

Krishna Associates Vs. Central Coalfield Ltd. and ors.

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Court : Jharkhand

Decided On : Jan-18-2001

Reported in : 2001(49)BLJR1237

Judge : M.Y. Eqbal, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 11(6); [Interest Act, 1978](#)

Appeal No. : Request Case No. 4 of 1998(R)

Appellant : Krishna Associates

Respondent : Central Coalfield Ltd. and ors.

Advocate for Def. : Ritu Kumar, Adv.

Advocate for Pet/Ap. : Anil Kumar Sinha, Sr. Adv.

Disposition : Application dismissed

Judgement :

ORDER

M.Y. Eqbal, J.

1. In the instant application, filed under Section 11(6) of the [Arbitration and Conciliation Act, 1996](#), the petitioner has prayed for appointment of Arbitrator and for reference of the claim to the Arbitrator for adjudication.

2. The facts of the case lie in a narrow compass: The petitioner was allotted work order for construction of wharf/ earth filling at Churi Railway siding under Piperwar Project in terms of the agreement, dated 30.7.1994. This work was valued at Rs. 31,57,162.46 paise. The side work was to be commenced from 26.4.1994 and to be completed within a period of six months.

Petitioner's case is that there was inordinate delay from the side of the respondents in allotment of clear site where the job was to be carried out. The respondents could not provide entire . working place except a part where the petitioner began its work. In this respect, for providing other site, the petitioner sent several letters but nothing was done by the respondents. It appears that contract was closed with effect from 30.5.1995. According to the petitioner, equipments were brought on the site and the said equipments and labourers remained idle for about 217 days due to which the petitioner suffered huge financial loss. The petitioner made a claim and by letter, dated 29.6.1996 requested the General Manager, Piperwar Project to settle the claim within 30 days failing which the petitioner shall invoke arbitration clause contained in the agreement. When nothing was done from the side of the respondents, the petitioner filed the instant application for appointment of Arbitrator.

3. A counter-affidavits has been filed on behalf of the respondents stating, inter alia, that the petitioner has already received the amount in full and final settlement of the claim and submitted 'no dues certificate'. The petitioner has also certified in the bill that the claim has been fully satisfied and there is nothing due against the respondents. The case of the respondents is, therefore, that no dispute exists as there is no amount due against the respondents and there is no question of entertaining this application and appointing Arbitrator.

4. Having regard to the pleadings of the parties, before exercising power under Section 11(6) of the said Act, I have to satisfy myself whether, prima facie, any dispute still exists which needs reference to arbitrator for adjudication.

5. Mr. A.K. Sinha, learned senior counsel for the petitioner mainly contended that the claim raised by the petitioner is for compensation for the loss suffered by it due to the fact that the equipments as also the labourers remained idle for about 217

days. Learned counsel submitted that the petitioner is not claiming any other amount in respect of the work done by it, for which the full and final certificate was executed by the petitioner. According to the learned counsel, the claim of the petitioner cannot be rejected on the ground that it has received the amount in full and final settlement of the claim. Learned counsel relied upon the decisions of the Supreme Court in the case of Damodar Valley Corporation v. K.K. Kar, AIR 1974 SC 158; Union of India v. L.K. Ahuja, AIR 1988 SC 1172; R.A. Desmukh v. City and Industrial Development Corporation of Maharashtra, 1997 Supp Arbitration Law Reports 574 and in the case of Executive Engineer, D.M.I Division v. N.C. Budhiraj, AIR 2000 SC 221.

6. On the other hand, Mrs. Ritu Kumar, learned counsel appearing for the respondents submitted that the petitioner by letter, dated 30.3.1995 requested the respondents to close the work and to pay the amount in respect of the work done by it. The petitioner, accordingly, submitted bills. Learned counsel submitted that at no point of time before submitting bills or before discharging the satisfaction voucher petitioner ever claimed any compensation or other amount for the alleged loss or damages suffered by it. Learned counsel further drew my attention to Annexures A and B to the counter-affidavit to show that the petitioner, in an unequivocal terms, admitted and agreed that it shall have no further claim at all. According to the learned counsel, therefore, the instant application is not maintainable. In this connection learned counsel relied upon the decisions of the Supreme Court in the cases of Nathini Steels Ltd. v. Associated Constructions, 1995 Supp (3) SCC 324; P.K. Ramaiah & Co. v. Chairman and Managing Director, National Thermal Power Corporation, 1994 Supp (3) SCC 126 and in the case of Union of India v. M/s. Raj Brothers, AIR 2000 Gauhati 132.

7. Before deciding the question as to whether the application for appointment of arbitrator is entertainable or not, I would like to discuss first the ratio decided by the Supreme Court in the decisions cited by the petitioner.

8. In the case of Damodar Valley Corporation v. K.K. Kar, AIR 1974 SC 158, the apex Court held that the question whether termination of the contract was valid or not and whether the damages were recoverable for such wrongful termination, did

not affect the arbitration clause or the right of the respondents to invoke it for appointment of arbitrator. Their Lordships further held that the question whether there had been a full and final settlement of the claim under the contract, was itself a dispute arising upon or in relation to the contract and a claim for damages is a dispute and difference in relation to such contract and the reference to the arbitrator is not barred. The fact of that case was that the respondent entered into a contract with the DVC for supply of coal. The contract was repudiated by the appellant and the respondent-contractor was asked to submit his bill along with a receipt stating that he received payment in full and final settlement of all dues and that there was no other claim but the respondent while submitting his bill did not give receipt as desired. The amount of the bill was, however, paid after receipt of which the respondent claimed further sum from the appellant including the damages for repudiation of that contract. In the said facts of the case their Lordships held that the dispute raised by the respondent-contractor is referable to arbitration.

