
(1998) 07 AP CK 0085

In the Andhra Pradesh High Court

Case No : Arbitration Application No. 25 of 1997

V. Ramana Reddy

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 24-07-1998

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(5)

Citation : (1998) 6 ALT 211

Hon'ble Judges : Umesh Chandra Banerjee, C.J

Bench : Single Bench

Advocate : Mehar Chand Noori, for the Appellant; R.S. Murthy, Addl. SC, for the Respondent

Judgement

Umesh Chandra Banerjee, C.J.—In this application u/s 11(5) of the Arbitration and Conciliation Act, 1996, the petitioner prayed for appointment of an Arbitrator under Clauses 63 and 64 of the General Conditions of Contract.

2. The contextual facts depict that in terms of an invitation to tender, the petitioner submitted his tender and his tender was accepted by the respondents and in pursuance whereof the Agreement No. 247/A/CAO/C/SC/95 dated 11-10-1995 was entered into by and between the applicant and the respondents herein. As appears, on the factual score, the awarded work was completed and certain part payments were also made, but on completion of the work, by reason of specific conduct of the respondents herein, the applicant raised various disputes as regards reimbursement of payment made to financier and compensation for loss of profit together with loss sustained by reason of the conduct of the respondents. The applicant herein did, in fact, submit a claim in January, 1997 and requested for arbitration. Similar request was reiterated on 17-3-1997. The respondents, however, issued a letter rejecting the claim of the applicant in December, 1997. The final bill was, however, subsequently issued in January, 1998 and an amount of slightly over Rs. 9 lakhs was paid to the applicant. The applicant, however, has made a claim of Rs. 1,08,55,567/- which

has been denied and disputed by the respondents in no uncertain terms.

3. The learned Standing Counsel for the respondents, contended that by reason of acceptance of the final bill without any reservation, question of there being any further claim does not and cannot arise. I am, however, unable to record my concurrence to the same by reason of the fact that there was in fact a protest lodged by the petitioner much prior to the finalisation of the bill. The petitioner recorded his objection as regards the proposed deductions. Since a claim had already been lodged and the dispute has already been raised prior to the payment of the final bill, question of there being an unconditional acceptance of the same does not and cannot arise as there was existing on that date, a claim lodged by the petitioner.

4. In any event, the records of the South Central Railway produced before the Court depict an office note to the following effect :

"The Contractor has furnished a "Qualified" no claim certificate along with the bill stating that the claims put forth in his letter dated 28-1-1997 still subsists. The claims put forth by the contractor were repudiated by the department vide this office letter dated 24-7-1997. Further, the contractor had filed an arbitration application in the High Court of A.P. and for which counter is being filed by the department."

5. The learned Standing Counsel appearing for the respondents further contended that the claims lodged by the applicant by reason of the specific terms of the agreement cannot be termed to be arbitrable in nature and as such question of there being any reference to the arbitration does not and cannot arise. It is on this score that Clauses 63 and 64 of the General Conditions of Contract ought to be noted :

"63. All disputes and differences of any kind whatsoever arising out of or in connection with the contract whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the Contractor to the Railway and the Railway shall within a reasonable time after receipt of the contractor's presentation make and notify decisions on all matters referred to by the contractor in writing, provided that matters for which provision has been made in Clauses 18, 22 (5), 39, 45(a), 55, 55-A (5), 61 (2) and 62 (1) (xiii) (B) (e) (b) of the General Conditions of Contract or in any Clause of the Special Conditions of the Contract shall be deemed as "Excepted matters" and decisions thereon shall be final and binding on the contractor; provided further that excepted matters shall stand specifically excluded from the purview of the arbitration clause and shall not be referred to arbitration.

64. (1) (i) In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account, or as to the withholding by the Railway of any certificate to which the

contractor may claim to be entitled to, or if the Railway fails to make decision within a reasonable time, then and in any such case, save the "excepted matters" referred to in clause 63 of these conditions, the contractor, after 90 days but within 180 days of his presenting his final claim on disputed matter, shall demand in writing that the dispute (s) or difference be referred to arbitration.

1. (ii) The demand for arbitration shall specify the matters which are in question, dispute or difference, only such dispute (s) or difference (s) in respect of which the demand has been made shall be referred to arbitration and other matters shall not be included in the reference.

.....

....."

The agreement, therefore, between the parties as above, depicts that as regards the "excepted matters", the decision of the respondents shall be final and binding on the contractor and the same shall stand specifically excluded from the purview of the arbitration clause. The learned Advocate appearing for the respondents, however, candidly submitted that none of the claims as lodged by the applicant herein can be termed to be within the category of "excepted matters". In that view of the matter, the other submission pertaining to bar in the contract itself, in my view, does not and cannot arise. The parties in no uncertain terms agreed that in the event of there being any dispute or difference between the parties as regards the respective rights or liabilities and disputes and differences inclusive of any dispute or difference arising out of or in connection with the contract, the same be referred to the arbitration. Entitlement to any sum is a matter in regard to the merits and not pertaining to the jurisdiction of the Arbitrator and as such cannot be taken as a bar to invoke the arbitration clause. In that view of the matter, I am unable to record my concurrence with the submission of the learned Standing Counsel appearing for the respondents that question of appointment of any Arbitrator does not and cannot arise. The factual score depicts that the applicant herein has already lodged a large claim and to deny him a right for adjudication thereof, in my view, in the contextual fact, does not and cannot arise since the same would otherwise be opposed to all norms of the concept of justice. The points raised cannot term to be a defence for a reference to arbitration.

6. In that view of the matter, this application succeeds. The disputes as raised by the applicant herein be referred to the arbitration of Sri Justice P. A. Chowdary, a former Judge of this Court. The Arbitrator shall be entitled to a remuneration of Rs. 10,000/- (Rupees ten thousand only) per effective sitting to be paid in the ratio of Rs. 7,500 : Rs. 2,500/- by the applicant and the South Central Railway, Secunderabad respectively.

7. Statement of facts be filed before the Arbitrator within a period of four weeks from the date hereof, counter statement within a further period of four weeks as

prayed for by the learned Advocate appearing for the respondents, rejoinder, if any, be filed two weeks thereafter and the first sitting of the arbitration shall take place three months hence. All documentary evidence to be relied on by the parties is to be filed along with the respective pleadings with copies to the other party.

8. Since the matter is pending for quite some time, the Arbitrator appointed herein is directed to complete the proceedings within a period of four months from the date here of.

9. The application thus stands disposed of as above. No order as to costs.