PETITIONER:
STATE OF ANNDHRA PRADESH

Vs.

RESPONDENT:
CHANDRASEKHARA REDDY & ORS.

DATE OF JUDGMENT: 22/09/1998

BENCH:
S.B. MAJUMDAR, M. JAGANNADHA RAO.

ACT:

HEADNOTE:

JUDGMENT:
J U D G M E N T
S.B. Majumdar. J :
Leave granted.
These appeals by special leave are preferred by the State of Andhra Pradesh being aggrieved by a common judgment and order dated 08.04.1996 of the High Court of Andhra Pradesh in appeal against order of the Trial Court as well as in companion civil revision petition arising out of the very same judgment of the Trial Court. The question in controversy between the parties in these appeals which were finally heard by consent of learned counsel for the parties is to the following effect :-
Whether the award of the arbitrator to the tune of Rs. 38,32,697/- with 18% interest per annum from the date of reference i.e. 27.06.1985 till payment in favor of Respondent No.1 which was made rule of the court, was legally justified or not.
A few relevant facts leading to these appeals deserve to be noted at the outset. Respondent No.1 contractor had executed a works contract assigned to him for laying distribution pipe to 32 fluoride affected villages in Prakasam District of Andra Preadesh. A per the said agreement dated 30.07.1980 executed by the executive Engineer on behalf of the appellant-State granting the said contract to Respondent No.1, the initial value of the work was Rs. 8,52,335.66. The site in question was handed over to Respondent No.1 contractor on 01.08.1980. The period of work was twelve months. Some dispute arose between the appellant-State on the one hand and Respondent No.1 on the other. As there was an arbitration clause in the contract for referring the dispute to arbitration for resolving the same, the said clause got invoked between the parties. The contention of Respondent No.1 Contractor was that the sole arbitrator, as provided in the articles of agreement, being the Superintending Engineer of Panchayat Raj, Hyderabad, N.A.P. Guntur, could not act as arbitrator as he was directly concerned with the contract work, he was required to be substituted by some other arbitrator. Accordingly, Respondent No.1 moved an application being C.P. No. 56 of 1984 under Section 8 of the Arbitration Act, 1940

(hereinafter referred to a 'the Act) in the Court of II Additional Judge, City Civil Court, Hyderabad for substituting. The said petition was decided by the learned Judge after hearing the parties by his order dated 25.02.1985. In place of sole arbitrator mentioned in the contract one Shri T. Nabi Saheb, Superintending Engineer, Retired. Ramchandranagar, Ananthapur, (Respondent No.2 herein) was appointed as soil arbitrator for adjudication of disputes that had arisen between Respondent No.1 (Petitioner before the court) and the appellant-State (first respondent before the court) in respect of agreement dated 30.07.1980 relating to the work i.e. providing distribution pipe lines to 32 fluoride affected villages in Prakasam District. The arbitrator was directed to sign a copy of the minutes of the order and enter upon reference in accordance with the agreement and to make the award within four months from the date of entering upon the reference pursuant to the said agreement between the parties. It is not in dispute between the parties that the said decision has become final.

Pursuant to the aforesaid order of the Trial Court, the arbitrator entered upon the reference, heard the parties and adjudicated upon the dispute by a non-speaking award and on various heads submitted before him by Respondent No.1 for adjudication, the aforesaid award of Rs. 38,32,697/- with interest was passed by him on 25.10.1985. The said award was submitted by Respondent No.1 for making it a rule of the court by filing O.S.No.1420 of 1985. A notice was issued to the appellant State authorities about the said filing of the award by the Trial Court. The appellant-State filed O.P. No.34 of 1988 on 26.02.1980 for setting award on various grounds raised therein. That O.P. was moved under Section 30 of the Act raising diverse objections to the award. The Trial Court took the view that the said application under Section 30 of the Act raising objections was time-barred and as there was no application for condonation of delay, the objections could not be entertained on merits. However, they were gone into on merits by treating them as a counter of application of Respondent No. 1 which was registered as O.S. No.35 of 1985 under which the award was sought to be made the rule of the court. The Trail Court considered the objections on merits and took the view that they were not sustainable in law. Resultantly, the Trial Court made the award rule of the court by its order dated 27.02.1989. Against the said order of the Trail Court, as noted earlier, the appellant-State filed an appeal from order as well as civil revision application challenging the order of the Trial Court making the ward rule of the court and also rejecting the objections filed by the State as barred by limitation. As both the appeal from order and by limitation. As both the appeal from order and civil revision petition raised common contentions, they were heard together by a Division Bench of the High Court. The High Court came to the conclusion that there was no substance in either of them and consequently dismissed both of them by its impugned common order dated 08.04.1996 and thus confirmed the order of the Trail Court making the award rule of the court. As noted earlier, it is the aforesaid common order of the High Court that has resulted in these appeals.

