

Govt. of A.P

Vs

K. Mastan Rao

Civil Appeal No. 144 of 1992

(L. M. Sharma, V. Ramaswami, B. P. Jeevan Reddy JJ)

14.01.1992

JUDGMENT

1. The respondent-contractor executed certain works in pursuance of an agreement which was reduced to writing containing an arbitration clause providing for settlement of disputes between the parties by arbitration of 3 persons holding the post of the Chief Engineer, Srisailam Project, the Deputy Secretary to Government, Finance Department, and the Director of Accounts, Sriramsagar Project, at the relevant time. Accordingly, a dispute which arose between the parties was referred to them for settlement. The matter, however, remained pending and was not disposed of expeditiously and the respondent made an application under the provisions of the Indian Arbitration Act, 1940 before the civil court. The petitioner, State of Andhra Pradesh, opposed the prayer of the respondent-plaintiff for appointing a single arbitrator, inter alia, on the grounds that the arbitrators had not defaulted in doing their duty and that in any event a single arbitrator could not be appointed by the court in view of the specific provisions in the Agreement. The learned Subordinate Judge overruled the objections and removed the panel of 3 arbitrators and appointed a retired Chief Engineer as the sole arbitrator to adjudicate the dispute. The petitioner challenged the decision by a civil revision application before the High Court, which was dismissed by the impugned judgment.

2. The learned counsel for the parties have placed before us their respective points of view on the question as to whether the panel of 3 arbitrators had so delayed in disposing of the proceeding that the learned subordinate Judge could have passed the impugned order removing them. It has been further argued on behalf of the petitioner that in any event the civil court ought to have appointed a panel of 3 arbitrators instead of a single arbitrator in view of the express provision in the Agreement, and further in his discretion he should have chosen the three incumbents holding the aforesaid posts. If that had been done the petitioner-State would not have objected.

3. The respondent has taken a preliminary objection to the petition on the ground that the petitioner-State had participated in the proceeding before the sole arbitrator appointed by the civil court and a final award has already been made. In reply the learned counsel for the petitioner has stated that the special leave petition was filed promptly and in spite of repeated prayers by the advocate-on-record the case could not be listed and since the arbitrator insisted on proceeding with the matter the petitioner was left with no option, but to co-operate after lodging a formal protest in writing which is on the record of the case. We do not find any merit in the objection of the respondent which is accordingly rejected. Special leave is granted.

4. We have considered the entire matter closely and have gone through some of the documents with the assistance of the learned counsel for the parties and in our opinion it is a fit case in which the arbitration matter should be entrusted to the incumbents of the three posts mentioned in the

Agreement, and in that view it is not necessary to decide the question debated by the parties as to whether the arbitrators had neglected to conclude the arbitration proceeding justifying the appointment of an arbitrator or arbitrators by the Court. We, therefore, set aside the orders passed by the Courts below and direct the trial Court to refer the dispute for decision of the present Chief Engineer, Srisailam Project, Deputy Secretary to Government, Finance Department and Director of Accounts, Sriramsagar Project with a direction to them as well as to the parties to co-operate in concluding the proceeding expeditiously. As a result of this judgment the Award made by the sole arbitrator being dependent on the impugned judgments which are being set aside, automatically stands set aside and accordingly the same will now be ignored. The appeal is allowed, but in the circumstances there will be no order as to costs. Appeal allowed.

</html