

THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN

ARBITRATION APPLICATION No.16 OF 2014

ORDER:

This is an Application under sub-section (5) of Section 11 of the Arbitration and Conciliation Act, 1996; for short, "the Act".

2. Heard learned counsel for the applicant and the learned counsel for the respondent in the light of the pleadings and the materials on record in the form of Annexures.

3. It is not in dispute that the parties had entered into an agreement on 25.01.2007, which is evidenced by the agreement bond and papers therewith, which are produced along with the application. The plea of the respondent in opposition to the application is that the contract was terminated with effect from 31.07.2008 due to poor progress of the work and that on 31.08.2013, the applicant filed a detailed claim and named an Arbitrator, however, the respondent refuted the claim. According to the respondent, the applicant did not thereafter respond by disputing the stand taken by the respondent and the claims are time barred. It is also pleaded that there is an agreement between the parties that only the civil Courts at Hyderabad will have jurisdiction and therefore, any clause in the Preliminary Specifications of Andhra Pradesh Detailed Standard Specifications, for short 'APDSS'; would have no application.

4. The Preliminary Specifications of APDSS are made part of the Articles of Agreement entered into between the parties with specific recital to that effect even in the Preamble, which among other things, state that the contractor had agreed to execute the contract upon and subject to the conditions set forth in the Preliminary Specifications of APDSS and such other conditions as are contained in all the

specifications for the sum mentioned in the Agreement or such other sum as may be arrived under the Clauses of the Standard Preliminary Specifications relating to payment on lumpsum basis or by that measurement at unit prices. After the Preamble to the Articles of Agreement, it is the further specific term that any consideration of the payment of the sum mentioned in those Articles of Agreement or such further sum is to be arrived at under Clauses of Standard Preliminary Specifications.

5. The Articles of Agreement provides for all disputes arising out or in any way connected with this agreement shall be deemed to have arisen in Hyderabad and only the Courts in Hyderabad city shall have jurisdiction to determine the same. The choice of the parties that the Courts in Hyderabad city would have jurisdiction is not one, which would act in defeasance of any provision for arbitration. It is only the choice made by the parties as regards the Civil Court before which it would go, in case of disputes. The parties were only making a choice based on the territorial jurisdiction of different Courts before which proceedings could be instituted. That does not denude any arbitration agreement between the parties of its efficacy.

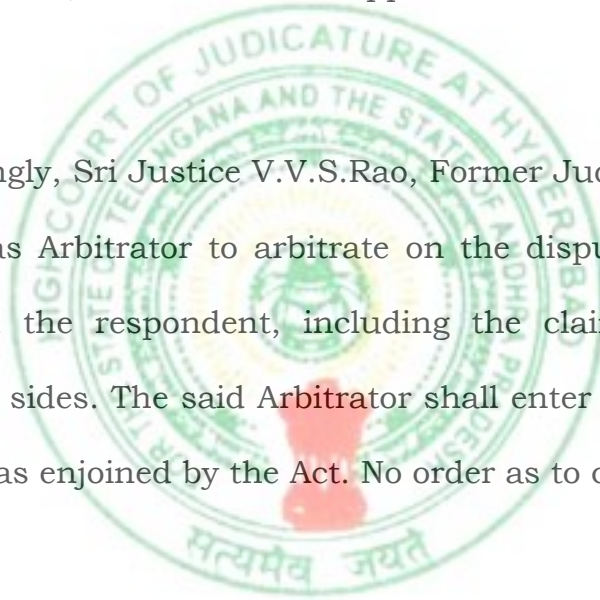
6. As already noted, Preliminary Specification No.73, among those specifications, in APDSS provides for arbitration as the mode of resolution of disputes. The learned counsel on behalf of the applicant is, therefore, right in placing reliance on the decision of the Apex Court in **H.Lathakumari vs. Vamanapuram Block Panchayat**¹ to support the plea that the provision for arbitration in the Preliminary Specifications of APDSS would apply to the contract between the parties in this case. That being so, the questions whether the claims

¹ (2009) 7 SCC 230

are time barred or whether there have been final settlement and payment are all issues, which are to be subjected to arbitration and not matters to be decided in an Application under Section 11(5) of the Act. It is settled law that existence of the arbitration agreement and the existence of the disputes between the parties having been established to the satisfaction of this Court, it is not for this Court to further embark upon enquiry into such matters as those issues would fall within the domain of Arbitration. For these reasons, the objections raised by the respondent are overruled.

7. In the result, this Arbitration Application is allowed appointing an Arbitrator.

8. Accordingly, Sri Justice V.V.S.Rao, Former Judge of this Court, is appointed as Arbitrator to arbitrate on the disputes between the applicant and the respondent, including the claims and counter claims of both sides. The said Arbitrator shall enter on reference and proceed with, as enjoined by the Act. No order as to costs.



THOTTATHIL B. RADHAKRISHNAN, CJ

26.10.2018
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