A INTERNATIONAL CONSTRUCTION COMPANY ETC.

v.

STATE OF ANDHRA PRADESH AND ORS.

FEBRUARY 1, 2001

B [S. RAJENDRA BABU AND S.N. VARIAVA, JJ.]

Arbitration Act, 1940: Sections 30 and 33—Contract for excavation work, formation of embankments etc.—Clause 83 stipulating that claim should be made in writing to the Superintending Engineer within 15 days from the C *date of cause of action in order to enable verification—Also stipulated that it would be impossible to verify the facts of the claims preferred after 15 days and such claims liable to be rejected—Appellant made claims in respect of losses suffered because of cyclone in November 1977 and floods in 1978, without giving details in terms of Clause 83—Award made by the Arbitrator* D *made rule of the Court—High Court reversed a portion of the said award—On appeal, Held: No dispute, as contemplated under Clause 83 had been raised at all—Appellant's letter only mentioned about the severe cyclone and heavy rains—It also said that the labourers gathered from the different areas were forced to return—It nowhere gave details as to the number of labourers from different areas and the arrangements made regarding them and the* E *extent of loss suffered by them.*

In the year 1977, two contracts were awarded to the appellants for the purpose of earthwork, excavation and formation of embankments and construction of aquaducts in the Nagarjuna Sagar Left Canals in District F **Khammam in Andhra Pradesh. The total value of the contract was about Rs. 1.57 Crores. A dispute arose out of the said two contracts which was referred to the Arbitrators. The Arbitrators made an award in favour of the appellants. The said award was made rule of the Court by the City Civil Court, Hyderabad. However, on appeal, the High Court set aside a portion of the award made by the arbitrators on account of claims towards losses suffered by the appellants** G **due to severe cyclone in Andhra Pradesh in November, 1977 and on account of reimbursement of losses due to abnormal rains and unprecedented floods in 1978. Hence these appeals.**

The appellants contended that the High Court had sought to interpret the clauses of the agreement which it was not entitled to do so and could not

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have reappraised the evidence particularly in respect of the taking over of the site and that there was no heavy rainfall in June 1978 as per statistics maintained by the Rainfall Station at Wyra which is near the work site. It was also contended that the High Court erred in holding that new claims had been raised by the appellants and that certain claims were time-barred. A

Dismissing the appeals, the Court B

HELD : 1. In order to make a claim and raise a dispute there should have been compliance with clause 83 of the agreement. The claim should have been submitted in writing to the Superintending Engineer within 15 days from the date of cause of action so that this aspect would be verified. On the interpretation of clause 83, the High Court held that condition therein is a condition meant for convenience of both the parties and does not lay down a rule of limitation, much less a condition for the arbitrator to entertain a claim. [795-D-E] C

2. From the materials on record, it is clear that there had been floods and, therefore, the appellants had been put to loss but a claim or dispute in terms of clause 83 does not seem to have been addressed at all either in claim regarding reimbursement of losses sustained by way of advances to labour on account of severe cyclone in November, 1977 or in the claim regarding reimbursement of losses sustained due to abnormal rains and unprecedented floods in 1978. All that the appellants stated in their letter dated 26-11-1977 is that there had been severe cyclone and heavy rains as a result of which communications dislocated and the appellants sent their labour recruitment personnel to Bilaspur, Orissa, Mehboobnagar and other labour recruitment areas and some of the labour gathered were on their way to site when they were held up due to the cyclone and were forced to return back due to complete breakdown of communications after the cyclone, but there are no details as regards how many labourers have been engaged from different areas and what arrangements had been made in regard to them and the extent of loss suffered by them. That is the dispute that is contemplated under clause 83 and such a dispute had not been raised at all. [795-E-H] D E F G

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 3593-3596 of 1996.

From the Judgment and Order dated 30.8.93 of the Andhra Pradesh High Court in A.A.O. Nos. 1200 and 1201/87 and C.R.P. Nos. 3120 and 3121 of 1987. H

A With

Civil Appeal Nos. 3688-3691 of 1996.

T.L. Vishwanatha Iyer, D. Ram Krishna Reddy, G.R.K. Prasad, D. Bharathi Reddy, G. Prabhakar, Ms. T. Anamika, P.P. Singh for the appearing parties.

B

The Judgment of the Court was delivered by

RAJENDRA BABU, J. These appeals arise out of orders made by the Andhra Pradesh High Court in two appeals Nos. 1200 and 1201 of 1987 and Civil Revision Nos. 3120 and 3121 of 1987. By a common judgment the High C Court allowed the appeals and civil revision petitions filed by the respondents and set aside a portion of the award made by the arbitrators for a sum of Rs. 9,66,000 on account of claims towards losses suffered by the contractor on account of severe cyclone in Andhra Pradesh in November 1977 and on account of reimbursement of losses due to abnormal rains and unprecedented D floods in 1978. The dispute arose out of two contracts awarded in the year 1977 to the appellants for the purpose of earth work, excavation and formation of embankments and construction of aquaducts in the Nagarjuna Sugar Left Canals in District Khammam in Andhra Pradesh The total value of both the contracts is about Rs. 1.57 crores. The arbitrators made an award which was made the rule of the court by the Additional Judge, City Civil Court, Hyderabad. E The High Court, however, reversed a portion of the award, as stated earlier. The contention put forth before us is that the High Court has sought to interpret the clauses of the agreement which it was not entitled to do so and could not have reappraised the evidence particularly in respect to the taking over of the site and that there was no heavy rain fall in June 1978 as per F statistics maintained by the Rainfall Station at Wyra which is near the work site. It is contended that the High Court also erred in holding that new claims have been raised by the appellants. The stand of the appellants is that no new claims had been made and the claims already made were elaborated by making another statement. It is further contended that the High Court also erred in holding that certain claims were time-barred.

