

P.V. Subba Naidu And Ors. vs Government Of A.P. And Ors. on 11 November, 1997

Equivalent citations: (1998)9SCC407

Bench: Sujata V. Manohar, D.P. Wadhwa

ORDER

1. All these appeals pertain to the scope of the arbitration clause under the two contracts entered into by the State of Andhra Pradesh, one with the appellant in CAs Nos. 4617-18 of 1990 and the other with the appellant in CAs Nos. 3933-34 of 1990, Both these contracts contain an arbitration clause (clause 73) which is identical. The material part of clause 73 is as follows: "In case of any dispute or difference between the parties to the contract, either during the progress or after the completion of the works, or after determination, abandonment, or breach of the contract, as to the interpretation of the contract, or as to any matter or thing arising thereunder ... then either party shall forthwith give to the other notice of such dispute or difference and such dispute or difference shall be, and is hereby referred to the arbitration of ... and the award of such arbitrator shall be final and binding on the parties unless contested by either party in a court of law.... Either party may, within a period which shall be fixed by the arbitrator, file before the arbitrator a statement of the case and also all the documents relating to, or having a bearing on the case.... The arbitrator shall have power to view the subject-matter of dispute with, or without the parties or their agents. The arbitrator shall have also power to open up, review, and revise any certificate, opinion, decision, requisition or notice, save in regard to matters expressly excepted, and to determine all matters in dispute which shall be submitted to him and of which notice shall have been given as aforesaid..."

2. The High Court has set aside the non-speaking awards which were given in the two arbitration proceedings on the ground that the subject-matter of the claims before the arbitrators was beyond the jurisdiction of the arbitrators. In the case of one contract, all the claims have been held to be beyond the jurisdiction of the arbitrator while in the other contract, one claim is allowed and the other claims are held to be beyond the jurisdiction of the arbitrator. There is a cross-appeal filed by the State in respect of one claim which was so allowed.

3. In the judgments which are under appeal in these appeals, the approach of the High Court has been similar. The High Court has examined the terms of the contract and has come to the conclusion that on the interpretation of the contract, the claims which were raised before the arbitrators would not arise under the contract itself and hence they were beyond the jurisdiction of the arbitrator.

4. The entire thrust of the judgment is on examining the terms of the contract and interpreting them. The terms of the arbitration clause, however, are very wide. The arbitration clause is not confined merely to any question of interpretation of the contract. It also covers any matter or thing arising thereunder. Therefore, all disputes which arise as a result of the contract would be covered

by the arbitration clause. The last two lines of the arbitration clause also make it clear that the arbitrator has power to open up, review and revise any certificate, opinion, decision, requisition or notice except in regard to those matters which are expressly excepted under the contract, and that the arbitrator has jurisdiction to determine all matters in dispute which shall be submitted to the arbitrator and of which notice shall have been given.

5. In the present case all the claims in question were expressly referred to arbitrator and were raised before the arbitrator. The High Court was, therefore, not right in examining the terms of the contract or interpreting them for the purpose of deciding whether these claims were covered by the terms of the contract.

6. In the case of K.K. Raveendranathan v. State of Kerala, this Court, relying upon the decision in Hindustan Construction Co. Ltd. v. State of J&K, has held that the court by purporting to construe the contract cannot take upon itself the burden of saying that it was contrary to the contract and as such beyond jurisdiction. This is precisely what has been done in the present case. In the case of Sudarsan Trading Co. v. Govt. of Kerala, this Court has made a distinction between error apparent on the face of the award and lack of jurisdiction. It has held that only in a speaking award can the court look into the reasoning of the arbitrator. It is not open to the court to probe the mental processes of the arbitrator, or speculate on what impelled an arbitrator to arrive at his conclusion. An award can be set aside on the ground that the arbitrator, in making it, had exceeded his jurisdiction. But by purporting to construe the contract, the court could not take upon itself the burden of saying that this was contrary to the contract and as such beyond jurisdiction. The same view has been reiterated in Hindustan Construction Co. Ltd. v. State of J&K².

7. Learned counsel for the State of Andhra Pradesh placed strong reliance on the judgment of this Court in the case of Ch. Ramalinga Reddy v. Superintending Engineer, (1994) 5 Scale 67 . In that case the arbitrator was required to decide the claims referred to him, having regard to the contract. His jurisdiction was expressly limited to decide claims under the terms of the contract. The Court, therefore, examined various terms of the contract to see whether the appellant was barred from considering any part of the claim on account of any express prohibition in the terms of the contract to that effect. In the present case we have not been shown any clause of the contract which prevents the arbitrator from examining the claims which were put up before the arbitrator.

8. Clause 73 of the contract which provides for arbitration is widely worded. The High Court was not right in examining and interpreting the contract to see whether the claim was sustainable under the terms of the contract. The impugned judgments of the High Court are set aside. Appeals Nos. 4617-18 and 3933-34 of 1990 are allowed. Appeals Nos. 4878-4879 of 1990 are dismissed. The judgments of the City Civil Court are upheld. Bank guarantee furnished by the contractor pursuant to interim orders of this Court will stand discharged.