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State of A.P. and ors. Vs. N. Siva Reddy (Died) and ors.

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Court : Andhra Pradesh

Decided On : Feb-04-1993

Reported in : 1993(2)ALT549

Judge : Syed Shah Mohammed Quadri and ;G.V.L. Narasimha Rao, JJ.

Acts : Arbitration Act, 1940 - Sections 39; Interest Act, 1839 - Sections 3(1)

Appeal No. : C.M.A. 1089 of 1986 and CRP No. 2646/86

Appellant : State of A.P. and ors.

Respondent : N. Siva Reddy (Died) and ors.

Advocate for Def. : N.V.B. Sankara Rao, Adv.

Advocate for Pet/Ap. : Adv. General and ;Government Pleader for F and P (Home)

Disposition : Petition dismissed

Judgement :

Syed Shah Mohammed Quadri, J.

1. The Appellants in C.M.A.No. 1089/86 and the Petitioners in C.R.P. No. 2646/86 are the same (hereinafter they will be referred to as 'the State'). The appeal and the Civil Revision Petition arise out of the common judgment dated 17-3-1986 in

O.S.No. 1165 of 1984 and O.P.No. 376 of 1984 on the file of the First Additional Judge, City Civil Court, Hyderabad making the award rule of the Court.

2. The 1st respondent is a contractor. He entered into a contract with the state with respect of construction of a wall from M.O.O.O. to M.O.O.6-447 for protection of Alampur town. The agreement was entered into between the parties on October 22, 1977. The site was handed over to the Contractor on 24-10-1977. As per the agreement, the work was to be completed on or before June 23, 1979. The work could not be completed within the said stipulated time. The first extension for completion of the work was granted by the State till 31-5-1980. Even by that time the work could not be completed. That necessitated granting of second extension till 30-11-1981. It appears that the work was completed by the date. After completion of the work the contractor raised certain dispute by issuing a notice to the State. The state appointed a sole Arbitrator Justice C. Kondaiah, a retired Chief Justice of this Court, on November, 18, 1983. The Arbitrator entered upon the reference on December 29, 1983 and passed the Award on September 28, 1984. Before the Arbitrator the contractor made as many as eleven claims, out of them only eight claims were accepted by the Arbitrator. They are claims 1 to 7 and 11. Thereafter the contractor filed O.S.No. 1165 of 1984 to direct the arbitrator to file the award into court and made the award rule of the court. The State filed O.P.No. 376 of 1984 to set aside the award with regard to claims, 1-7 and 11. By a common judgment dt. 17-3-1986 the learned First Additional Judge, City Civil Court, Hyderabad, decreed the suit making the award rule of the Court and dismissed the O.P. filed by the State. Against the judgment in O.P.No. 376 of 1984 C.M.A. No. 1089 of 1986 is filed by the State and against the Judgment in O.S.No. 1165 of l984 C.R.P.No. 2646 of 1986 is preferred by the State.

3. The learned Advocate-General appearing for the State urged two contentions before us; they relate to claim No. 7 and claim No. 11. the contention with regard to claim No. 7 is that the escalation charges granted by the arbitrator do not form part of the agreement; therefore the escalation charges ought not to have been awarded. In any event, submits the learned Advocate-General, unless the arbitrator finds that the delay in completion of the work is attributable to the State, no escalation charges ought to have been awarded to the contractor. Sri N.V.B.

Sankara Rao, the learned Counsel for the contractor, on the other hand, contends that delay is only attributable to the State and therefore the contractor is justified in making the claim and that as the Award is a non-speaking award, the reasons for grant of a particular claim, not having been spelt out in the award, cannot be speculated and therefore the contention of the Advocate-General is liable to the rejected.

