
(1993) 10 AP CK 0005

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2561 of 1991 and A.A.O. No. 1360 of 1991

State of Andhra Pradesh and Another

APPELLANT

Vs

P. Lakshmu Reddy

RESPONDENT

Date of Decision : 14-10-1993

Acts Referred:

Arbitration Act, 1940 — Section 14, 17, 30

Citation : (1993) 3 ALT 694 : (1994) 1 ARBLR 402

Hon'ble Judges : P. Ramakrishnan Raju, J;G. Radhakrishna Rao, J

Bench : Division Bench

Advocate : Sudarshan Reddy, Govt. Pleader, for the Appellant; K. Bathi Reddy and M.R.K. Chowdhary, for the Respondent

Judgement

P. Ramakrishnan Raju, J.—The Civil Revision Petition and the Civil Miscellaneous Appeal arise out of a common Judgment in Original Suit No. 174 of 1990 and Original Petition No. 75 of 1990 on the file of Sub-ordinate Judge's Court Tirupati.

2. The suit was filed for recovery of Rs. 8,43,049.93 ps. together with interest at 18% p.a. and the same was decreed for a sum of Rs. 7,50,841/- with interest at 6% p.a., Challenging the said decree, the Department filed Civil Revision Petition.

3. Original Petition was filed by the Government Department to set aside the award dated April 19, 1990 under Sections 14, 17 and 30 of the Arbitration Act. As the award was not set aside, this Civil Miscellaneous Appeal by the State.

4. The respondent Contractor hereinafter referred to as "the Contractor", entered into an agreement No. 41/SE/83-84 dated March 9, 1984 to close the breaches and for reconstruction of Kothalakona in Kalroadpalli village, Chandragiri Taluk, Chittoor District. Originally, the value of the contract as per the agreement dated March 9, 1984 is Rs. 1,67,742/-. According to the contractor, the site was handed over to him on April 13, 1984, while the Department maintains that the site was handed over on March 1, 1985. The Chief Engineer inspected the site on June 1, 1984. Afterwards, in December, 1984, revised design was approved and

accordingly, estimates were also revised. As per the revised estimate, the cost of the work is increased by Rs. 2,41,340/- in addition to the original contract being Rs. 1,67,742/- and thus making up to Rs. 4,09,082/- in all. A supplemental agreement was also entered into on January 31, 1985. It appears that by January, 1986, the work was completed and final bill was also paid by May, 1986.

5. According to the Contractor, he excavated the foundation as early as by May, 1984. Now the Contractor claims that he is entitled to claim certain sums under several heads. He contends that he is entitled to the amount spent towards excavation of foundation in May, 1984, the Forest authorities did not allow him to enter the site, and therefore, he could not complete the work early and sustained loss due to escalation of price. He also contends that there are natural calamities and as such, he suffered loss and hence, he is entitled to reimbursement. Initially, the Contractor filed O.S. No. 151 for 1987 for appointment of an arbitrator to decide the disputes. However, a sole arbitrator was appointed on July 7, 1989 to decide the dispute. The Arbitrator after enquiry filed his Award marked as Ext. C-1, dated April 9, 1990 and filed the same into Court. Ext. A-1 is the notice issued by the court to both parties intimating about the filing of the award. In spite of the same, as the amount awarded was not paid, the Contractor filed the suit for recovery of money under the award and the Department filed the Original Petition to set aside the Award.

6. The learned Government Pleader appearing for the Department, contends that the site was handed over to the Contractor only in March, 1985 and therefore, the question of excavating the foundation by May, 1985 does not arise. Even otherwise, if there is any truth in the said claim, the Contractor would have certainly insisted to include the said claim the supplemental agreement dated January 31, 1985. Under Clause 10 of the agreement - vide Schedule "D" the Contractor should submit atleast within 15 days and as no bills were submitted within the said period of 15 days regarding the said foundation work and inasmuch as no dispute was raised within 15 days, the said claim cannot form basis of arbitration. It is also his further contention that as per the terms of Schedule "A" of the agreement, the Contractor has agreed to execute the supplemental work also. Regarding the objection raised by the Forest Department, the Contractor raised objection regarding the alleged contravention one-and-half years after handing over the site. Non-raising of such objection for a period of 18 months clearly belies the truth of the said contention. The Contractor cannot claim any damages on the ground of escalation of prices since there was delay in completing the work. The Contractor himself filed a writ petition and dragged on the matter for some time. He himself asked for extension of time for completion of the work without reserving his right for claiming extra money towards escalation of prices. In fact he has accepted the final bill in May, 1986 without a demur and came to the court only in 1990. Having accepted the final bill, it is not open to him to raise any supplementary claims.

