

(1997) 04 AP CK 0038

In the Andhra Pradesh High Court

Case No : C.R.P. No. 4139 of 1996 and C.M.A. No. 1406 of 1994

State of Andhra Pradesh

APPELLANT

Vs

P. Somasekhara Rao, Contractor and Another

RESPONDENT

Date of Decision : 03-04-1997

Acts Referred:

Limitation Act, 1963 — Article 137

Citation : (1997) 2 ALT 551

Hon'ble Judges : M.N. Rao, J;M.H.S. Ansari, J

Bench : Division Bench

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

Judgement

M.N. Rao, J.—These two matters are inter-connected and so we are disposing them of by this common judgment.

2. The point at issue in both these matters concerns the validity of the award passed by Sri S.C. Rangappa, Retired District Judge, in the matter of Arbitration of disputes arising within the contract for construction of Anicut across Gowrarapu Vagu, Komatipalli Village, Eturunagaram Taluk, Warangal District under Agreement No. 2/77-78, dated 7-4-1977. As per the agreement dated 7-4-1977, the Contractor was required to carry out works valued at Rs. 8,25,125.92 Ps. and the work was to be completed before 20th January, 1978. The site was handed over on 21-1-1977 but as the contractor could not complete the work, the time for completion was extended four times, the last extension expired on 31-12-1983. The Contractor could do work of the value of only Rs. 3,92,044/-. On 3-1-1984, the contract was terminated under Clause 61 of P.S. to A.P. Detailed Standard Specifications. After getting the measurements recorded, the balance work was entrusted to another contractor on 13-3-1984. The Contractor filed O.P. No. 397 of 1987 on the file of the IV Additional Judge, City Civil Court, Hyderabad for appointment of a sole arbitrator. The learned Judge appointed Sri S.C. Rangappa, a retired District Judge as the sole arbitrator on

30-12-1987.

3. A total of 16 claims were preferred by the contractor, 8 under the Part-A and another 8 under the Part-B. The Arbitrator rejected in toto the claims under Part B totalling Rs. "7,39,617/-. In respect of the 8 claims under Part-A, the learned Arbitrator upheld claim Nos. 1, 2, 3, 5 and 6 totalling Rs. 3,16,310/-. The State represented by Superintending Engineer, Irrigation Circle, Warangal filed O.P.No. 306 of 1990 on the file of the IV Addl. Judge, City Civil Court for setting aside the award to the extent of claim Nos. 1, 2, 3, 5 and 6. The State also filed O.P.No. 490 of 1990 for making the award in relation to the rejection of claim Nos. 4,7 and 8 a "rule of Court." The contractor filed O.P.No. 17 of 1991 requesting the Court to make the award a rule of Court.

4. Before the learned Judge, it was contended for the State Government that in regard to the claims 3 and 6, the Arbitrator had no jurisdiction under Clause 59 of Standard Specifications since the same does not provide for Arbitration in respect of claims for escalation charges for the works done during the extended period.

5. The 2nd contention advanced for the State was that the grant of interest by the Arbitrator was in violation of Clause 69 of the Standard Specifications.

6. The third and the last contention advanced was that the claim was barred by limitation as the contract was terminated on 3-1-1984 itself. The learned Judge negated all the three contentions and sustained the award.

7. Against O.P.No. 306 of 1990 by which the plea of the State to set aside the award was negated, C.M.A.No.1406 of 1994 was filed. Against O.P. No. 17 of 1991 which was filed by the contractor by which the award was made a rule of Court, the State preferred C.R.P.No. 4139 of 1994.

8. Before us, the learned Government Pleader has reiterated the contentions advanced in the Court below. The first aspect that requires to be considered is : whether the contractor is precluded from claiming escalation charges for the works done during the extended period in relation to claims 3 and 6 ? Under claim No. 3, the amount involved was Rs. 1,82,435/- and under claim Rs. 1,64,818/- In its entirety, the third claim was allowed by the Arbitrator whereas only Rs. 71,000/- was allowed in respect of claim No. 6. It is not in dispute that the contractor was given 4 extensions after the expiry of the original period, to carry out the works. Clause 59 of the Standard Specifications which governs the contract in question reads as under :

"59. Delays and extension of time; No claim of compensation on account of delays or hindrances to the work from any cause whatever shall the, except, as hereinafter defined. Reasonable extension of time will be allowed by the Executive Engineer or by the officer competent to sanction the extension, for unavoidable delays, such as may result from causes, which, in the opinion of the Executive Engineer, are undoubtedly beyond the control of the contractor. The

Executive Engineer shall assess the period of delay or hindrance caused by any written instructions issued by him, at twenty five per cent in excess of the actual working period so lost.

