

The Executive Engineer, Sbc Division Vs. K. Subba Reddy (Deceased) by L.Rs

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Court : Karnataka

Decided On : Mar-06-2003

Reported in : 2004(2)ARBLR274(Kar); 2004(3)KarLJ143

Judge : M.F. Saldanha and ;M.S. Rajendra Prasad, JJ.

Acts : [Arbitration Act, 1940](#) - Sections 39

Appeal No. : Miscellaneous First Appeal No. 1039 of 1993

Appellant : The Executive Engineer, Sbc Division

Respondent : K. Subba Reddy (Deceased) by L.Rs

Advocate for Def. : D.N. Nanjunda Reddy, Adv.

Advocate for Pet/Ap. : A.S. Menasinakai, Additional Government Adv.

Judgement :

M.F. Saldanha J.

1. We have heard the learned Counsel who represents the appellants as also the learned Counsel who represents the respondents who are the L.Rs of the original contractor-claimant. The facts of this case are very similar to all other cases relating to Government contracts insofar as the contract dated 22-7-1985 for

construction of Shahapur Branch Canal, Upper Krishna Project was awarded to the contractor and this was a time bound contract worth Rs. 37.27 lakhs. The duration of the contract was one year and the case of the department is that the Contractor neglected to perform his part of the contract, that he had commenced the work at a very late stage; that the amount of work undertaken was absolutely minimal and since this was a World Bank aided project and the department would have suffered serious prejudice as the time factor was very short and the loan would have lapsed, and that the department had no option except to terminate the contract on 21-7-1986. Pursuant to this, the contractor contended that he is entitled to claim reimbursement for the expenditure incurred by him while executing the contract and secondly, that he is also entitled to claim damages and overhead expenses at the accepted and admitted rates of 15% and 10% respectively. The dispute was referred to the Arbitrator and the learned Arbitrator has after a rather protracted hearing, made an award aggregating to Rs. 21,72,140/- under different heads. He also awarded interest at the rate of 15% per annum on the amount in question until the date of realisation.

2. This award was the subject-matter of a challenge before the Civil Court and the learned Civil Judge by his order dated 8-1-1993 virtually confirmed the award and made it a rule of Court but for some strange reason, which in our view appears to be an error, the learned Judge in the operative part of his order awarded interest at the rate of 15% per annum from the date of the decree until the date of payment. Though there is no cross-appeal against the order of the Civil Court the State has challenged the legality and validity of the Civil Court's order through the present appeal.

3. We have heard the learned Counsels who represent the contesting parties and we have also done a review of the record to the extent that the law would permit. We have brought it to the notice of the learned Counsel who represents the appellant, that the law is now very well crystallised and we drew his attention to the earlier decision of this Court in M.F.A. No. 650 of 1984 as also to a series of decisions of the Supreme Court followed by this Court culminating with the Division Bench decision in *Union of India v. Ravi Construction Company*, Bangalore, 2003(2) Kar. L.J. 532 (DB): ILR 2002 Kar. 5326 (DB) where again, this

Court had occasion to refer to 19 decisions of the Supreme Court in all of which the principles of law have been reiterated again and again along with following lines. Firstly, the Courts have consistently held that the scope of challenge in relation to an arbitration award is very very restricted and that barring situations in which there is established misconduct on the part of the Arbitrator or more importantly, where there is a very gross and serious error apparent from the record that the parties having referred the dispute to arbitration are bound by the decision and cannot question it. Secondly, the Courts have also repeatedly held that a review that may be undertaken by the Court in relation to an arbitration award is really restricted to points of law insofar as the Court would not under normal circumstances even permit reappreciation of evidence or factual references because that stage is over when the award has been made. Thirdly, though we have indirectly dealt with this concept earlier what we need to reiterate is that the inflexible rule that emerges in all these situations is that on a finding of fact, barring perversity being established to the extent that the record has been totally ignored or misread, a Court would not interfere with the findings that have been recorded by the Arbitrator. In this background, we brought it to the notice of the appellants' learned Counsel that though a host of submissions were canvassed on the ground that the Arbitrator has arrived at incorrect decisions, that we are now at stage 3 insofar as fortunately for the appellants the Civil Court did entertain the challenge, that they have gone through one lengthy round of litigation before the Civil Court and after hearing the parties and after a review of the record that the Civil Court has confirmed the award in totality. In this background, we brought it to his notice that the law would totally preclude the appellants from asking this Court to reappreciate the record or reopen any issue of fact and for that matter, that the scope of this appeal is very very restricted.

4. The learned Counsel representing the appellants vehemently submitted that even at this stage, if he is able to demonstrate serious errors that emerge from the record that it would be within the powers of this Court to take corrective action and he reinforced his submission by contending that the appellants are effectively the State, that there is a large amount of public money involved and that consequently, the interests of justice would require that the Court will not shut out the appellants after they are able to establish that there has been serious