7. Coming to the findings of the court below, he learned Government Pleader submits that no reason has been given by the court for arriving at various figures under various heads. The lower court has also not considered several objections raised by the Department, including the one that inasmuch as the Contractor has filed to make a claim within 15 days, the said claim or claims cannot be considered afterwards. Even though there is no plea that the supplemental agreement was entered by coercion, the lower court has accepted the Award. Though the Contractor has given an undertaking at the time of seeking extension of time not to claim extra rates, the Arbitrator awarded compensation towards natural calamities, which was confirmed by the lower court.

8. The learned Government Pleader relied upon a Division Bench decision of this court reported in *State of Andhra Pradesh Vs. M/s. Associated Engineering Enterprises, Hyderabad*, wherein the Division Bench held that it is not open to the Contractor to claim compensation in view of extension of the period of contract unless the Contractor put the Government on notice of his intention to claim compensation on that account at the time of asking extension. He relies upon another decision reported in *Government of A.P. v. P. V. Subbanaidu* (1990 (1) ALT 54.), to support his contention that it is not open to the Contractor to claim extra amount on account of certain unexpected obstacles or difficulties which may encounter in execution of the contract. The learned Judges observed that it is a business that the Contractor is doing and in one case he may earn profit and in another, he may incur losses and it is no part of the duty of the arbitrator to ensure that the Contractor does not suffer loss in any case. The learned judges observed that although in that case the Contractor claimed a total sum of Rs. 13,96,157/- under four heads, the Arbitrator has awarded Rs. 9,18,000/- without specifying the amount under each of the four claims and therefore, it is not possible to know how much has been awarded under each head. In this case also the court below has not specified the amount awarded under each head.

9. The learned Government Pleader further contended that although the revised drawings were received by December, 1984, the Contractor could not start the work as there was heavy flow of water in the breached portion due to unprecedented rains. Therefore, when the Department is not responsible, it is not open to the Contractor to claim damages on this account. The allegation that the Contractor kept the coolies and the tractor idle, cannot be believed since it is a small work and therefore, there is no question of keeping the coolies and the tractor for months together at the work spot. Therefore, the Contractor is not entitled to claim any compensation towards the establishment charges or overhead charges or idle charges for labour. There are also no particulars for the claim regarding the objection of the Forest Department for conveying the required material from the quarry and incurring loss of Rs. 14,000/- by the Contractor on that account. In a nut-shell, the contention of the learned Government Pleader is that the Arbitrator has not given reasons for allowing the claim of the Contractor under each head.

10. Sri M. R. K. Choudary, the learned Counsel for the respondents, countered these arguments saying that the Arbitrator is not bound to give reasons. He relies upon the following decisions for the said proposition. Food Corporation of India and Another Vs. Great Eastern Shipping Co. Ltd., ; State of Orissa Vs. Niranjana Swain, , M/s. Hind Builders Vs. Union of India, , AIR 1990 1426 (SC)) and Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, . He also contends that re-appraisal of evidence by court is not permissible when the Arbitrator has given his finding. He relies upon the following decisions. State of Orissa and Another Vs. Kalinga Construction Co. (P) Ltd., , Jivarajbhai Ujamshi Sheth and Others Vs. Chintamanrao Balaji and Others, , Food Corporation of India Vs. M/s. Veshno Rice Millers, , Sudarsan Trading Co. Vs. Government of Kerala and Another, and Hindustan Steelworks Construction Ltd. Vs. C. Rajasekhar Rao, .

11. The learned Government Pleader countered these arguments by saying that as per Section 14 of the Arbitration Act, as amended by Act 1 of 1990, even the Arbitrator is bound to give reasons. The amending Act came into force with effect from February 19, 1990. Under the amendment (A.P. Act 1 of 1990) the following proviso is added to Section 14 of the Arbitration Act, 1940, which is as follows :

"Provided that the arbitrators or umpire shall give reasons for any award made under this section and no award shall be valid unless reasons therefore are given as aforesaid."

12. Consequently, the following proviso is added to Section 17 of the Arbitration Act, which reads as follows :

"Provided that where an award pending in the court at the commencement of Arbitration (Andhra Pradesh Amendment) Act, 1990 or an award filed in the court, thereafter does not contain reasons therefore as required by the proviso to sub-section (1) of Section 14 of the court shall not proceed to pronounce the judgment according to the award, but shall remit the award to the arbitrators or the umpire for giving reasons therefore as required by the said proviso and thereupon the arbitrators or umpire shall, within thirty days from the date of remittance of the award to them by the court give reasons for the award and file the same in the court."

The cumulative effect of these two provisions clearly show that the Arbitrator is bound to give reasons and the award would not be valid without reasons. The proviso to Section 14 of the Act applies to all cases where an award enquiry is pending in a court at the commencement of the Arbitration (A.P. Amendment) Act, 1990, or where the awards are filed subsequent to that date, and this is clear as per the proviso to Section 17 of the Arbitration Act, 1940. Since the award enquiry is pending by the time the Amending Act came into force, the Arbitrator is bound to give reasons. It is true that the Award was passed on April 19, 1990 i.e., after the amending Act came into force. Therefore, we have no difficulty in holding that the Arbitrator is bound to give reasons.

