

SUPREME COURT OF INDIA

Rajkamal Builders

Vs.

Ahmedabad Municipal Corpn.

C.A.No.5728 of 2008

(R.V. Raveendran and Lokeshwar Singh Panta JJ.)

17.09.2008

ORDER

Leave granted. Heard learned counsel for the parties.

1. The Ahmedabad Municipal Corporation (AMC for short) decided to construct a bridge across the river Sabarmati. In that behalf AMC sought financial contribution from Ahmedabad Electricity Company (AEC), Oil & Natural Gas Commission (ONGC) and Gujarat State Road Transport Corporation (GSRTC). As the cost was estimated to be Rs.11 crores, it was agreed that AMC, AEC, ONGC and GSRTC will bear the cost in the ratio of Rs.4 crores, Rs.1 crore, Rs.2 crores and Rs.4 crores respectively. According to AMC, it was further agreed that in the event of the cost exceeding Rs.11 crores, the excess to the extent of Rs.1 crore would be borne by ONGC and AEC in the proportion of 2:1. AMC appointed AEC as its agent for construction of the bridge. The work was entrusted to the appellant for execution. The cost of construction turned out to be Rs.11,38,06,000/-. It is stated that the additional cost of Rs.38,06,000/- was borne by ONGC and AEC in the ratio of 2:1 as per the earlier understanding.

2. Thereafter, the contractor raised certain disputes in regard to its claims aggregating to Rs.1,33,36,200/-. The said disputes were referred to arbitration. AMC, AEC, ONGC and GSRTC were made respondents in the arbitration proceedings.

“The Arbitrator by award dated 15.6.1999, awarded a sum of Rs.20,14,860/- to the appellant contractor and directed that AMC and AEC shall pay the said amount with interest at the rate of 12% per annum from the date of award till date of realisation (in the manner set out in para 24 of the award). Feeling aggrieved by the award, AEC filed an application before the City Civil Court, Ahmedabad under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act' for short). The City Civil Court by its judgment dated 15.9.2003 upheld the award directing the payment of Rs.20,14,860/- with interest at the rate of 12% per annum to the contractor.

However, the trial court held that AMC was not liable to pay any amount. It held that AEC was liable to pay one-third of the award amount and ONGC was liable to pay two-third of the award amount. Consequently it directed AEC to pay RS.6,71,620/- plus interest and ONGC to pay Rs.13,43,240/- plus interest to the contractor.”

3. Feeling aggrieved by the modification of the award, ONGC filed an appeal before the High Court of Gujarat. ONGC contended that having regard to the scope of Section 34 of the Act, the Court ought not to have shifted the liability from AMC to ONGC. On the other hand AMC supported the order of the trial court. The High Court by its judgment dated 27.9.2005 allowed the appeal. It held that the ONGC could not have been made liable to pay Rs.13,43,240/- with interest in modification of the award of the Arbitrator. The High Court was of the view that having regard to the nature of jurisdiction exercised under Section 34 of the Act, and as the provisions of Section 96 and Order 41 Rule 33 of CPC were inapplicable, the trial court could not have shifted the liability from AMC to ONGC. Therefore, the High Court set aside the decision of the trial court to the extent it held that ONGC was liable to pay Rs.13,43,240/- with interest.

4. Feeling aggrieved the contractor has filed this appeal by special leave. The contractor submits that it is not concerned whether the AMC pays or ONGC pays, so long as some one pays the award amount to it. The grievance of the contractor is that the High Court while setting aside the liability of ONGC, ought to have issued a specific direction to AMC to pay the amount or ought to have stated that the award of the Arbitrator stood restored in full. The contractor apprehends that the judgment of the High Court may be so interpreted that AMC may dispute its liability to pay Rs.13,43,240/- with interest on the ground that there is no specific direction to them by the High Court to pay the said sum.

5. On a careful consideration of the judgment, we are of the view that there is no basis for the apprehension of the contractor-appellant. The entire judgment when read as a whole, makes it clear that all that the High Court intended was to shift back the liability from ONGC in regard to Rs.13,43,240/- with interest and not to reduce the amount due to the appellant. In short the effect of the decision of the High Court is to restore the award to its original position. It therefore follows that the sum of Rs.13,43,240/- with interest thereon will have to be paid in terms of the award.

6. However, this leaves us with the dispute between AMC and ONGC as to who should bear the said liability. As observed above, the appellant contractor is not concerned with this dispute. It is unfortunate that even though the liability towards the contractor for the sum of Rs.20,14,860/- with interest awarded by the Arbitrator was not under challenge, the contractor has not been able to get the amount due to it for nearly a decade because of the inter-se dispute in regard to liability between the AMC and the ONGC.

7. AMC is a statutory body established under the Ahmedabad Municipal Corporation Act and ONGC is a statutory Corporation established under the Oil & Natural Gas Commission Act, 1959. In regard to disputes between Government departments and public sector Undertakings, there is a mechanism for amicable resolution of disputes by mutual

negotiations or through good offices of the High Powered Committee constituted by the Central Government, before parties approach a court. (See: *ONGC vs. CCE*¹). Though the dispute between AMC and ONGC may not strictly fall under the category of disputes referable to the High Powered Committee, there is no reason why an attempt should not be made by AMC and ONGC to sort out the dispute between them by mutual negotiations or through the High Powered Committee, before the issue is considered by the court.

There is also no reason why the appellant contractor should wait for payment till the issue is decided as between AMC and ONGC.

8. Therefore in exercise of power under Article 142 of the Constitution, we direct that the amount admittedly due as per the award (the sum of Rs.13,43,240/- with interest thereon) shall be paid equally (50% each by AMC and ONGC) to the appellant-contractor within three months from today. AMC and the ONGC shall also pay a sum of Rs.10,000/- as costs to the appellant contractor. The appeal is disposed of accordingly in so far as the appellant is concerned.

9. Such payment will be without prejudice to the rights and contentions inter se between themselves. AMC and ONGC shall endeavour to sort out the dispute between themselves as to who is liable, in the manner stated above. In the event of failure, this Court will consider the question. List the matter after six months to enable AMC and ONGC to report about the results of their efforts of negotiated settlement.

¹*1995 Supp(4) SCC 541*