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Clause 83 of the agreement, upon which much argument had been addressed, is to the following effect :-

83. CLAIMS AND DISPUTES

H Any claims or disputes out of the contract should be submitted in

writing to the Superintending Engineer within 15 (fifteen) days from the date of cause of action, so that the points at issue should be immediately verified at site by the field officers, facts ascertained and a prompt decision given. Claims raised subsequently at such a distance of time as to make it impossible to verify the facts are liable to be rejected. The tenderer shall carefully note this stipulation.

The appellants had made representations to the Government for reimbursement of losses suffered on account of the cyclone of 1977 and abnormally heavy rains and floods in June 1978 and the Government had in September 1979 agreed to advance a loan of Rs. 4.67 lakhs which was subsequently recovered from the running bills payments. The only two claims that survive for our decision are Claim No. I (A) and Claim No. II (A). Claim No. I (A) is "towards reimbursement of losses sustained by way of advances to labour on account severe cyclone in November 1977 and Claim No. II(A) is regarding "towards reimbursement of losses sustained due to abnormal rains and unprecedented floods in 1978". In order to make a claim and raise a dispute there should have been compliance with clause 83 of the agreement and on this aspect there is no dispute. The claim should have been submitted in writing to the Superintending Engineer within 15 days from the date of cause of action so that this aspect would be verified. On the interpretation of clause 83, the High Court held that condition No. 83 is a condition meant for convenience of both the parties and does not lay down a rule of limitation, much less a condition for the arbitrator to entertain a claim. It is not necessary for us to examine whether any new claim had been raised by the appellants or not. All that we need to notice is whether, in fact, any claim had been made in terms of condition No. 83 at all or not. It is clear from the materials placed before us that there had been floods and, therefore, the appellants had put to loss but a claim or a dispute in terms of condition No. 83 does not seen to have been addressed at all either in claim No. I (A) or claim No. II (A). All that the appellants stated in their letter dated 26.11.1977 is that there had been severe cyclone and heavy rains as a result of which communications dislocated and the appellants sent their labour recruitment personnel to Bilaspur, Orissa, Mahboobnagar and other labour recruitment areas and some of the labour gathered were on their way to site when they were held up due to the cyclone and were forced to return back due to complete break down of communications after the cyclone, but there are no details as regards how many labourers have been engaged from different areas, as to who they were and what arrangements had been made in regard to them and the extent of loss suffered by them. That is the dispute that is contemplated under clause 83 and such a dispute had

A not been raised at all.

The appellants made a claim No. II(A) in the following terms :-

"CLAIM NO. II. TOWARDS REIMBURSEMENT OF LOSSES SUSTAINED DUE TO ABNORMAL RAINS AND UNPRECE-DENTED FLOODS IN 1978.

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The claimants submit that while the work was in good progress, in June, 1978, there were heavy unprecedented rains in the catchment of Pedavagu. These were found to be the heaviest recorded in the preceding about 20 years, for the month of June as could be verified C subsequently from the I.M.D. data (enclosed). This resulted in many floods one following the other breaching all protective works in the river bed and resulting in heavy siltation of the excavated foundations, heavy erosion of the banking already formed, and damage to machinery and loss of stacked materials, in addition to idling of labour and transport vehicles. These heavy rains had also an adverse effect on D the cart track used for conveyance of materials from the quarry to the work-site. The cart track became slushy and loaded lorries could negotiate the cart track only with reduced loads; it also took extra time for each trip. This increased enormously the cost of transportation.

E The rainfall being unusually heavy for the month of June, exceeded all expectations of the claimants based on which the protection arrangements had been formed. The total losses caused by the extraordinary heavy rains and floods amount to Rs. 12,80,262. As the claimants incurred these losses due to no fault of theirs, they are entitled to be reimbursed."

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Again it is not clear whether the appellants had raised any dispute or a claim. Moreover, clause 42 of the agreement reads as under :-

"42. FLOODS :

G In case of flash and untimely floods during the working season i.e. resulting in over topping of protective work and flooding of the work area, the contractor shall make his own arrangement at his cost to shift the machinery equipment, material and labour to a safe place. The work shall have to be resumed after receding of floods and necessary strengthening of protective work and dewatering done by H the contractor at his cost. Suitable extension of time shall however be

granted on such occasions for the loss of working at the request of the contractor. The Department is not liable for any loss or damage to the men, machinery, work or materials on account of these floods and no compensation whatsoever in this regard shall be paid to the contract.

1. The silt, debrice, sand and other materials accumulated in the working area during flash floods or regular floods in the monsoon shall be removed by the contractor as required for continuing the work at his cost, by any chance, if any, excavated portion that could not be filled with concrete and masonary by the contractor, get a filled up during the monsoon period with earth and silt, its removal will not be paid for again. The contractor will have to re-excavate at his own cost.

2. It shall be distinctly understood that it is entirely the responsibility of the contractor to make such arrangements as may be required from time to time to project the men, machinery, materials and the work under progress and the work for which the measurements were recorded and payment made, against damage either during working season or during the flood season and department accepts no liability, whatsoever for any damage or loss of men, materials, machinery and work or hindrance caused to the progress of work except as provided in clause under "contractor's risk and Insurance" as mentioned herein."

In the event of such situation, as is pointed out, as to what arrangement the appellants had made and what are the claims in regard to the same and they had not made such a claim before the department. These two findings are sufficient for rejecting the claim made by the appellants and the view taken by the High Court, therefore, is correct and calls for no interference.

The appeals, therefore, stand dismissed. However, there shall be no order as to costs.

R.C.K. Appeals dismissed.