

(1996) 11 AP CK 0062

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 914 of 1992

State of Andhra Pradesh and Another

APPELLANT

Vs

G. Ananthaiah and Others

RESPONDENT

Date of Decision : 12-11-1996

Acts Referred:

Arbitration Act, 1940 — Section 11, 12

Citation : (1997) 1 ALD 718 : (1996) 4 ALT 1067 : (1997) 1 APLJ 213

Hon'ble Judges : R. Bayapu Reddy, J

Bench : Single Bench

Advocate : Govt. Pleader, for the Appellant; Y. Venkataramayya, for the Respondent

Judgement

R. Bayapu Reddy, J.—This revision petition is filed by the petitioners who are the respondents 1 and 2 O.P. No. 426 of 1989 on the file of the IV Additional Judge, City Civil Court, Hyderabad questioning the orders dated 26.12.1991 by which a sole arbitrator was appointed in the place of the panel of arbitrators who are respondents 3 to 5.

2. The first respondent herein is the contractor who had entered into an agreement bearing C.R. No. 98/90-81 dated 21-4-1981 with the second petitioner herein who is the Superintending Engineer, Irrigation Department, T.B.P., H.L.C. Circle, Ananthapur, for executing the work of excavation of Penna Ahobilam Balancing Reservoir Right Canal from K.M. 30.500 to 31.500. The value of the work to be done as per the terms of the agreement was Rs. 1,78,021/-. As per the terms of the agreement, the respondents 3 to 5 who are (i) The Chief Engineer, Roads and Buildings Department, Erramanzil, Hyderabad, (ii) The Deputy Secretary to Government, Finance and Planning (FW) Department, Secretariate, Hyderabad and (iii) The Director of Accounts, Sriramsagar Project, L.M.D. Colony, Karimnagar District were designated as arbitrators to adjudicate the disputes if any arising between the parties in the execution of the agreed work. As some dispute arose between the parties, the first respondent who is the

Contractor, referred the claims on 10.11.1987 to the above said panel of arbitrators for decision. As there was some delay in deciding the disputes, the first respondent filed O.P. No. 426 of 1989 before the lower Court seeking removal of the designated arbitrators and for appointment of a sole arbitrator under Sections 11 and 12 of the Arbitration Act, contending that the said arbitrators failed to act with reasonable despatch and make the award within time, and more than one and half years had elapsed without taking any steps for passing the award and that, therefore, a sole arbitrator should be appointed by removing the abovesaid panel of arbitrators. The first petitioner herein is the State of Andhra Pradesh and the second petitioner is the Superintending Engineer, Irrigation Department, T.B.P., H.L.C. Circle who are respondents 1 and 2 before the lower court. They opposed the petition contending that the IV Additional Judge, City Civil Court, Hyderabad before whom the petition was filed, does not have territorial jurisdiction to entertain the petition as the agreement was entered into and the work had to be executed only within the limits of Ananthapur District and as such, the court in the District of Ananthapur alone has got jurisdiction to entertain such petition and that a sole arbitrator cannot be appointed as the agreement contemplates that there should be panel of arbitrators and that the petition is, therefore liable to be dismissed.

3. The lower Court allowed the petition and appointed the second respondent herein, who is a retired District Judge, as sole arbitrator after revoking the authority of the panel of arbitrators who were contemplated under the terms of the agreement and the sole arbitrator was directed to take up the matter and proceed to make his award in accordance with law. The present revision petition is filed by the respondents 1 and 2 before the lower Court contending that the lower court has acted in an illegal and irregular manner in appointing the sole arbitrator which is not in accordance with the terms of the agreement and such orders shall, therefore, be set aside.

4. The point for consideration is whether there is any illegality or irregularity in the impugned orders of the lower court and whether there are any valid reasons to interfere with the same ?

5. It is an admitted fact that as per the terms and conditions of the agreement dated 21.4.1981 entered into between the petitioners herein and the first respondent who is the contractor, and a copy of which is marked as Ex. B-1, the respondents 3 to 5 herein were designated as arbitrators to decide any disputes that might arise between the parties relating to the execution of the contemplated work. It is also an admitted fact that the claims were preferred by the first respondent-contractor before the said arbitrators on 10.11.1987 as some disputes arose regarding the execution of the work. The first respondent filed a petition before the lower Court on 31.8.1989 alleging that, as no specific time was mentioned for submitting the award in the agreement, the arbitrators were bound to make the same within four months from the date of submission of claims, that the arbitrators however, neglected and failed to perform their duties

