

P.K. Ramaiah And Company vs Chairman & Managing Director, National ... on 1 October, 1993

Equivalent citations: 1994(1)SCALE1, 1994SUPP(3)SCC126, AIRONLINE 1993 SC 270

Bench: K. Ramaswamy, N.P. Singh

ORDER

1. Leave granted.

2. The appellant had a contract with the respondent on February 7, 1979 to complete the site levelling and grading for Ramagundam Super Thermal Power Project, Ramagundam, Karimnagar Dist., A.P., for a sum of Rs. 1, 74, 33, 334/- and the work had to be completed within 15 months. According to the appellants, he completed the work on December 30, 1980. His claim for further amounts was rejected on August 12, 1981. Therefore, he wrote a letter on April 13, 1984 requesting the respondent to settle his claim within a period of one month from the date of its receipt. Though the respondent promised in their letters dated November 10, 1984 and March 7, 1987 to refer the dispute for arbitration, no action in that behalf was taken under Clause 57 of the Contract. On his application under Sections 8, 11 & 12 of the Arbitration Act, 1940 for short 'the Act', Vth Additional Judge, City Civil Court, Hyderabad, after hearing the parties, appointed Shri P Chennakesava Reddy, retired Chief Justice, Guwahati High Court as an Arbitrator. The A. P. High Court in C.R.P. Nos. 838 & 839/90 by judgment dated October 31, 1991 held that the appellant had acknowledged the final measurement and accepted the payment in full and final settlement of the contract on May 19, 1981, therefore, there was no subsisting contract for reference. The learned Judge also found that after 3 year from the date of rejecting the claim, the claim was barred by limitation, and set aside the order of the Civil Court giving rise to this appeal.

3. Shri A.N. Parikh, the learned Senior counsel for the appellant, contended that the appellant had not unconditionally acknowledged the full and final settlement of the claim and that he immediately wrote a letter on June 1, 1981 disputing the settlement and thereafter number of representations were made requesting the respondent to refer the dispute for arbitration. The Chief Construction Manager in his letter dated November 16, 1984 admitted that the respondent was taking steps to refer the dispute to the arbitration. Therefore, the respondents are estopped from assailing the appointment of arbitrator. The full and final settlement of the claim was not unconditional and the respondent had obtained it by coercion which itself is referable to arbitration. In support thereof, he placed reliance on Damodar Valley Corporation v. K. K. Kar ; B.H.E.L. Ltd. Bhanu Prakash 1988 (1) SCC 625; Union of India and Anr. v. L.K. Ahuja & Co. and a judgment of the Calcutta High Court in Calcutta Metropolitan Development Authority v. Gouranga Lal Chatterjee . Shri Sanghi, learned Senior Counsel for the respondent, contended that the arbitration would arise only when there is a subsisting dispute or difference between the parties. Once there is a settlement of the claims admittedly made by the appellant, there is no pending dispute and the question of arbitration of the

dispute thereafter does not arise. In view of the fact that the appellant admittedly accepted the payment in full and final settlement, there is no arbitrable dispute for reference. He also contends that the claim is barred by limitation.

4. The view which we have taken, it is not necessary to go into the question of limitation. The High Court has recorded as a fact that admittedly the appellant on May 19, 1981, had made an endorsement in his own hands thus:

Final measurement and payment accepted in full and final settlement of the contract.

5. It is not in dispute that the appellant had settlement with the respondent in writing. The question emerges whether there exists arbitrable dispute between the parties. Clause 57 of the contract providing arbitration reads as under:

Clause 57. Except where otherwise provided for in the contract all questions and disputes relating to the meaning of the specification, designs, drawings and instructions herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claims right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works, or the execution of failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the General Manager (S) of National Thermal Power Corporation Limited and if the General Manager (S). National Thermal Power Corporation Limited and if the General Manager (S) is unable or unwilling to act, to the sole arbitration, some other person appointed by the Chairman & Managing Director, National Thermal Power Corporation Limited willing to act as such arbitrator. There will be no objection if the arbitrator so appointed is an employee of National Thermal Power Corporation Limited, and that he had to deal with the matters to which the contract relates and that in course of his duties as such he had expressed views on all or any of the matters in disputes of difference. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason as aforesaid at the time of such transfer, vacation of office or inability to act, Chairman & Managing Director, National Thermal Power Corporation Limited shall appoint another person to act as arbitrator in accordance with the terms of the contract. It is also a term of this contract that no person other than a persons appointed by C.M.D., N.T.P.C. Ltd. as aforesaid should act as arbitrator and if for any reasons, that is not possible the matter is not to be referred to arbitration at all.

6. The reading of the above Arbitration Clause would clearly establish that all questions and disputes relating to the meaning of the specifications, designs, drawing and instructions hereinbefore mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claims, right, matter or things whatsoever, in any way arising out of or relating to the

contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works, or the execution of failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the General Manager of the N.T.P.C. Ltd. On his inability or unwillingness, another arbitrator appointed by C.M.D. alone has to arbitrate the dispute. Thus it is clear that if there is an arbitrable dispute, it shall be referred to the named arbitrator. But there must exist a subsisting dispute. Admittedly the appellant acknowledged in writing accepting the correctness of the measurements as well as the final settlement and received the amount. Thereafter no arbitrable dispute arises for reference.

7. In *Damodar Valley Corporation v. K.K. Kar* , this Court noted the facts thus:

It is the case of the appellant that these payments including the return of the deposit amount finally settled the claims of the respondent. No doubt the respondent was asked to submit his bill along with a receipt stating that he received the payment in full and final settlement of all payments and that there was no other claim. But the respondent while submitting his bill did not give the receipt as desired. The amount of the bill was, however, paid after receipt of which the respondent claimed further sums from the appellant including damages for repudiation of the contract.

(emphasis supplied)

8. On those facts, this Court held that although there was alleged payment as final satisfaction of the contract, yet as the respondent did not give any receipt accepting the settlement of the claim, the payment was unilateral, so the dispute still subsisted and therefore it was arbitrable dispute and the reference was valid. In *Bhanu Prakash's* case also there was no full and final settlement and payment was not received under a receipt. In *L.K. Ahuja & Co.'s* case (supra), this Court while laying the general law held that if the bill was prepared by the department, the claim gets weakened. That was not a case of accord and satisfaction but one of pleading bar of limitation without prior rejection of the claim. Therefore, the ratio therein is of little assistance. The Calcutta High Court merely followed the statement of law laid in *Ahuja & Co. 's* case. It is not shown to us that the Chief Construction Manager was competent to acknowledge the liability or an authority to refer the dispute for arbitration. So neither his letters binds the respondent nor operates as an estoppel. Admittedly the full and final satisfaction was acknowledged by a receipt in writing and the amount was received unconditionally. Thus there is accord and satisfaction-by final settlement of the claims. The subsequent allegation of coercion is an after thought and a devise to get over the settlement of the dispute, acceptance of the payment and receipt voluntarily given. In *Russal on Arbitration*, 19th Ed., p. 396 it is stated that "an accord and satisfaction may be pleaded in an action on award and will constitute a good defence." Accordingly, we hold that the appellant having acknowledged the settlement and also accepted measurements and having received the amount in full and final settlement of the claim, there is accord and satisfaction. There is no existing arbitrable dispute for reference to the arbitration. The High Court is, therefore, right in its finding in this behalf. The appeals are dismissed but in the circumstances without costs.