RIVAL CONTENTION

Shri A. Raghuvir, learned Senior Counsel appearing for the appellant-State raised two contentions in support of these appeals. He submitted that the learned Trial Judge as well as the High Court patently erred in taking the view that the objections under Section 30 of the Act were barred by 62 days. That in fact, the delay was only of 8 days,

which deserved to be condoned in the interest of justice as the advocate to whom the papers were entrusted by the State-authorities for filing objections before the Trial Court under Section 30 of the Act had suffered from a family bereavement which required him to go out for one week. The moment he came back, the objectors were filed. The delay in filing the objections was, therefore, required to be condoned in the interest of justice and that it was not necessary that a petition to condone the delay was required to be filed, as wrongly assumed by the Trial Court. He, therefore, submitted may be remanded to Trail Court for considering objections under Section 30 of the Act on merits. He next contended that in any case the award was a nullity being without jurisdiction as the procedure required by preliminary specification no.73 which was binding on the parties was not followed in the present case. That after the order of the Trial Court substituting the arbicrator, Respondent No.1 was required to move the Superintending Engineer of the area who was in charge of the work in question for referring the dispute to the newly appointed arbitrator and till that was come the new arbitrator could not assume jurisdiction to adjudicate upon the reference and hence the arbitration proceedings before him and the final award passed by him were nullities.

Shri P.P. Rao, learned Senior Counsel appearing for the contesting respondent, on the other hand, submitted that the question of condonation of delay in filing objections under Section 30 of the Act does not survive at this stage as the Trial Court had considered the objections on merits by treating them as written statement to the suit files by the respondent contractor for making the award rule of the court.All these objections were found unsustainable on merits both by the Trial Court as well as by the High Court. So far as the second contention of the learned Senior Counsel for the appellant-State is concerned, it was submitted by Shri Rao for Respondent No.1 that no such contention was ever canvassed before the arbitrator or even raised in any objections filed under Section 30 of the Act, not was such a contention placed before the Trail Court or even before the High Court. That this contention raised a highly disputed question of fact whether the Superintending Engineer, Panchayat Raj, Ongile, could ever be approached by Respondent No.1 - Contractor as per preliminary specification no. 73 as according to him the concerned Superintending Engineer was functioning at Guntur and that the said Supterintending Engineer who was the sole arbitrator as per the terms of the contract was supersended and substituted by Shri Nabi Saheb as per the order dated 27.02.1989 passed by the Trail Court which had become final between the parties. In any case the said decision of the court itself directed the arbitrator to enter upon the reference and, therefore, such a technical contention could not be entertained for the first time in these appeals.

In view of the aforesaid rival contentions, the following points arise for our consideration :-

(1)Whether the delay in filing objections under Section 30 of the Act is required to be condoned in the interest of justice and the proceedings are required to be remanded to the Trail Court for fresh decision;

(2)Whether the arbitration award was without jurisdiction and nullity in the absence of any reference by the Superintending Engineer, Ongole, to the substituted arbitrator Shri Nabi Saheb.

We shall proceed to deal with these points seriatim :-

POINT NO. 1

It is true that the learned Trial Judge held that objections under Section 30 of the Act as moved on behalf of the appellant-State were barred by 62 days. The said finding was arrived at by the Trail Court on the ground that the notice under Section 14(2) of the Act served on the appellant-State on 18.12.1985 while the petition being O.P.No.34 of 1988 was. However, Shri A. Raghuvir, learned Senior Counsel for the appellant-State, vehemently contended that there is a patent error in the aforesaid finding of the learned Trial Judge. That in fact, the notice of the court was served on 18.01.1986 on the Superintending Engineer, Panchayat Raj, N.A.P Circle Ongole, Prakasam District, as stated by him in his affidavit before the High Court and accordingly the limitation for filling the objections would expire on 17.02.1986. That the papers for filing Srinivasa Rao s/o Shri Ranga Rao by the deponent within time. That objections raised in O.P were within time but because the learned advocate had to leave immediately from Hyderabad to Bangalore as his close relative had expired, the O.P. could be filed only on 25.02.1986 when the advocate returned to Hyderabad on 24.02.1986. That is mentioned in the affidavit of Shri L.K. Srinivasa Rao which was filed in the High Court. Consequently, there was eight day' delay in filing objections which should have been condoned in the interest of justice. We would have been required to closely examine this contention to find out as to whether the delay was of 62 days or eight days. In either case, we would have been inclined to condone the delay in the interest of justice as a huge amount of public money is involved. It has to be kept in view that though originally the claim of Respondent No.1 was confined at that stage only to certain heads of dispute which totally amounted to Rs.7,55,760/-, as per the two letters written by the claimant to the Executive Engineer dated 22.10.1983 and 24.10.1983, the claim before the arbitrator got highly inflated to Rs.46,93,858/- and towards the said claim ultimately Rs.38,34,097/- were awarded by the arbitrator.

