

M/S. Satyanarayana Construction Co

v.

Union of India & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE R.M. LODHA HON'BLE MR. JUSTICE JAGDISH  
SINGH KHEHAR

Civil Appeal No. 2012 Of 2006 | 12-10-2011

This is an appeal from the judgment passed by the Division Bench of the Andhra Pradesh High Court on April 8, 2005.

2. Appellant M/s. Satyanarayana Construction Co. (for short "contractor") was awarded a contract for earth work in formation and miscellaneous works from Ch. 24150 M to Ch. 27700 M between Dharur and Rukmapur stations. The work was to be completed by the contractor by May 21, 1997 but it was extended from time to time and the last date for completion of the work, as per extended time, was March 31, 1998. According to the contractor, except for few minor works that remained to be verified, it completed the work by March 31, 1998 but the respondents did not pass the final bill.

3. For resolution of the disputes in relation to the above contract, the contractor sought appointment of an Arbitrator but the Arbitrator was not appointed by the respondents. The contractor, then, approached the Chief Justice of the Andhra Pradesh High Court by filing an application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act"). After hearing the parties, the Chief Justice allowed the application made by the contractor under Section 11 of the 1996 Act and appointed Justice Shri T.N.C. Rangarajan, retired Judge of the High Court, as an Arbitrator.

4. The sole Arbitrator entered upon the reference. The contractor submitted his statement of claim. The claim of the contractor was under diverse heads; the principal claim being claim No. 4 for a sum of Rs. 1,89,99,999/- (one crore eighty nine lakhs ninety nine thousand nine hundred ninety nine only) as additional remuneration relating to cutting the earth and sectioning to profile.

5. The claim was contested by the respondents. They set up a plea that the contractor unduly delayed the execution of the work and was not entitled to any further claim.

6. Before the Arbitrator, the parties relied upon the documentary evidence. No oral evidence was let in by any of the parties.

7. The Arbitrator, by his Award dated December 31, 2000, awarded a total sum of Rs. 95,00,000/- (ninety five lakhs only) in favour of the contractor payable by the respondents on or before March 31, 2001 failing which it was directed that the due amount shall carry compound interest @ 12% p.a. with quarterly rest until payment.

8. Respondents challenged the Award by filing objections under Section 34 of the 1996 Act through a petition being O.P. No. 77 of 2001. The Ist Additional Chief Judge, City Civil Court, Secunderabad heard the parties and by his order dated July 4, 2002 dismissed the respondents' petition.

9. Not satisfied with the order of the Ist Additional Chief Judge, City Civil Court, Secunderabad, respondents preferred an appeal under Section 37 of the 1996 Act before the Andhra Pradesh High Court. The Division Bench of the High Court, after hearing the parties, allowed the appeal, set aside the order of the Ist Additional Chief Judge, City Civil Court, Secunderabad passed on July 4, 2002 and modified the Award dated December 31, 2000 passed by the Arbitrator with regard to claim Nos. 4, 6,8 and 11.

10. Mr. Anil Kumar Tandale, learned counsel for the contractor assailed the judgment of the High Court mainly with regard to claim No. 4. He extensively referred to the reasons given by the Arbitrator in awarding rate of Rs. 210 per cubic meter for the work relating to 'cutting the earth and sectioning to profile'. Mr. Tandale submitted that the Arbitrator took into consideration the relevant aspects in awarding higher rate for that work than the rate agreed to between the parties under the contract. Mr. Tandale further submitted that the High Court

exceeded in its jurisdiction in setting-aside the well-reasoned award passed by the Arbitrator.

11. Mr. Harish Chandra, learned senior counsel for the respondents, on the other hand, justified the judgment of the High Court.

12. In Schedule 'A' appended to the contract, rates of the items not covered by SSR 96 are provided. At serial No. 3 of Schedule 'A', the rate and amount of earth work in cutting all types of soils is provided. It reads as follows:

S.No.	Description	Qty.	Unit	Rate	Amount
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3)	x x x x x x Earth work in cutting in all types of soils including soft disintegrated rock and with boulders of any size or continuous rock with blasting as required at site including side drains trolley refuges catch water drains etc., including excavation sectioning to profile, dressing of slopes surface and leading of cut spoil into spoil dumps or into embankment upto maximum lead of 150M and all lifts and dressing slopes and surfaces of spoils dumps with all contractor's tools, plant and machinery and labour complete as directed by the Engineer.	600001	M	3110/-	66,00,000.00
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13. Thus, as per the contract, the contractor was to be paid for cutting the earth and sectioning to profile etc. @ Rs. 110 per cubic meter. There may be some merit in the contention of Mr. Tandale that contractor was required to spend huge amount on the rock blasting work but, in our view, once the rate had been fixed in the contract for a particular work, the contractor was not entitled to claim additional amount merely because he had to spend more for carrying out such work. The whole exercise undertaken by the Arbitrator in determining the rate for the work at serial No. 3 of Schedule 'A' was beyond his competence and authority. It was not open to the Arbitrator to rewrite the terms of the contract and award the contractor a higher rate for the work for which rate was already fixed in the contract. The Arbitrator having exceeded his authority and power, the High Court cannot be said to have committed any error in upsetting the Award passed by the Arbitrator with regard to claim No. 4.

14. We, thus, find that the High Court did not commit any error in upsetting the Award of the Arbitrator with regard to claim No. 4 in the statement of claim.

15. Mr. Tandale did not assail the judgment of the High Court with regard to other claims upset by the High Court namely; Claim Nos. 8 and 11. With regard to Claim No. 6, the High Court has already directed the respondents to calculate the amount under this head at the time of settling the final bill and also directed the respondents to pay interest @ 12% p.a. on the due amount, if not paid. Obviously, in view of the directions given by the High Court in para 26 of its judgment, the respondents will have to calculate the amount as regards contractor's Claim No. 6 at the time of settling the final bill. If the final bill has not been settled so far, we direct the respondents to settle the final bill expeditiously and, in any case, not later than eight weeks from the date of receipt of copy of this order. Respondents shall have to pay interest as directed by the High Court on the due amount, if not paid so far.

16. Consequently, appeal is dismissed with no order as to costs.