

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY ,THE TWENTY NINTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT .

**THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE N.TUKARAMJI**

CIVIL MISCELLANEOUS APPEAL NO: 4663 OF 2003

**Appeal U/s 37 of Arbitration and Conciliation Act against the Judgment and
Decree made in O.P.No.599 of 2002 dated 23.06.2003 on the file of the Chief
Judge, City Civil Court, Hyderabad.**

Between:

**T.Venu Babu, R/o. Plot No.229, New Vasavi Nagar, Phase-II, Kakaguda,
Secunderabad.**

...APPELLANT/RESPONDENT NO.1

AND

- 1. Union of India, Rep.by the General Manager, South Central Railway, Rail
Nilayam, Secunderabad.**
- 2. The Senior Divisional Engineer(Coordination), Hyderabad Division, South Central
railway, Secunderabad.**

...RESPONDENTS(PETITIONERS)

- 3. J.Venugopal Rao, Sole Arbitrator Flat No.4&5, Triveni Apartment, D.No.8-3-
969/1, Srinagar colony, Hyderabad-73.
(Not a necessary party hence betta not filed)**

...RESPONDENT/(RESPONDENT NO.2)

Counsel for the Appellant : SRI. SOMANCHI VENKATESWARLU

**Counsel for the Respondents: SRI K.V.V.VEDANTHA CHARYA
(CENTRAL GOVT COUNSEL)**

The Court made the following: JUDGMENT

THE HONOURABLE SRI JUSTICE P.SAM KOSHY

AND

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

Civil Miscellaneous Appeal No.4663 of 2003

JUDGMENT: (per the Hon'ble Sri Justice P.SAM KOSHY)

The instant appeal has been filed by the appellant / contractor under Section 37 of the Arbitration and Conciliation Act, 1996 assailing the judgment dated 23.06.2003 in O.P.No.599 of 2002 passed by the Chief Judge, City Civil Court, at Hyderabad (for short, 'the impugned order').

2. Heard Mr. Somanchi Venkateswarlu, learned counsel for the appellant (Contractor) and Mr. K.V.V. Vedantha Charya, learned Central Government Counsel for respondent Nos.1 and 2- Railways.

3. *Vide* the impugned order, the Trial Court has allowed the above O.P., filed by the respondent Nos.1 and 2 herein under Section 34 of the Arbitration Act, by setting aside the Award dated 11.01.2002 passed by the respondent No.3 (Sole Arbitrator) herein with costs.

4. The brief facts of the case are that the South Central Railway has floated a tender in order to provide more amenities for paving platform Nos.1 and 2 at the Kacheguda Railway Station. The appellant / contractor herein had participated in the said tender. When the appellant / contractor was found eligible during the tender selection process, he was given a letter of acceptance on 07.03.2000. The allotted work was for a value of Rs.9,96,393/-. Time was not essence of the contract and the work was to be completed within one month.

5. According to the respondent-Railways, though the acceptance letter was issued on 07.03.2000, the appellant (Contractor) has neither executed the agreement within the period of seven (7) days nor did the appellant / contractor deposited the requisite security deposit of Rs.57,320/- within the stipulated period of time. Since the appellant / contractor could not make the security deposit within the stipulated period of time and also did not execute the agreement with the respondent-Railways within the stipulated period of seven (07) days, notice was issued to the appellant / contractor duly terminating the contract vide order dated 11.04.2000.

6. Aggrieved, the appellant / contractor approached the High Court for appointment of sole arbitrator by filing Arbitration Application No.3 of 2002 and claimed for damages and interest for an amount of Rs.7,25,000/- on the ground that the respondent-Railways did not permit the appellant / contractor to execute the work order. The appellant contended that, being a serious participant in the tender process, he had made huge investment in plant, machinery and manpower, and when the subject contract was terminated by the respondent-Railways he incurred losses.

7. Thereafter, the High Court appointed a sole arbitrator, and both parties appeared before the Arbitrator. After hearing both sides, the learned Arbitrator initiated proceedings and finally passed Award on 11.01.2002 in favour of the appellant / contractor accepting all claims.

8. Aggrieved by the Award passed by the Sole Arbitrator, dated 11.01.2002, the respondent Nos.1 and 2 filed petition, viz., O.P.No.599 of 2002 under Section 34 of the Arbitration Act before the Trial Court.

