The Reliable Water Supply Service of India

Vs

Union of India and Others

Civil Appeal No. 1327 of 1967

(CJI J. C. Shah, S. K. Hegde, A. N. Grover JJ)

21.01.1971

JUDGMENT

HEGDE, J. -

1. The appellant is a company. It entered into a contract with the Union of India on November 17, 1959 for fabrication of tank Shells at Kalai Kunda. The fabricated Shells were to be rolled through the tracks allotted by the Air Force authorities. After the manufacture of Shells, the appellant applied for permission to roll the Shells. The permission asked for was granted on March 24, 1960. The appellant was asked to roll those Shells through the airfield and the rolling was to be done on Sundays and Mondays which were not flying days. In pursuance of the said permission the appellant rolled some Shell on February 28, 1962. While the Shells were being rolled, a Shell hit a parked aircraft on the apron. The Air Force authorities assessed the damage caused to the plane at Rs. 51,414/-. Thereafter the appellant was called upon to pay the said amount. The appellant denied its liability to pay the amount demanded. Then the authorities threatened the appellant that they would deduct the amount in question from its bills. The appellant protested against the threatened deduction. Thereafter the Union of India referred the dispute to Col. J. S. Sandhu on August 13, 1962, negativing the contention of the appellant that the dispute in question does not fall within the scope of the agreement entered into by it with the Union of India. Soon thereafter the appellant moved the Court of Civil Judge, Lucknow under Section 5 of the Indian Arbitration Act, 1940 for revoking the reference to the arbitrator. The trial Court accepted that application and ordered the revocation of the reference. The Union of India took up the matter in appeal to the High Court of Allahabad. The appellant contested the appeal on various grounds. One of the grounds taken by him was that the appeal was not maintainable. The High Court accepted that contention but converted the appeal into a revision under Section 115 of the Code of Civil Procedure. The High Court set aside the order of the trial Court holding that the reference was a valid one. Thereafter this appeal was brought after obtaining a certificate from the High Court.

2. In support of the appeal, two contentions were advanced by the learned Counsel for the appellant viz. (1) that the dispute in question does not fall within the scope of clause (70) of the agreement and (2) that the High Court had no jurisdiction to convert the appeal into a revision under Section 115 of the Code of Civil Procedure.

3. The clauses in the agreement which are relevant for deciding the points arising in the appeal are Clauses 48(c) and 70. Clause 48(c) reads :

"Damage and Loss :

(c) Save as provided above, the Contractor shall at his own expense reinstate and make good to the satisfaction of the G.E. or make compensation for any injury, loss or damage occasioned to any property or right whatever including property and right of Government (or agents, servants, or employees of Government) being injury, loss or damage arising out of or in any way in connection with the execution or purported execution of the Contract and further, Contractor shall indemnify Government against all claims enforceable against Government (or any agent, servant or employee of Government) or which would be so enforceable against Government were Government a private person, in respect of such injury (including injury resulting in death), loss or damage to any person whomsoever or property, including all claims which may arise under the Workmen's Compensation Act or otherwise."

Clause 70 reads :

"Arbitration. - All disputes, between the parties to the Contract (other than those for which the decision of the C.W.E. or any other person is by the Contract expressed to be final and conclusive) shall, after written notice by either party to the Contract to the other of them be referred to the sole arbitration of an Engineer Officer to be appointed by the authority mentioned in the tender Documents."

4. In support of the contention that the dispute in question did not fall within the scope of Clause 70 of the agreement, it was urged that the contract entered into by the appellant was with the President of India and that the damage, if any, caused to the aircraft was to the property of the Air Force and hence the same cannot be considered as causing any loss to the property of the Union Government. This is an untenable contention. The Government is the owner of the aircraft in question. The armed forces of this country do not form a separate legal entity. The army is only one of the many departments of the Government. Hence the damage to the aircraft has resulted in loss to the Government of India.

5. The second contention advanced on behalf of the appellant is that the damage in question was not caused while carrying out the terms of the contract and therefore the same does not fall within Clause 48(c). This contention again cannot be accepted. From the facts set out above, about which there is no dispute, damage to the aircraft was caused while implementing the terms of the contract. We are clear in our opinion that the claim made by the Government falls within the scope of Clause 48(c) and as there is a dispute between the parties about the sustainability of that claim as well as to the quantum of the loss caused, the dispute falls within the scope of Clause (70). This conclusion disposes of the first contention.

6. Turning now to the second contention, in our opinion, the application under Section 5 of the Arbitration Act, 1940 was a misconceived application. The controversy in this case is whether the dispute in question is covered by the terms of the agreement. In other words the dispute is as to the existence of an agreement to refer disputes of the type with which we are concerned in this case, to arbitration. That being so, the case fell within the scope of Section 33 of the Arbitration Act and not Section 5. In view of the erroneous conclusion of the trial Court that the Air Force is a legal entity different from the Union Government, it proceeded to take the view that the dispute in question is not covered by Clause 48(c) and hence did not come within the scope of Clause (70). The trial Court was under the erroneous impression that the controversy before it fell within the scope of Section 5 of the Arbitration Act. We do not know what its conclusion would have been if it had taken the correct view of the law. The facts disclosed in the application did not confer jurisdiction

upon it under section 5. It did not consider the application under Section 33. Hence in our opinion it illegally exercised its jurisdiction under Section 5. Under those circumstances the High Court was right in converting the appeal into a revision.

7. For the reason mentioned above this appeal fails and the same is dismissed with costs.

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