13. Sri M. R. K. Choudary, the learned Counsel for the respondents, contends that in these appeals, it is not open to the High Court to go into the findings of the Arbitrator, but only go into the findings of the lower court and as the lower court rightly confirmed the Award in accordance with law after going into the findings recorded by the Arbitrator, as this court cannot reappraise the evidence. But, it is open to this court to see whether lower court has applied the correct legal principles while confirming the Award of the Arbitrator. It is to be seen from a reading of the Award whether the Arbitrator has not assigned reasons for awarding the sum under each head. The lower court has felt that the jurisdiction of the lower court is very much limited and the Award cannot be scrutinized on merits judiciously, but the lower court has to see whether the Arbitrator has assigned reasons or not before arriving at a particular figure under each head. It is not as if the court has no jurisdiction or power to interfere with the findings of the Arbitrator even though the Arbitrator has not given reasons. On a perusal of the judgment under appeal, we are of the opinion that the lower court did not examine the Award of the Arbitrator and find out whether the Arbitrator has assigned any reasons or not under each head. As already stated after the Amending Act 1 of 1990 came into force by February 19, 1990, it is the bounden duty of the Arbitrator to assign the reasons and the court is entitled to consider whether the Arbitrator has assigned reasons for awarding the compensation under each head. As the lower court has failed to examine in this perspective, the order of the lower court is liable to be set aside. There are also no reasons forthcoming in the order of the lower court for confirming the compensation as awarded by the Arbitrator under each head. Even the second agreement dated January 31, 1985 was not referred to and the terms and conditions of the agreement have not been looked into.

14. Mr. M. R. K. Choudary, the learned Counsel for respondents, contends that the Civil Revision Petition No. 2561 of 1991 is not maintainable. He relies upon the following words in Section 17 of the Arbitration Act, "and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award". According to the learned Counsel, these words clearly imply that no appeal shall lie except under these two contingencies viz., that the decree is in excess of, or it is not in accordance with, the award. It is true, no appeal lies except under these two grounds as per Section 17 of the Act, Section 39 of the Act, also provides for appeal in certain cases and it enumerates the grounds on which an appeal shall lie and from none others. Therefore, appeal only lies on the enumerated grounds either in Section 17 or in Section 39 of the Arbitration Act.

15. Section 41 of the Arbitration Act, reads as follows :

"Subject to the provisions of this Act and of rules made thereunder -

(a) the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the court, and to all appeals, under this Act, and

(b)".

Under this section, the provisions of the Code of Civil Procedure, 1908 are made applicable to all the proceedings before the court and to all appeals under this Act, subject however, to provisions of the Act and the Rules made thereunder.

16. u/s 115 of Civil Procedure Code, revisions are provided to High Court against the orders passed by the Subordinate Court against which no appeal is provided under certain contingencies. It is true no appeal is provided in respect of matters other than contemplated by Sections 17 and 39 of the Arbitration Act. Therefore, in respect of the other matters, appeals cannot be filed, but there is no bar to file revisions in respect of those matters as there is no inconsistency with the statutory provisions contained in the Arbitration Act for filing revisions u/s 115 of the Civil Procedure Code. Therefore, filing revisions in respect of matters which are not covered by Sections 17 and 39 of the Arbitration Act, is not illegal, as otherwise, Section 41 of the Arbitration Act will become illusory. Precisely to cover the cases of this nature, Section 41 of the Arbitration Act comes into play. Therefore, in all matters where appeals though not lie under the Arbitration Act, revision u/s 115 of the CPC would lie to the High Court in view of Section 41 of the Arbitration Act, since filing of revision in the High Court would not be inconsistent with the provisions of the Act, or the Rules made under the Arbitration Act, inasmuch as there is no inhibition under the Act for filing a revision u/s 15 of the Civil Procedure Code.

17. The learned Counsel for the respondents relied upon a decision reported in P. Mulji and Sons, Africa Vs. Kerala Produce Exporting Co. and Another, , in support of his contention, but we do not find that the said decision in any way helps the contention of the respondents. All the decisions relied upon by the learned Counsel for the respondents in support of his contentions, are all rendered prior to (A.P. Amendment) Act 1 of 1990 came into force. Therefore, the submission of the learned Counsel for the respondents that the revision is not maintainable cannot be countenanced.

18. For the foregoing discussion, we held that the impugned common order is liable to be set aside and it is accordingly, set aside. The matter is remanded back to the lower Court for fresh disposal according to law. The costs in the High Court will abide the result in the lower Court on remand. The petitioners and the appellants respectively, in the revision petition and the Civil Miscellaneous Appeal, are entitled for refund of Court-fee.

19. Petition allowed.