

(2002) 04 AP CK 0055
In the Andhra Pradesh High Court
Case No : AA No. 91 of 2001

Siri Engineering Contractors, Vijayawada	APPELLANT
Vs	
Union of India (UOI) and Others	RESPONDENT

Date of Decision : 09-04-2002

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11

Citation : (2002) 3 ALD 228

Hon'ble Judges : S. Ananda Reddy, J

Bench : Single Bench

Advocate : A. Ramalingeswara Rao, for the Appellant; C.V. Vinitha Reddy, SC for Railways, for the Respondent

Final Decision : Allowed

Judgement

S. Ananda Reddy, J.—By this application u/s 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to "the Act"), the applicant is seeking appointment of an arbitrator for adjudication of the disputes between the parties.

2. As per the averments of the affidavit, the applicant was the lowest tenderer and his tender was accepted by the Respondents for the work of "Narasaraopet-Proposed additions and alterations to the Station Building", costing about Rs. 11,61,366/-. Accordingly an agreement was entered into between the parties dated 19-04-1999 and as per the terms of the said agreement the work was to be completed within 6 months from the date of issuance of letter of acceptance i.e., 8-12-1998. In connection with the said work, the applicant raised certain claims and issued letters seeking settlement of the claims by Notice dated 10-5-2001 and 7-6-2001. As the Respondents did not settle the claims of the applicant, the applicant requested the 1st Respondent by his letter dated 2-10-2001 for appointment of an Arbitral Tribunal for the adjudication of the disputes. But the Respondents did not appoint the Arbitral Tribunal in terms of Clause 64 of the General Conditions of Contract, which forms part of the agreement between the parties. Therefore, the applicant has come up with this

present application seeking appointment of an arbitrator for adjudication of the disputes.

3. A counter has been filed on behalf of the Respondents disputing and denying the allegations made in the affidavit. With reference to the acceptance of the applicant's tender and also the execution of the agreement between the parties, it is admitted including the original value of the works completed by the applicant. But, however, according to the Respondents, the claims submitted by the applicant are untenable, frivolous, vexatious, inflated, contrary to the terms of the agreement, and beyond the terms of the contract and therefore, they are not arbitrable and hence cannot be referred to arbitration and liable to be rejected.

The respondents have also stated that in terms of Clauses 63 and 64 of the General Conditions of Contract, the claimant has to wait for 120 days for the settlement of claims before seeking for arbitration. As the claims were raised by the applicant by letter dated 2-10-2001, the present application filed on 14-12-2001 is before the expiry of the period of 120 days as contemplated under clause 64 of the General Conditions of Contract and therefore, the present application is premature and liable to be dismissed on that ground itself. It is further stated that as per the Clauses 63 and 64 General Conditions of Contract, the Respondents Railways are taking steps for appointment of a Departmental Arbitrator, but even before doing so, the applicant has approached this Court. It is also the case of the Respondents that no dispute exists between the parties and therefore, it is not a case for appoint of an arbitrator. It is further stated that without prejudice to their contentions disputing the appointment of an arbitrator, this Court may direct the Respondents officials to take action for appointment of an arbitrator, if the Court comes to the conclusion that the appointment of an arbitrator is necessary and proper.

4. Reiterating the averments in the petition, the learned counsel for the applicant contended that though the applicant raised disputes, the same were not settled by the Respondents authorities and therefore, even remainders were issued and finally the applicant had sought for reference to the Arbitral Tribunal with reference to the disputes between the parties. But the Respondents failed to do so. Therefore, the present application is well within the provisions of the Act and therefore, an independent arbitrator has to be appointed as the Respondent authorities have forfeited their right to appoint an arbitrator for adjudication by their inaction.

5. The learned Standing Counsel for the Respondents, on the other hand, reiterated the stand taken by the Respondents in their counter and finally contended that hi view of the judgment of the Kerala High Court in the case of Bel House Associates Pvt. Ltd. v. G.M., Southern Railway, Madras AIR 2001 Kerala 163, as well as the decision of the Madhya Pradesh High Court in the case of Subhash Projects and Marketing Ltd. Vs. South Eastern Coalfields Limited, , this, Court has to direct the parties for enforcement of the terms of the

agreement between the parties instead of appointing an independent arbitrator.

6. Heard both sides and considered the material on record.

7. The facts are not in dispute that the applicant entered into an agreement with the Respondents authorities for execution of certain works, the said works were also executed and in the course of execution of the work, there were certain Disputes and therefore, the applicant sought for settlement of the claims. As the said claims were not settled, the applicant also issued remainder letters to the Respondent authorities and finally made a request for appointment of an Arbitral Tribunal to the 1st Respondent. But the 1st Respondent did not take any positive steps for reference of the disputes to the Arbitral Tribunal. Therefore, the applicant has approached this Court. The Respondents have taken different and in fact inconsistent stands in the counter. At one stage, they are saying that the application is not maintainable and premature; and at another stage, it is stated that they are taking steps for appointment of an arbitrator. In any case, it is an admitted fact that certain disputes do exist between the parties. Though the respondents have contended that the present application is premature on the ground that the applicant did not wait for 120 days from 2-10-2001 but in fact the applicant demanded settlement by letter dated 10-5-2001 and 7-6-2001, therefore, there is no merit in the said contention. Hence, it is a fit case for reference to arbitration for adjudication.

8. Though under the General Conditions of Contract it was provided specifically under Clauses 63 and 64 for adjudication of the disputes as well as for reference of the disputes to an Arbitral Tribunal, the 1st respondent failed to refer to the Arbitral Tribunal and therefore, the Respondents have forfeited their right to refer the disputes to Arbitral Tribunal. Insofar as the contention of the Respondents that in case it is decided to refer to an Arbitral Tribunal, the terms of the agreement must be given effect so as to refer the matter to Arbitral Tribunal by giving a direction to the Respondents for such a reference. The learned counsel also relied upon the decision of the Kerala High Court in *Bel House Associates Pvt. Ltd. v. G.M. Southern Railway, Madras* (supra). The said decision was already considered by this Court and the terms of Clauses 63 and 64 referred and relief upon by the Kerala High Court are totally different from the present Clauses 63 and 64 of the General Conditions of Contract. Apart from that the said argument advanced on behalf of the Railways was already negated by this Court in the case of *Ashok Engineering Company Engineers and Contractors Vs. General Manager, South Central Railway, Secunderabad* and another, . In that view of the matter, there is absolutely no merit in the contention of the Respondents. The learned counsel, however, sought for permission to raise all the issues before the arbitrator if this Court does not accept the contentions that are advanced.

9. Under the above circumstances, this Court do not find any merit in the contention of the. Respondent to reject the claim of the applicant for appointment of an independent arbitrator. Accordingly, Sri Justice D. Reddeppa

Reddi, a retired Judge of this Court is appointed as an arbitrator for adjudication of the dispute between the parties. The arbitrator is at liberty to fix up his fee. The parties are at liberty to raise all issues before the arbitrator.

10. In the result, the arbitration application is allowed accordingly.