

SUPREME COURT OF INDIA

State of A.P.

Vs.

Obulu Reddy

C.A. No.7246 of 1993

(D.P.Wadhwa and M.B.Shah JJ.)

01.09.1999

ORDER

1. These four appeals raise a common question on the interpretation of a certain G.O.M. issued by the State of Andhra Pradesh terms of which supposedly constitute an arbitration agreement. There is, however, apparent conflict on two decisions of this Court on the interpretation of the said G.O.M.

2. We take the facts in Civil Appeal No. 7246 of 1993 to understand the issue involved in these appeals.

3. Appellant, the State of Andhra Pradesh, awarded a contract on March 14, 1984 to the respondent for execution of certain work of construction or a canal across Sarada River. The value of the contract was over Rs. 83 lacs. G.O.M. No. 430 dated October 4, 1983 which contained arbitration clause was part of the contract document. This G.O.M. 430, in relevant part is as under:-

Value of Amount panel of Arbitration 1. Claims up to 1. Superintending Rs. 10,000 Engineer of & above another Circle in the same Department. 2. Claims above 1. Another CE of the Rs. 10,000/- same Department. upto Rs. 50,000/- 2. Where there is only one CE in the Deptt., the CE, will submit proposals to Govt., in the Administrative Deptt., for nomination of another CE as Arbitrator by Government. 3. Claims above Court of Rs. 50,000/- competent jurisdiction.

4. Disputes and differences having arisen of the value above Rs. 50,000/-, the respondent sent a letter to the Principal Subordinate Judge, Visakhapatnam to enter into the reference as arbitrator. The Principal Subordinate Judge, however, declined to enter into any reference. Respondent then filed a petition under Section 8 of the Arbitration Act. 1940 which was allowed by the Subordinate Judge on April 13, 1992 and the disputes were referred to a sole arbitrator. State of Andhra Pradesh felt aggrieved and challenged the appointment of the arbitrator by filing a Civil Revision in the Andhra Pradesh High court. It was the contention of the State Government that under G.O.M. No. 430 claims above Rs. 50,000/- could only be decided in a regular suit and it could not be the subject matter of arbitration and that Section 8 of the Arbitration Act was inapplicable. High Court, however, dismissed the revision filed by the State Government by its judgment and order dated November 23, 1992. State Government has then taken the matter to this Court in appeal after obtaining leave. In the meanwhile, it appears, another GO No. 160 date June 1, 1987 was issued by

the State Government clarifying if claim over Rs. 50,000/- is to be decided by the arbitrator or by a Civil Court. This GO we set down as under:

ORDER

Govt., after careful consideration of various aspects, issued orders in para (2) of the G.O. read above prescribing the revised procedure for arbitration.

2. It has come to the notice of the Govt., that some of the contractors are approaching Courts to decide the claims above Rs. 50,000/- under the provisions of the Arbitration Act taking advantage of para 2(3) of the G.O. read above. The intention of the Govt. incorporating the above provision is to dispense with the Arbitration proceedings in respect of claims above Rs. 50,000/- and leave the parties to have their remedy in Civil Court. As some of the contractors have misconstrued that the claims above Rs. 50,000/- have to be decided under the Arbitration Act and not under ordinary Law in a regular civil Court, the Govt., direct that the following amendments to G.O.MS. No. 430, I(Irr.V) Deptt., dated 24-10-1983 be issued by way of clarification.

(i) Item (3) of para (2) may be deleted.

(ii) Substitute para (3) by the following.

"All claims above Rs. 50,000/- shall be decided by the Civil Court of competent jurisdiction by way of a regular suit."

(iii) Para 3 to 7 are renumbered as para 4 to 8.

5. As to how the conflict has arisen, we refer to the two decisions of this Court in State of Andhra Pradesh v. I Devender Reddy 1993 (2) SCALE 732 and in Vishakapatnam Urban Development Authority v. V. Narayana Raju 1995 (2) SCALE 234. In both the decisions reference was made to G.O.M. No. 430 and G.O.M. No. 160 and this is how the Court understood these two G.O.MS.:

(1) State of Andhra Pradesh v. I. Devender Reddy 1993(2) SCALE 732 Under Section 8(2) of the Arbitration Act, subordinate Judge, Paddapalli at the instance of the respondent appointed an Arbitrator to give an award in respect of the dispute relating to the execution of a work contract. The appeal against the said order has been dismissed by the High Court in limine. The State has now appealed to this Court challenging the order appointing the Arbitrator.

Mr. Nambiar, learned Counsel for the State has relied upon two Government notifications dated 24 October, 1983 and 1st June, 1987 in support of his contention that the dispute cannot be decided by the Arbitrator but must be determined by a civil court in a properly constituted suit. We have perused the terms of the notifications. The first notification dated 24 October, 1983 is not precise in terms as to the forum of adjudication of claims above Rs. 50,000/- but the second notification dated 1st June, 1987 expressly provides that all claims above Rs. 50,000/- shall be decided by the civil court of competent jurisdiction by way of a regular suit. If first notification was clear enough as to the jurisdiction of the civil court to decide all claims above Rs. 50,000/- it was unnecessary to issue the second notification substituting the uncertainty in para 3 of the first notification. It is not in dispute that the second notification is only prospective and apparently not applicable to the case on hand since the claim in question arises out of the contract dated 4th March, 1986."

(2) Vishakapatnam Urban Development Authority v. V. Narayana Raju 1995 (2) SCALE 234 Having perused GOMS No. 430 dated 24th October, 1983 we have no doubt that it clearly provides for arbitration in respect of claims only up to Rs. 50,000/- and not above that amount, making it clear in paragraph 2 that the claims above Rs. 50,000/- are to be adjudicated by the court of competent jurisdiction. No doubt the expression "court of competent jurisdiction" is mentioned under the head "panel of arbitrators" since the same para deals with "claims up to Rs. 10,000/- and up to Rs. 50,000/-." That is, however, in inartistic drafting of the GOMS but it cannot be construed to mean that claims above Rs. 50,000/- are to be adjudicated by arbitration in which the Judge presiding over the court of competent jurisdiction is to act as the arbitrator. It would be absurd to make such a construction of that part of the GOMS which would oblige the Judge to act as the arbitrator. The subsequent GOMS No. 160 dated 1-6-1987 merely clarifies this fact on account of an attempt by some contractors to misconstrue the earlier GOMS as clearly stated in the subsequent GOMS. The contention of the respondent is wholly untenable.

Consequently, the appeals are allowed. The impugned orders made by the High Court and the trial court are set aside resulting in rejection of the respondent's applications made under Section 8 of the Arbitration Act.

6. It will, thus, be seen that in Devender Reddy's case G.O.M. 160 has held to be prospective in operation and the appeal of the State Government seeking removal of arbitrator appointed under Section 8(2) of the Arbitration Act was dismissed. In the case of V. Narayana Raju this Court said that GOM. 160 was only clarificatory in nature and it allowed the appeal of Vishakapatnam Urban Development - Authority it would appear that the decisions I. Devender Reddy 's case was not cited before the Court in the case of V. Narayana Raju. In any case, there is apparent conflict in these two decisions which has to be resolved by a larger Bench. We, therefore, direct that these appeals be laid before Hon'ble the Chief Justice for him to constitute a larger Bench in order to decide if GO 160 dated June 1, 1987 is merely of clarificatory nature or of prospective operation.