However, on the peculiar facts of this case, it is not necessary for us to consider this question any further. The reason is obvious. The learned Trial Judge in his judgment while making the award rule of the court has clearly held that through the objections under Section 30 of the Act were barred by time, he thought it fir to consider the question whether the award was to be set aside on any of the grounds under Section 30 of the Act and having so observed the learned judge proceeded to consider the objections to the award on merits in details. Reasoning of the Trail Court Judge is found in paragraph 6 of his judgement wherein the objections were meticulously considered and ultimately it was held that no doubt it appeared that the contractor had made excessive claim before the arbitrator but there was no material on record to point out that the petitioner (present appellant) had taken the same plea before the arbitrator. There was also no record to show that they had brought the matter into consideration of the learned arbitrator. The learned Judge also observed that the award was a non-sperned one and on merits it could not be interferred with by the court by sitting in appeal over the findings of the arbitrator. The aforesaid reasoning adopted by the learned Judge is well sustained in the present case. When we turn to objections filed by the appellant-State before the arbitrator, it become at once clear that the appellant-State through it fit to join issue on merits of the claim before the arbitrator. No argument

was placed before the arbitrator to the effect that the claim put forward before the arbitrator by the contractor was in excess of the original claim before the arbitrator and, therefore, could not be adjudicated upon. On the contrary, in the counter filed on behalf of the appellant-State before the arbitrator it was stated that such claims that were required to be adjudicated upon by the arbitrator were according to the appellant not justified. The arbitrator considered those claims with reference to their various sub heads and out of the total claim of Rs. 46,93,858/- as found in the claim statement before the arbitrator and also the total claim at the time of rejoinder amounting to Rs. 80,03,950/-, the arbitrator ultimately reduced the grantable claim to Rs.38,34,097/-. In our view Therefore, it cannot be said that the arbitrator had not applied his mind to the relevant heads of the claim as put forward by Respondent No.1 nor the State authorities ever contended before the arbitrator that the excess claim could not be adjudicated upon. Having chosen to join the issue on merits of the claim, the award of the arbitrator had to be treated as binding on the State-authorities. It is also pertinent to note that the amounts claimed by the respondent-claimant in his letters dated 22.10.1983 and 24.10.1983 did not amount to total final claims. On the contrary, we find on the scrutiny of these letters that Respondent No.1 Contractor had reserved liberty to put forward further claim on topics of disputed items. The matter would have stood differently, if these letters had confined the total claim of Respondent No.1 to the amounts mentioned therein. Then a further question would have survived for consideration as to whether there was any further material available to enhance the said claim before the arbitrator but such was not the situation on the facts of the present case. Consequently, the decision rendered by the learned Trail Judge on merits of these objections overruling them cannot be found fault with. In this connection, learned Senior Counsel for the respondent rightly invited our attention to a decision of learned single Judge of Orissa High Court in the case of State of Orissa & Anr. vs. M/s Civien Construction Co. & Anr (Air 1983 Orissa 48). wherein Hon'ble R.N. Misra. J. (as he then was) in a similar situation held that as per the terms of the notice when the amount of claim was subject to further variations, if found necessary, addition claim could be submitted by the claimant before the arbitrator. Once this conclusion is reached, the result becomes obvious. The question whether the delay in filing the objections under Section 30 of the Act should have been condoned in the interest of justice or not would have been condoned in the interest of justice or not would pale into insignificance and would be academic as the very same objections have been considered on merits and rejected by the Trial Court and the said rejection in our view is well sustained on the facts of the present case. The first point for consideration is, therefore, answered against the appellant and in favor of the respondent by holding that there is no need to condone the delay even in absence of a written application and remand the proceedings for fresh decision as the said question has become of academic nature.