(Emphasis given)

9. In the case of *Union of India v. L.K. Ahuja and another*, AIR 1988 SC 1172, the apex Court while deciding the maintainability of the application for reference under Section 20 of the Arbitration Act, 1940 held that the question whether the claim is liable to be adjudicated by arbitrator or it was barred by lapse of time, are the questions which are to be decided by the arbitrator. Their Lordships further held that after the settlement of final bill right to get further payment gets weakened but the claim subsists, is a matter which is arbitrable.

10. In the case of *R.A. Deshmukh v. City and Industrial Development Corporation of Maharashtra*, 1997 Supp Arbitration Law Reports 574, a Bench of the Bombay High Court held that in order to entitle the Court to refuse to refer the dispute to arbitration, there must be voluntary and unconditional written acceptance of payment in full and final settlement of the contract.

11. In the case of *Executive Engineer, D.W.I, Division v. N.C. Budhiraj*, AIR 2000 SC 221, the question that arose for consideration by the apex Court was as to whether the arbitrator has got jurisdiction to award interest for the pre-reference period in cases which arose prior to commencement of the [Interest Act, 1978](#).

The ratio decided by the Supreme Court has, therefore, no relevance in the instant case.

12. Now, I shall discuss some of the admitted facts of the present case. As noticed above, under the agreement work was to be commenced from 26.11.1994 and to be completed within a period of six months. The petitioner executed the work in part but the entire work could not be completed due to non-availability of site. The petitioner submitted his bill for the work done and received payment as per the bill., The petitioner now claims loss and damages for a period of 217 days during which the equipments and labourers allegedly remained idle. In this connection, it is worth to refer the letter of the petitioner, dated 30.3.1995, a copy of which has been annexed as' Annexure 2 to the application. In the said letter, the petitioner requested the respondent to close the work and make immediate payment for the work done by it. The petitioner accordingly, submitted the bill. The bill was submitted on 12.9.1995. In the said bill, the petitioner made an endorsement that it has no claim outstanding against the administration for this work and the claim preferred through this bill is in full and final settlement of its claim. The petitioner also executed a separate document giving the details of the amounts payable, i.e., Rs. 1,31,194.75 paise and further gave a certificate which reads as follows :--

'Certified that the claim preferred through this bill is in my full satisfaction of claim and there is nothing any due against the management for this work up-to-date.'

13. It appears that the petitioner received all his claim on 23.1.1996. The respondents also refunded the earnest money and security money along with the final bill. The petitioner after receiving the amount in full and final settlement of the claim started writing letters that he is entitled to claim damages for the loss suffered by it due to the equipments and labourers sitting idle for 217 days. It mustbe mentioned here that before submission of bill the petitioner never raised any claim against loss and damages. It is only after the payment was received under the bill after due execution of discharge receipt in full and final settlement of the claim, the petitioner raised additional claim by way of loss and damages in respect of the same work. In my opinion, therefore, such claim cannot be referable to arbitration.

14. In the case of M/s. P.K. Ramaiah and Co. v. Chairman and Managing Director, National Thermal Power Corporation, 1994 Supp (3) SCC 126, their Lordships held that voluntary and unconditional written acceptance of payment in full and final settlement of the contract debars the claimant from making further claim in respect of the same work. In that case before the Supreme Court, the appellant had a contract with the respondent to complete the site levelling and grading for Ramagundam Super Thermal Power Project for a sum of Rs. 1,74,33,334/- and the work had to be completed within 15 months. After completion of the work he received the amount in full and final settlement of the claim. In that case also the appellant-contractor had made an endorsement in his own hand to the effect that final measurement and payment accepted in full and final settlement of the contract. Their Lordships held 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.

15. In the case of Nathani Steels Ltd. v. Associated Constructions, 1995 Supp (3) SC 324, the apex Court after considering the same question held that once there is a full and final settlement in respect of any particular dispute or difference in relation to a matter covered under the arbitration clause in the contract and the dispute or difference is finally settled by and between the parties, such a dispute or difference does not remain to be an arbitrable dispute and the arbitration clause cannot be invoked.

16. Recently in the case of Union of India v. M/s. Raj Brothers, AIR 2000 Gauhati 132, a Bench of the Gauhati High Court has considered a similar question. In the case before their Lordships, the question that fall for consideration was whether once a contractual claim is finally settled and a certificate to that effect is given, the contractor is estopped from raising further claim under the contract and demand reference to arbitrator. Their Lordships observed as follows :--

'Once a person gives a certificate of final settlement of his contractual claims it will be rather unfair on his part to go back on his words so as to ask for settlement of some new claims allegedly remaining to settle under the same contract on the

plea that while certifying the final settlement he was either misled in giving the certificate or that he gave such certificate under duress or under some compulsion. Where such plea is raised the first question which would arise will be whether the certificate of final settlement of the claims arising from the contract was given voluntarily or under coercion. This question, in my opinion, cannot be settled by the arbitrator. Such a plea can, however, be raised only in a suit if filed for cancellation of the documents the question which according to the claimant had been obtained from him under duress or coercion. So long the document endorsing final settlement remains it is not open for him to put up other claims under the contract.'

17. Having regard to the entire facts and circumstances of the case and after giving my due consideration to the decisions referred hereinabove, I am not of the opinion that the petitioner after having received the amount in full and final settlement of the claim cannot be permitted to raise additional claim and demand reference of the dispute for arbitration. In that view of the matter, the dispute raised by the petitioner is not arbitrable. No relief can be granted to the petitioner in this application which is accordingly dismissed.

18. Application dismissed.