9. After hearing the contentions of respondent Nos.1 and 2-Railways, the Trial Court vide order dated 23.06.2003 allowed the

O.P. and set aside the arbitral Award passed by the Sole Arbitrator dated 11.01.2002.

10. Aggrieved, the appellant / contractor filed the instant appeal before this Court.

11. Learned counsel for the appellant / contractor primarily contended that the learned Sole Arbitrator having duly appreciated the contentions of appellant / contractor and the effort and investment that he had put in for execution of the work contract, and which subsequently the appellant could not execute the contract on account of termination of the contract by the respondent-Railways, passed the award by awarding compensation of an amount of Rs.7.25 lakhs. He further contended that the order passed by the Arbitrator under no circumstances could not have been interfered with by the Trial Court exercising powers under Section 35 of the Arbitration Act.

12. According to the learned counsel for the appellant / contractor, the Sole Arbitrator had passed the impugned Award on admitted factual matrix of the case that the appellant / contractor being found eligible, the letter of acceptance having been issued on 07.03.2000 and the correspondences made by the appellant / contractor with the respondent-Railways, would go to show the

bona fides on the part of the appellant / contractor. He further contended that the Trial Court has exceeded its jurisdiction under Section 34 and set aside the impugned Award without giving any valid and strong reasons available on records before the Sole Arbitrator. He further contended that the grounds on which the Trial Court has interfered with the impugned Award are not one which are permissible under Section 34 of the Arbitration Act and for which reason itself the impugned order passed by the Trial Court is liable to be set aside, and thus prayed for allowing the appeal.

13. Having heard the contentions on both sides and on a perusal of the record, the admitted factual matrix of the case at the cost of reputation are that, (i) a tender for contract work being floated for providing more amenities for paving platform Nos.2 and 3 at the Kachiguda Railway Station, Hyderabad; (ii) the said tenders were floated inviting interested parties for execution of the said work; and (iii) the appellant having participated in the said tender process was found eligible, and a letter of acceptance was also issued by the respondent-Railways on 07.03.2000 in favour of the appellant / contractor. As per the said letter of acceptance, the appellant / contractor was supposed to make security deposit of Rs.57,320/- within seven (07) days and he was also required to

get an agreement executed in respect of the work contract. Admittedly, neither the security deposit was made by the appellant / contractor, nor did he execute the agreement for execution of the work contract. The appellant / contractor made certain correspondences with the respondent-Railways stating that since certain dues were payable by the respondent-Railways to the appellant / contractor, therefore the same may be treated as security deposit and prayed for release of the site for execution of the work contract. However, the said request of the appellant / contractor was not conceded by the respondent-Railways, and the respondent-Railways issued letter of acceptance for completing the formalities as per the letter of acceptance and to commence the work which the appellant / contractor failed to execute. Finally, the letter of acceptance dated 07.03.2000 stood cancelled vide order dated 11.04.2000 (Annexure P.5).

14. From the aforesaid factual matrix of the case, what is evidently clear and glaringly visible is that after issuance of letter of acceptance, the conditions required in the said letter were not adhered to by the appellant / contractor, i.e., no security deposit was made, and no agreement was entered into either. The correspondence made by the appellant / contractor requesting the respondent-Railways to adjust the dues payable by it towards

security deposit was not entertained or accepted by the respondent-Railways. Another admitted fact is that since there was no agreement executed by the appellant / contractor, the appellant / contractor could not execute the work and he has in fact not executed the work. Since he has not executed the work contract, and time being the essence of the contract, the respondent-Railways had no other option but to terminate the work and get it executed through third-party.

15. In the said circumstances, the question which arises for consideration by this Court is *whether* the appellant / contractor is entitled for any sort of compensation or damages for the work which he has in fact not even commenced. There can be no dispute that there is requirement of a valid agreement to be entered into between a contractor and an establishment for commencement of a work order. If the condition mentioned in the tender notification envisages making a security deposit within a stipulated period of time, it also entails getting the agreement executed within the stipulated period of time. Unless there is a class of relaxation of any of these conditions available with the respondent-Railways, the appellant / contractor could not have presumed of having a right for execution of agreement with the respondent-Railways even without depositing of the security

deposit that too only on the basis of some alleged amount payable to the appellant / contractor by the respondent-Railways.

