
(2002) 10 AP CK 0015
In the Andhra Pradesh High Court
Case No : AA No. 22 of 2002

Y. Chenna Reddy

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-10-2002

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(6)

Citation : (2002) 6 ALD 323 : (2002) 6 ALT 93 : (2003) 1 ARBLR 384

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : T.S. Ravi Kumar, for the Appellant; C.V. Vinitha Reddy, for the Respondent

Final Decision : Allowed

Judgement

N.V. Ramanam, J.—The applicant is a Railway Contractor. He filed this Arbitration Application u/s 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator for adjudication of the claims/disputes, which arose between him and the respondents.

2. The applicant was awarded a contract under an agreement dated 27-10-1998. The nature of the work is Guntakal-Wadi Section, replacement of bridge timbers with new steel channel sleepers for Br.No. 1017 at KM 536/4-537/5 (36 x 19.20 M."G"), between Mantralayam Road - Hanumapur (1092 sleepers of 2.6 m length)". The value of the work is Rs.58,26,960/-. The work was to be completed within six months. As the respondents did not supply the material required for executing the work, the applicant could not complete the work in time, and the currency of the contract was extended. The applicant completed the work on 26-9-2000. Though the applicant received some payments, he raised certain claims, and in that regard a lot of correspondence took place between the applicant and the respondents. The applicant though got issued a legal notice dated 18-12-2001 requesting the respondents to appoint an Arbitrator for adjudication of the claims/ disputes, no action was taken thereon. Therefore, he

filed the present Arbitration Application.

3. On behalf of the respondents, the Senior Divisional Engineer, has filed counter denying the averments made by the applicant. It is stated that the applicant completed the work on 26-9-2000 and the final bill submitted by him was also paid. The applicant also gave a No-claim Certificate, as required under Clause 43(2) of the General Conditions of Contract, stating that he has no claims against the respondents-Railways. Further, the No-claim Certificate given by the applicant in terms of Clause 43(2) of the General Conditions of Contract, falls under "excepted matters", which are excluded from the scope of arbitration as per Clause 63 of the General Conditions of Contract, and therefore, the applicant cannot be allowed to raise any claims. It is, however, stated that even assuming that there are disputes between the parties, the respondents-Railways should be given the option of appointing an Arbitrator.

4. Heard the learned Counsel for the applicant as well as the learned Counsel for the respondents.

5. The learned Counsel for the applicant would submit that though the applicant completed the works under the agreement, the respondents have not paid him the full amounts, which he had incurred in respect of the claims now raised by him. He would further submit that though the applicant invoking the arbitration clause in Clause 63 of the General Conditions of Contract, got issued a notice to the respondents calling upon them to appoint an Arbitrator for adjudication of the claims raised by him, no action has been taken thereon, and therefore, the applicant seeks appropriate directions.

6. He would further submit that since the claims raised by the applicant are arbitrable, the respondents have no other option but to appoint an arbitrator when an application in that regard was made by the applicant, and inasmuch as the respondents have failed to appoint an Arbitrator despite receiving the notice, they have waived their right to appoint an Arbitrator, and therefore, this Court should appoint an Arbitrator as prayed for by the applicant, and in support of his submission, he placed reliance upon the judgment of the Supreme Court in *Konkan Railway Corporation Limited v. Rani Constructions Private Limited* 2002 AIR SCW 426.

7. On the contrary, the learned Counsel for the respondents-Railways would contend that the applicant while receiving the final bill gave a No-Claims Certificate to the respondents in terms of Clause 43 (2) of the General Conditions of Contract, stating that he has no claims against the Railways and therefore, he is precluded from raising any fresh claims in respect of the same agreement. He would further contend that when once a person gives No-Claims Certificate, he is barred from raising any fresh claims in respect of the very same agreement against the Railways. Inasmuch as the No-Claims Certificate given by the applicant falls under "excepted matters", the matters covered thereunder are excluded from the provisions of the arbitration clause under Clause 63 of the

General Conditions of Contract, and therefore, they are not arbitrable, and as such the request of the applicant for appointment of an Arbitrator cannot be considered. In support of his contention that when once a person receives the amounts in full and final satisfaction of the claims without registering any protest or objection, he cannot be allowed to raise any fresh claims in respect of the very same agreement or contract at a subsequent stage, the learned Counsel relied upon several decisions of the Apex Court and this Court in *State of Maharashtra v. Nav Bharat Builders*; *P.K. Ramaiah and Company Vs. Chairman and Managing Director, National Thermal Power Corpn.*, ; *The Food Corporation of India Vs. The New India Assurance Co. Ltd. and others*, , *Union of India Vs. M/s. Popular Builders, Calcutta*, , *United Construction Company Vs. National Thermal Power Corporation and another*, , *Kolleru Constructions, Hyd. Vs. Nectar Laboratories, Ltd., Hyd.*, , and *V.M. Thomas Vs. Tata Projects Limited, Hyderabad*, .

8. The question as to whether the No-claims Certificate given by the applicant as required under Clause 42(3) of the General Conditions of Contract falls under "excepted matters" and whether the matters covered thereunder are not arbitrable under Clause 63 of the General Conditions of Contract, by an Arbitrator, is a question which cannot be gone into by this Court in an application u/s 11(6) of the Arbitration and Conciliation Act, 1996. Though the learned Counsel for the respondents relied upon several judgments of the Apex Court, it is not necessary to go into the same, in view of the judgment of the Apex Court in *Konkan Railways Corporation Ltd. v. Rani Construction Private Limited*, (supra) wherein it has been held that all contentious issues have to be decided by the Arbitrator. That apart, in terms of the said judgment, this Court discharges only administrative functions, namely that of appointing an arbitrator.

9. Since this Court is precluded from venturing into deciding contentious issues, I am of the opinion, that the parties should be directed to approach the Arbitrator and put forth their respective claims before him for adjudication. Inasmuch as the parties have admitted that there is an arbitration clause in the agreement in Clause 63 of the General Conditions of Contract, and having regard to the averments made by the respondents in their counter that even if it is assumed that there are differences between the parties, they should be given the right to appoint an Arbitrator. I am of the opinion that they have waived their right to appoint an Arbitrator, for despite receiving the notice sent by the applicant in regard thereto, they have not taken any action thereon. So instead of directing the respondents to appoint an Arbitrator, this Court feels it appropriate to appoint an Arbitrator.

10. In the result, the Arbitration Application is allowed. Sri Justice Y.V. Anjaneylu a former Judge of this Court is appointed as Sole Arbitrator to adjudicate the disputes between the parties. The respondents are directed to refer the claims/ disputes raised by the applicant to the Sole Arbitrator forthwith. The respondents are at liberty to raise all their contentions and objections, which they are entitled to, before the Sole Arbitrator. The Arbitrator is at liberty to fix his fee. No costs.