4. It is a common ground that the award in this case is a non-speaking award. The learned Additional Judge observed that the department itself paid certain amounts, as is evident from the award, towards escalation charges therefore it came to the conclusion that the escalation charges were payable to the contractor. That the escalation charges could be paid to the contractor for the work done by him of the State is to be at fault and responsible for the delay is not disputed by the learned Advocate General. What is contended is that from the reading of the award it is evident that the arbitrator has not recorded a finding that the state is at default for delay in execution of the work. As has been observed that is a non-speaking award; it is not open to the Court to speculate about the reasons which could have prompted the Arbitrator to agree to or accept a particular claim. We are supported in our view by the observations of Sabyasachi Mukharji, Chief Justice in State of Andhra Pradesh v. R.V. Rayanim, : [1990]1SCR54 . For these reasons we are unable to accept the contention of the learned Advocate General.

5. The next contention relates to claim No. 11, which deals with awarding of interest. The learned Advocate-General contends that the arbitrator has no jurisdiction to award interest for the period earlier to the date on which he entered upon the reference. In this case the arbitrator entered upon the reference on 18-11-1983. The dispute in the case was raised and claims were made on 24-4-1981. The arbitrator awarded interest at the rate of 12% p.a. from 24-4-1981 till the passing of the decree. The award of interest from 24-4-1981 to 29-12-1983, that is the date on which the arbitrator entered upon the reference is now in question.

6. Sri N.V.B. Sankara Rao, contends that the arbitrator is empowered to award interest under the Interest Act. Section 3(1)(b) of the Interest Act is pressed into service in support of his contention.

7. It will be useful here to extract Section 3(1) of the Act, which is relevant for our purpose.

'Section 3. Power of Court to allow interest:-

(1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at the rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say.....

(A) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then from the date when the debt is payable to the date of institution of the proceedings;

(B) if the proceedings do not relate to any such debt, then from the date of mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings;

Provided that where the amount of the debt of damages has been repaid before the institution of the proceedings, interest shall not be allowed under this Section for the period after such repayment.'

8. Clause (a) of Sub-section (1) of Section 3 deals with award of interest when the proceedings relate to a debt and Clause (b) deals with the award of interest where the proceedings do not relate to debt. Section 3(1)(b) of Interest Act provides that in a case where the proceedings do not relate to any debt, then interest is payable at a rate not exceeding the current rate of interest for the whole or any part of the period from the date mentioned in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed to the date of institution of the proceedings. Nothing is placed before us to show that such a claim is not made. Therefore it follows that the arbitrator is competent to award interest from the period when the notice was given till the period the

arbitrator enters upon the reference. We must observe that the power of the arbitrator to award interest from the date of raising the dispute till he enters upon the reference has not been in dispute.

9. The law with regard to award of interest is laid down by the Supreme Court in a recent Judgment of the Supreme Court in Secretary, Irrigation Department, Government of Orissa v. G.C. Roy, : [1991]3SCR417 . In Executive Engineer, Irrigation, Galimala v. Abnaduta Jena, : [1988]1SCR253 the Supreme Court held that the arbitrator has power to award interest from the date of dispute till the date of entering upon the reference, but did not have power to award interest pendente-lite. In subsequent decisions of the Supreme Court what was questioned was that the interest pendente-lite cannot be awarded by the arbitrator. But in R.V. Rayanim's case (1) (supra) the constitution Bench of the Supreme Court held that where the agreement does not prohibit grant of interest, it had to be presumed that the arbitrator had power to award interest pendente-lite and accordingly held that interest pendente-lite could be awarded.

10. The power of arbitrator to award interest from the date of dispute till the date the arbitrator enters upon the reference, as noted above, could not be disputed in view of the authority of Abnaduta Jena's case, : [1988]1SCR253 which is also reiterated in Gujarat W.S. and S.B. v. Unique Erectors (Gujarat) (P) Ltd., AIR 1989 SC 793.

11. For these reasons we do not find any force in the contention of the learned Advocate-General; hence it is rejected.

12. In the result the appeal and the C.R.P. fail and they are accordingly dismissed; we make no order as to costs.

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