POINT No.2

So far as this point is concerned, Shri Raghuvir, learned Senior Counsel for the appellant, vehemently contended placing reliance on a decision of this Court in the case of Banwari Lal Kotiva vs. P.C. Aggarwal [(1985) 3 SCC 255] that a reference to the newly appointed

arbitrator had to be made after following the procedure laid down by preliminary specification no. 73. It is not necessary for us to closely examine this contention for the simple reason that this contention immediately raises a disputed question of fact as to whether Shri Nabi Saheb who was appointed as a substituted arbitrator vice the Superintending Engineer, Guntur, the sole arbitrator could have been required to be issued a fresh reference by the Superintending Engineer, Ongole. If the Superintending Engineer, Ongole, was not in charge of the work and if the contract work was done by Respondent No.1 under the supervision and jurisdiction of the Superintending Engineer, Guntur was substituted by Shri Nabi Saheb as the sole arbitrator, there would remain no occasion for requiring very same Nabi Saheb to refer the matter to himself for adjudication. Realising this difficulty, Shri Raghuvir, learned Senior Counsel for appellant, submitted that the reference of dispute was required to be made not by the Superintending Engineer, Guntur but by the Superintending Engineer, Ongole under whose jurisdiction the work had to be carried out. This contention was never raised either before the arbitrator or before the Trail Court or in any case before the High Court and it is too late now for the learned Senior Counsel for the appellant to raise this contention for the first time before us in these proceedings. But even that apart, the order of the Trail Court substituting Shri Nabi Saheb as the sole arbitrator in place of the Superintending Engineer, Guntur, as early as 1985, has become final. As we have noted earlier, the said decision dated 25.02.1985 has clearly directed the arbitrator to sign the copy of the minutes of the order and enter upon the reference in accordance with the agreement. Thus, the arbitrator got jurisdiction to enter upon the reference pursuant to the order of the court which has become final between the parties. Even on this ground, this contention about the requirement of further reference by the Superintending Engineer concerned does not survive for consideration. Point No.2 also fails and is rejected.

These were the only contentions canvassed in support of the appeals and as there is no substance in either of them, the net result is that these appeals fail and are liable to be dismissed and the award passed by the arbitrator as made the rule of the court and as confirmed by the High Court would stand untouched. However, as a huge amount of public money was involved. through his counsel. It was recorded by an order of this Court dated 05.09.1997 which reads as under :-

> " Learned counsel appearing for the respondents states on instructions that he is prepared to put an end to this litigation by accepting 20% less out of the total awarded amounts which by now work up to Rs.81,00,000/(Rupees Eighty one lakh only) inclusive of interest till date. Thus as a package deal a lump sum amount of Rs. 61,00,000/- (Rupees Sixty one lakh only) will be acceptable to the respondents in full and final satisfaction of their claim in these cases. Learned counsel for the respondents further states that out of Rs.15,00,000/(Rupees

Fifteen lakh only) which the respondents have already received form the petitioner towards the award decree. According to him now his dues will be only Rs.46,00,000/(Rupees Forty six lakh only) towards which Rs.5,00,000/(Rupees Five Lakh only) lying deposited in the Lower Court will be adjusted and the petitioner-State will have to pay the balance amount of Rs.41,00,000/- (Rupees Forty one lakh only) towards the awarded dues of the respondents if this proposal is accepted by them.

At the request of learned senior counsel appearing for the petitioner, adjourned for a weeks to get response of the patitioner-State to this proposal."

proposal."

As per the said fair stand and proposal for compromise submitted on behalf of Respondent No.1 Contractor, he had agreed to reduce the amount of the claim by 20%. Unfortunately, that proposal was not accepted by the State-authorities. However, Shri Rao, learned Senior Counsel fairly stated that whatever may be the view of the State-authorities regarding settlement of this dispute and through it is ultimately found by this Court that the appeals are liable to fail, he would leave it ti the Court for reducing the amount of the award decree as earlier proposed by Respondent No.1 before this Court. We appreciate the fair stand taken by learned counsel for Respondent No.1., even through the respondent had emerged successful in the present proceedings. Consequently, while rejecting both the contentions of learned counsel for the appellant in support of the appeals, we deem it fit by consent of Respondent No.1, as recorded in the order dated 05.09.1997 to direct that the appeals will stand allowed to the limited extent that the award decree amount as passed by the Trail Court and confirmed by the High Court will stand reduced by 20% as fairly agreed to by Respondent No.1 through his senior counsel. After adjusting the amount withdrawn towards the decretal dues and also after permitting Respondent No.1 to withdraw Rs.5,00,000/- which are deposited in the Trail Court towards the decretal dues, the net amount of Rs41,00,000/will now remain payable by the appellant to Respondent No1. in full and final satisfaction of his claim in the present proceedings. The said balance amount of Rs.41,00,000/- will have to be paid by the appellant to Respondent No.1 with 9% interest thereon from 05.09.1997 till the actual payment to Respondent No1. The award decree passed by the court below and as confirmed by the High Court will stand modified to the aforesaid extent by consent of the respondent-decree holder. The appeals are partially allowed accordingly with no order as to costs.