16. In the absence of any assurance given by the respondent-Railways for execution of the agreement without the mandatory security deposit being made, the presumption or assumption drawn by the appellant / contractor that the work contract was terminated by the respondent-Railways, and which fact was accepted by the sole Arbitrator to be based on sound principles, cannot be accepted in the instant appeal.

17. Perusal of the impugned order passed by the Trial Court would go to show that there was no cogent, strong documentary proof produced by the appellant / contractor to show the investment that he has already made even before the letter of acceptance was awarded in his favour or immediately thereafter. For example, the invoices in respect of purchase of the materials required for execution of the work were not available nor the appellant / contractor was able to provide sufficient proof of having spent money for mobilization of raw materials and plant and machinery for execution of the work contract. This by itself is sufficient strong material available with the Trial Court to reach to the conclusion that the finding arrived at by the Sole Arbitrator to

be baseless and without any strong cogent material to establish the same. Under the circumstances, if the Trial Court has found the arbitral Award to be in conflict with the public policy, the power exercised by the Trial Court under Section 34 setting aside the arbitral Award, cannot be found fault with.

18. The point which needs to be considered is that mere acceptance of letter could not have by itself given rise for invoking arbitration clause unless the agreement is executed, as arbitration proceedings could not have been commenced only for the sake of argument. The amount of money spent by the respondent-Railways from the public money for providing amenities to the general public for using the platform may not be used for granting compensation and damages to a contractor, as in the instant case the appellant / contractor himself has failed to make the security deposit and also did not enter into agreement within the stipulated period of time. Even if the appellant / contractor has mobilized resources for execution of the work, the same was at his own risk and peril as the agreement itself has not been executed by then and the site was also not handed over to him, and he has also not fulfilled the conditions stipulated in the letter of acceptance. Therefore, the arbitral Award becomes one which is in contravention of public policy.

19. It would be relevant at this juncture to take note of the contents of the findings given by the Trial Court at paragraph Nos.10.15, which is extracted hereunder :

"10.15 The impugned arbitral award is in conflict with the public policy of India. The reasons are under clause 61 of the General Conditions of the contract. The railways can terminate the contract at any time and only if the work was commenced they have to pay the amount to that extent. In the instant case, there is no agreement between the contractor and the railways. The site is not handed over to the contractor. The work material is not collected at the site. In fact, the material is not delivered by the suppliers to the contractor and according to the contractor only advances have been paid and to support the payment of advance there are no corresponding bank entries for withdrawal. The contractor was unable to pay even security deposit amount. As such, the agreement was not executed and when there is no agreement between the parties and when the security amount is not deposited to the railways and the work has not commenced and the material is not collected at the site and the material is not received by the contractor from the suppliers and there is no evidence that he has kept the material in a particular go-down. Even then the award is pronounced in favour of the contractor in the arbitration proceedings directing the railways to pay the amount. It is nothing but conflict with the public policy of India. If the work has been commenced and the material is collected at the site and the work is progressing but could not be completed in time or the nature of work is changed and in such case the railways cancelled the contract then the railways can be directed to pay the amount as it is not against the public policy."

20. In the light of the aforesaid facts and circumstances of the case and also taking into consideration the findings given by the

Trial Court in the impugned order in setting aside the arbitral Award passed by the sole Arbitrator, we are of the firm view that the Trial Court has given a well reasoned order in a petition filed under Section 34 of the Arbitration Act which does not warrant interference by this Court invoking powers conferred to the High Court under Section 37 of the Arbitration Act.

21. Therefore, the appeal fails and the same deserves to be and is accordingly dismissed. No costs.

22. As a sequel, miscellaneous applications, pending if any shall stand closed.

//TRUE COPY//

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

SECTION OFFICER

To,

1. The Chief Judge, City Civil Court, Hyderabad. (With Records)
2. One CC to Sri Somanchi Venkateswarlu ,Advocate (OPUC)
3. One CC to Sri K.V.V.Vedantha Charya, S.C for CG (OPUC)
4. Two CD Copies

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HIGH COURT

DATED:29/11/2024



JUDGMENT

CMA.No.4663 of 2003

**Dismissing the Appeal
Without costs.**

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