

Rajeev Traders, Secunderabad Vs. General Manager, South Central Railway, Secunderabad and ors.

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Court : Andhra Pradesh

Decided On : Jul-08-2002

Reported in : 2002(5)ALD69; 2003(1)ALT55; 2003(1)ARBLR624(AP)

Judge : N.V. Ramana, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 11(5) and 11(6)

Appeal No. : AA No. 40 of 2001

Appellant : Rajeev Traders, Secunderabad

Respondent : General Manager, South Central Railway, Secunderabad and ors.

Advocate for Def. : C.V. Vinitha Reddy, SC

Advocate for Pet/Ap. : Somanchi Venkateswarlu, Counsel

Judgement :

ORDER

N.V. Ramana, J.

1. Rajeev Traders, represented by its Managing Partner, has filed this application under Section 11(5) and (6) of the [Arbitration and Conciliation Act, 1996](#) read with

the Scheme for Appointment of Arbitrator, 1996 of the A.P. High Court, for appointment of a Sole Arbitrator.

2. The facts leading to the filing of this application may briefly be noted as under:

3. The applicant entered into an agreement with the respondents-South Central Railway on 1-1-1996 for raising of Platform No. I at Jalna Railway Station of Hyderabad Division, valued at Rs. 13,80,579/-. According to the terms and conditions of the agreement, the applicant was to complete the work by 20-3-1996. However, he could complete the same by 9-4-1997. The applicant further contends that according to the terms and conditions of the agreement, he was supposed to raise the length of the platform to a distance of 300 metres, but due to faulty measurements made by the respondents, he raised the length of the platform to a distance of 427 metres. The applicant further contends that according to the terms and conditions of the agreement, the respondents are empowered to increase, decrease or modify the quantum and mode of execution of the work. The applicant has to execute the works upto 25% beyond the agreement quantities at agreed rates and beyond 25% the rates should be arrived at before commencing the additional quantities of work.

4. The applicant upon completion of the work, furnished his claim on 31-10-1997, and thereafter, he submitted his final claim on 13-7-1999. When no payments were made, he got issued a legal notice to the respondents under Clause 64 of the General Conditions of Contract. Thereafter, he filed Arbitration Application No. 49 of 1999 before this Court seeking appointment of an arbitrator for resolution of the disputes between them. During the pendency of the said application, the respondents appointed one Sri. Gopi Singh, as Sole Arbitrator. However, by order dated 27-12-1999, this Court dismissed the said application holding that the application is premature for it has been filed before the expiry of 90 days. Thereafter, the Sole Arbitrator to whom three claims were referred, having heard both the parties, by award dated 2-1-2001, allowed two claims of the applicant and rejected the third. Contending that though there are nine claims valued at Rs. 24,05,833/-, which are referable to the Sole Arbitrator for arbitration, the respondents have referred only three, the applicant has filed this application

praying this Court to appoint an arbitrator for arbitration of the remaining six claims.

5. On behalf of the respondents, the Divisional Engineer (North), Hyderabad Division, has filed counter-affidavit contending that the respondents have already appointed a Sole Arbitrator and referred the three claims raised by the applicant, and the Sole Arbitrator having heard the parties, also passed an award, that the applicant impugned the said award in OP No. 79 of 2001 on the file of I Additional Chief Judge, City Civil Court, Hyderabad, which was dismissed. The applicant having participated in the arbitration proceedings before the Sole Arbitrator did not raise any objections for non-referring of the other six claims, and therefore, he is estopped from pleading that the respondents should be directed to refer the remaining six claims raised by him to the Sole Arbitrator for arbitration.

6. The learned Counsel appearing on behalf of the applicant contended that though there are nine referable claims to be referred to the Sole Arbitrator for arbitration, the respondents have referred only three claims, and though the applicant made several requests, including sending a legal notice on 12-1-2001 to the respondents to appoint a Sole Arbitrator for referring the remaining six claims for arbitration, no action has been taken by the respondents to appoint a Sole Arbitrator. He further submitted that immediately after filing of this application, the respondents by letter dated 25-6-2001, appointed Sri. Gopi Singh as Sole Arbitrator to adjudicate the disputes raised by the applicant, and that the applicant by letter dated 29-6-2001 informed the respondents that they have forfeited their right of appointing an arbitrator. In support of his contention that when an application for appointment of an arbitrator is pending before the Court, it is not proper on the part of the respondents to appoint an arbitrator for adjudication of the disputes, relied upon the judgment of this Court in *Sharma & Sons v. Engineer-in-Chief, Army Headquarters*, 2000(2) Arb.LR 31 (A.P.), wherein it was held that the appointment made by the appointing authority during the pendency of the application before the High Court, is no appointment in the eye of law and such appointment is non-est.

7. On the other hand, the learned Standing Counsel appearing on behalf of the respondents submitted that when the three claims were referred to the Sole Arbitrator for arbitration, the applicant did not raise any objection for not referring the other six claims, and that apart, the applicant also participated in the arbitration proceedings before the Sole Arbitrator, and therefore, he cannot be allowed to say that the respondents should be directed to refer the remaining six claims for resolution by a Sole Arbitrator.

8. Admittedly there are disputes between the applicant and the respondents. Though the applicant raised as many as nine claims, the respondents referred only three claims to the Sole Arbitrator for arbitration, and in respect of which an award has also been passed. Further, immediately after filing this application, the respondents by letter dated 25-6-2001, appointed Sri Gopi Singh as Sole Arbitrator and referred the claims raised by the applicant, for adjudication, to which the applicant by letter dated 29-6-2001, informed the Chief General Engineer of the respondents that since he had moved this Court by filing this application, they have forfeited their right of appointing a Sole arbitrator. When there are disputes between the parties, which are referable to an arbitrator for adjudication, it is the duty of the party which gets the work executed, to refer the disputes raised by the executor to an arbitrator for adjudication in accordance with arbitration clause in the agreement, entered into between them. In the instant case, Clause 64 of the General Conditions of Contract, obligates the respondents to refer the disputes raised by the executor to the Sole Arbitrator for arbitration. Though the applicant raised as many as nine claims, the respondents have referred only three claims to the Sole Arbitrator, and immediately after filing this application, they have referred the remaining six claims to the Sole Arbitrator for adjudication of those claims, and therefore, as rightly contended by the learned Counsel for the applicant, the respondents have forfeited their right to appoint an arbitrator, and such appointment of arbitrator, made by the respondents, is no appointment and is non-existent in the eye of law.

9. For the aforementioned reasons, and having regard to the judgment of this Court Sharma & Sons, this application is allowed, and Sri, Justice R. Bayapu Reddy, a former Judge of this Court is appointed as Sole Arbitrator to adjudicate

the disputes between the parties. The respondents shall refer the six claims raised by the applicant, to the Sole Arbitrator, for adjudication forthwith. The respondents are at liberty to raise all objections, which they are entitled to, in respect of the claims raised by the applicant, before the Sole Arbitrator. The arbitrator is at liberty to fix his fee. No Costs.

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