and prepare the award even though more than one and half years time has elapsed from the date of submission of the claim and that on account of such negligence on the part of the panel of arbitrators, they shall be removed and substituted by a sole arbitrator. It was, however, contended by the petitioners herein that the delay in making the award by the arbitrators was only on account of the lapses on the part of the first respondent in co-operating with the arbitrators and that the authority of the panel of arbitrators cannot be revoked and cannot be substituted by a sole arbitrator as it is against the intention of the parties as seen from the terms and conditions of the agreement. It was also sought to be contended by the first respondent-contractor that at the time when the agreement was entered into, there was only one Chief Engineer, R & B Department and he was mentioned by designation as one of the arbitrators; that subsequently the Government of Andhra Pradesh appointed two Chief Engineers which resulted in creating confusion so far as the present arbitration proceedings are concerned, that originally one V. Raghavan who was the then Chief Engineer, R & B Department had taken up the matter along with the other two arbitrators when the claim was referred to them, that subsequently the said V. Raghavan attained superannuation and one Mohammed Kareemulla Khan was appointed as Engineer-in-Chief, R & B Department and he came in place of the said V. Raghavan and began to function as arbitrator along with the other two arbitrators as seen from Exs. A-1 and A-2 letters and that on account of such circumstances, there was confusion in conducting arbitration proceedings and consequently there was abnormal delay and as such, the panel of arbitrators may be set aside and they may be substituted by a sole arbitrator. It is seen from a perusal of the orders of the lower Court that the learned Additional Judge agreed with such contentions of the first respondent contractor and revoked the authority of the panel of arbitrators and appointed a retired District Judge as sole arbitrator for the purpose of adjudicating the claims raised by the first respondent-contractor. Such orders passed by the lower court are clearly erroneous and illegal as they are not in accordance with the intention of the parties as seen from the terms of the agreement. As already stated above, as per the terms of the agreement, a panel of three arbitrators by designation as enumerated above was contemplated to decide the disputes if any, arising between the parties. Therefore, the intention of the parties as seen from the terms of the agreement is that the abovesaid three arbitrators mentioned by designation should alone decide their disputes if any, and that a sole arbitrator cannot, therefore, be substituted in the place of such panel. In the decision of the Supreme Court *Government of A.P. v. Mastan Rao* (1994 (1) APLJ 43 : 1994 (1) ALR 177), the facts in which are quite similar to the present facts and in which also a sole arbitrator was sought to be appointed in place of a panel of three arbitrators mentioned by their designation as contemplated under the agreement on the ground that the panel of arbitrators did not expeditiously dispose of the claim referred to them by the contractor, it was observed by Their Lordships as follows :

"We have considered the entire matter closely and have gone through some of the documents with the assistance of the learned Counsel for the parties and in our opinion it is a fit case in which the arbitration matter should be entrusted to the incumbents of the three posts mentioned in the Agreement and in that view it is not necessary to decide the question debated by the parties as to whether the arbitrators had neglected to conclude the arbitration proceedings justifying the appointment of an arbitrator or arbitrators by the court. We, therefore, set aside the orders passed by the Courts below and direct the trial Court to refer the dispute for decision of the present Chief Engineer, Srisailam Project, Deputy Secretary to Government, Finance Department and Director of Accounts, Sriramsagar Project with a direction to them as well as to the parties to co-operate in concluding the proceeding expeditiously."

The said decision of the Supreme Court was referred to and followed in the Full Bench decision of this court reported in Government of A.P. v. N. Choudary (1993 (2) APLJ 430), the facts in which are also similar to the present facts. It is observed by Their Lordships in that Full Bench decision of this Court in Para 56 of the Judgment as follows :

"For all the reasons mentioned above, we are of the opinion that even assuming that the panel of arbitrators is vague, it would be proper for the Court to refer the dispute/disputes to a panel but not to a sole arbitrator. The panel may consist of the incumbents satisfying the designations mentioned in the agreement. If for any reason, it is not feasible to do so, it is open to the court to refer the disputes to a panel consisting of serving senior officials having technical and accounts experience. Such a reference will be in conformity with the intention of the parties as reflected in the arbitration clause."

Their Lordships answered the Points referred to the Full Bench by observing as follows :

"Where the panel of arbitrators comprises of three designated officials and if there is more than one incumbent conforming to that designation, the panel cannot be said to be vague and it can be made certain by referring the dispute to anyone of the persons who are holding the post of specified designation.

Even if it is held that the panel is vague and uncertain, having regard to the fact that there is more than one incumbent in anyone or two or even all of the designated offices, it would be proper for the court to refer the dispute/disputes to a panel but not to a sole arbitrator. The panel may consist of the incumbents satisfying the designations mentioned in the agreement. If for any reason, it is not feasible to do so, it is open to the Court to refer the disputes to a panel consisting of serving senior officials having technical and accounts experience. Such a reference will be in conformity with the intention of the parties as reflected in the arbitration clause."

6. In the present case also as already stated above, the only ground on which the first respondent requested for appointment of sole arbitrator is that there

was delay in submitting the award by the panel of arbitrators and that some confusion was created on account of change of officer in the post of the first arbitrator as one Mohd. Kareemulla Khan who was appointed as Engineer-in-Chief, R & B Department, took the place of Sri V. Raghavan who was the Chief Engineer, R & B Department and who attained superannuation during the pendency of the arbitration proceedings. But on such ground, the lower Court is not justified in appointing the sole arbitrator who is non-technical person in the place of a panel of arbitrators who were contemplated as such arbitrators as per the intention of the parties as revealed from the terms of agreement. In the above cited Full Bench decision of our High Court, their Lordships referred to the observations of a Division Bench of this Court in A.A.O. No. 1129/86 and Batch, dated 27.10.1986, which are as follows :

"The Courts while appointing an arbitrator, should keep in mind that the disputes being technical in nature, it is desirable that technically qualified persons, viz., persons in the know of contracts and who has dealt with such contracts, should be designated as arbitrators."

The panel of arbitrators who were contemplated under the agreement are technically qualified persons, whereas, the present arbitrator who is appointed as sole arbitrator by the lower Court is not such a technically qualified person. In that view also, the appointment of sole arbitrator in the place of the panel of arbitrators is not justified. In view of all such circumstances, the orders of the lower Court suffer from material irregularity and illegality and are clearly erroneous. On a perusal of the material on record. I am satisfied that it is a fit case in which the arbitration matter should be entrusted only to the incumbents of the three posts mentioned in Ex. B-1 agreement as contemplated in the said agreement. As such, the orders of the lower court by which the sole arbitrator was appointed, are liable to be set aside.

7. In the result, the revision petition is allowed, but without costs as none represented the respondents at the time of hearing, and the orders of the lower Court are set aside and it is ordered that the dispute shall be decided by the incumbents of the three posts mentioned as arbitrators in the agreement and the proceedings shall be conducted and concluded expeditiously by the said arbitrators.

8. Revision Petition allowed.