In the event of the Executive Engineer failing to issue necessary instructions and thereby causing delay and hindrance to the contractor, the latter shall have the right to claim an assessment of such delay by the Superintending Engineer of the Circle whose decision will be final and binding. The contractor shall lodge in writing with the Executive Engineer a statement of claim for any delay or hindrance referred to above, within fourteen days from its commencement, otherwise no extension of time will be followed.

Whenever authorised alterations or additions made during the progress of the work are of such a nature in the opinion of the Executive Engineer as to justify an extension of time in consequence thereof, such extension will be granted in writing by the Executive Engineer or other competent authority when ordering such alterations or additions."

The opening part of the clause clearly lays down that no claim for compensation on account of delays or hindrances shall be entertained unless the claim falls within the scope of the excepted matters specified in the clause. What are the excepted matters contained in Clause 59 which govern the claims 3 and 6, the learned Arbitrator has not considered. But he merely allowed Claim No. 3 in its entirety and Claim No. 6 in part as stated supra. The learned Judge also has not adverted to this aspect. The learned Counsel for the respondent- contractor is unable to point out any circumstance justifying the contractor to claim the amounts covered by claim Nos. 3 and 6 especially when it is not in dispute that time was extended on four occasions to enable the contractor to complete the works. We are satisfied in the particular circumstances that the learned Arbitrator has misdirected himself as to the scope of claims 3 and 6 and so to that extent, the Arbitrator's award deserves to be set aside and we do so accordingly.

9. The second aspect that falls for consideration is the validity of the award concerning, the grant of interest at the rate of 18% by the learned Arbitrator w.e.f., the date of the award. The learned Government Pleader in support of his contention that the Arbitrator has no power do so, relies upon Clause 69 of the Standard Specifications which concerns the claim for interest. Sub-clause (a) which is relevant reads as under.

"69. Interest on money due to the contractor: (a) No omission by the Executive Engineer or the sub-divisional officer to pay the amount due upon certificates shall vitiate or make void the contract, nor shall the contractor be entitled to interest upon any guarantee fund or payments in arrear, nor upon any balance which may, on the final settlement of his accounts, be found to be due to him".

The learned Government Pleader seeks to contend that as the amount was not paid to the contractor in respect of which he has made several requests, the claims which are the subject matter of the Award fall within the ambit of

"payments in arrear" occurring in sub-clause (a) of Clause 69 in respect of which the contractor is precluded from making any claim for interest. We do not agree. The expression "payments in arrear" according to us takes in only situations where money was paid by the Department to the contractor after certification was made but after delay. Wherever money was paid, but the payment was delayed, the contractor is forbidden from putting forth a claim for interest for such delayed payment. In the case on hand, no payment was made at all, much less was there any certification for payment. Sub-clause (a) of Clause 69 therefore has no application. The Supreme Court in Hyderabad Municipal Corporation Vs. M. Krishnaswami Mudaliar and Mudaliar and Another, viewing the above clause from a different perspective, observed :

"In our view the reliance on this clause is of no avail to the appellant for the simple reason that this clause will be applicable provided the work was completed according to the specifications and the time schedule fixed in the original contract".

The view taken by the Arbitrator that the contractor is entitled for interest at 18% from the date of the award therefore cannot be faulted.

10. The last contention urged for the State concerns the aspect of limitation. The contract was terminated on 3-1-1984. The limitation of three years prescribed under Article 137 of the Limitation Act, according to the learned Government Pleader, is attracted and so if the computation is made w.e.f., 3-1-1984, the claim made on 3-4-1987 is totally barred. We are unable to accept this contention. The prescription of three years period of limitation under Article 137, commences from the time the right to sue accrues. In the absence of final settlement, it cannot be said that any right has accrued to the contractor and as admittedly no final settlement was done in this case, the three year period of limitation contained in Article 137 cannot be computed w.e.f., 3-1-1984, the date on which the contract was terminated. The termination of the contract being undoubtedly without final settlement, the claims submitted by the contractor on 3-4-1987 and his filing O.P.No. 397 of 1987 on the same day in the Court of the IV Addl. Judge, City Civil Court, Hyderabad, could not be said to have been vitiated because of the bar of limitation. We therefore hold that the claims made by the contractor are within the period of limitation. This aspect of the matter was fairly settled. In Major (Retd.) Inder Singh Rekhi Vs. Delhi Development Authority, . it was held:

".....It is true that on completion of the work a right to get payment would normally arise but where the final bills as in this case have not been prepared as appears from the record and when the assertion of the claim was made on 28th Feb. 1983 and there was non-payment, the cause of action arises from that date, that is to say, 28th Feb. 1983."

11. For the above reasons, C.R.P.No. 4139 of 1994 filed against O.P. No. 17 of 1991 and C.M.A.No. 1406 of 1994 are allowed in part The Award of the Arbitrator

in so far as it pertains to claims 3 and 6 is set aside. In other respects, the award is sustained. In view of the divided success, there shall be no order as to costs.