miscarriage of justice. Respondents' learned Counsel at this stage drew our attention to two judgments of the Supreme Court, the first one in *Union of India v. A.L. Rallia Ram*, : [1964]3SCR164 and the second one in *U.P. Hotels v. U.P. State Electricity Board*, : AIR 1989 SC268 in support of his submission, that even as far as the so-called error apparent on the face of the record is concerned that this ought to have been pointed out and got corrected at the stage when the case was before the lower Court and that having come past that stage, it would not be open to the State to contend that there should be a review on this ground. We have taken into account this objection because we see considerable force in it insofar as it has unfortunately become the order of the day for the parties to refer cases to arbitration, which is really an alternate disputes resolution system, and once that stage is over the case comes back to the Court in the form of a normal dispute and after the Court in the first instance has finished with that stage it becomes customary to attempt further appeals and second appeals. In our considered view, the time has now come for us to lay down very firmly that there will have to be a full-stop to this state of affairs. As an illustration, we cite the human angle wherein the State has been litigating in this case for the last 18 years. In the course of this long period of time the claimant who obtained an award in his favour in the year 1992 has still not received the benefits thereof, barring whatever small amounts that might have been deposited by the appellants. What further aggravates the situation is the fact that, in this case the respondent who was a Government Contractor has since died and it is his wife and family members who are required to contest this litigation. Apart from the human factor the more important principle is that where the parties resort to the alternate disputes resolution system, that they do so with their eyes open, that they go to the Arbitrator in whom the parties have faith and barring the miniscule number of cases wherein some very gross error has occurred to the extent requiring judicial corrective action, it would be very necessary for the Courts to indicate in no uncertain terms that they will not permit an arbitration award to be made the subject-matter of challenge before any judicial forum. This is because the Courts which are already overburdened with the commercial disputes badly need diversion of the proceedings to the arbitration forum and that exercise will be rendered downright meaningless if the Courts were to permit a second round of challenge before a judicial forum.

5. Bearing in mind the aforesaid principles, we have heard the learned Counsels on both sides and we have reviewed the arbitration award and more importantly the order passed by the Civil Court to the extent that the law permits. Having done so, we seen no ground to interfere with the decision except to the extent that despite there being concurrent findings one aspect seems to have been totally overlooked. Though under Head No. 1 the claimant-Contractor had claimed damages which included all heads including the amounts of profits, etc., towards the fag end of the arbitration he sought to amend his claim by including one more head viz., loss incurred due to the machinery having been rendered idle. He was able to establish before the Arbitrator that he had spent prescribed amounts of money under this head and it was his submission that since the termination was held to be wrongful, that he was entitled to be compensated to this extent. The Arbitrator as far as this head is concerned viz., Head No. 6, finally computed an amount of Rs. 6,78,990/- and awarded this amount and the learned Government Advocate submitted that insofar as Head No. 1 was a composite head whereby damages of all types including loss of profits have been computed and awarded and he pointed out to us that an amount of Rs. 12,77,192/- has been awarded under this head and it was his submission that Head No. 6 has virtually been included under Head No. 1, that the two heads are overlapping and secondly, either this amount be deducted from Head No. 1 or that Head No. 6 be deleted. We have very carefully reappraised the record to this limited extent because we do concede that if the heads are overlapping and if in case an amount has virtually been awarded under Head No. 1 in the aggregate and then it is again awarded under the specialised head that this would be impermissible. Furthermore, the amount is relatively large and if this is a very serious and gross error, it virtually goes to the root of the matter and will have to be corrected at any stage and since the parties are before us in appeal we consider it necessary to carry out that limited corrective action respondents' learned Counsel vehemently submitted that no interference is warranted and he sought to justify the claim under the separate head but having heard the parties we are firmly of the view that Head No. 6 was improper insofar as the aggregate damages under all heads have been awarded under Head No. 1. That being the position, we disallow the amount of Rs. 6,78,990/- awarded under the Head No. 6 and the award shall proportionately be

reduced to this extent.

6. As regards the rate of interest, it was vehemently submitted that the rate of interest awarded at 15% per annum was exorbitantly high and the learned Government Advocate cited several decisions before us including the one in Ravi Construction Company's case, *supra*, in support of his claim, that the Courts have approved of interest at the rate of 8% or 10% at the very highest and it was his submission in the facts and circumstances of this case that the interest should be awarded at 6%. Again we have looked into the facts and circumstances, injury and the time period and we have looked into all other relevant aspects. We have also considered as to whether the award of interest would be at all harsh or unjust to the State and having regard to the fact that we have effected a substantial reduction as far as the aggregate amount or award is concerned, we are not inclined to interfere with the rate of interest that has been awarded.

7. The appeal partially succeeds. The award which has thereafter been transmitted into a decree, to stand reduced to the extent of Rs. 6,78,990/- only.

8. We are aware of the fact that even after the Courts have disposed of this litigation that the departments have been unfortunately dragging their feet and that as a result of delays and non-payments, the aggrieved parties are seriously prejudiced. They are even required to resort to execution proceedings which are not only a burden on the Courts but are time consuming, expensive and unfair to the claimants. Under these circumstances, we do not see the propriety of subjecting the respondents to any such trauma and we direct the appellants to compute and deposit the whole of the balance amount due in the manner as indicated below. We are required to innovate because in case after case, the aggrieved parties have been required to re-apply to the Court on all sorts of grounds because of obstacles raised by the Offices of the Courts etc., and consequently, we desire to simplify the procedure and make the same foolproof. Within 12 weeks from today the appellants shall compute and deposit the whole of the balance amount with the ING Vysya Bank Limited, High Court Branch, Bangalore, in the name of the Registrar General, High Court of Karnataka, as a Fixed Deposit for a period of 45 days. The deposit receipt shall be filed with the

office and on receipt of the same, the office shall complete the formalities for purposes of facilitating the payment to the claimants. All that the office will be required to do is to issue a direction to the Bank to release the amount in question to the claimants. With these directions, the appeal which succeeds partially to stand disposed off. No order as to costs.

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