7. Therefore, the petition is dismissed as not maintainable. However, the petitioner-contractor may take legal action according to law under the provisions of the Arbitration Act, 1940 or under other forum, if so advised. No costs.