

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).3 9 4 2 / 2 0 0 6

(From the judgment and order dated 1 6 / 0 9 / 2 0 0 5 in MCC No. 1 4 3 / 2 0 0 5
of The HIGH COUR T OF CHAT T I S G A R H AT B I L A S P U R)

STA T E OF CHHAT T I S G A R H AND ORS.

Petitioner(s)

V E R S U S

RAMA V T A R AGRA W A L ROA D CONS T. P V T . L T D .

Respondent(s)

(With appln. for directions/ modification of Court's Order dt.9. 1 0 . 9 6 and with
prayer for interim relief)
(For final disposal)

Date: 2 2 / 0 1 / 2 0 0 8 This Petition was called on for hearing today.

CORA M :

HON' B L E MR. JUS T I C E A L T A M A S K A B I R
HON' B L E MR. JUS T I C E P. SATH A S I V A M

For Petitioner(s) Mr. Neeraj Gupta, Adv.
Ms. Suparna Srivastava, Adv.
Mr. Rajesh Srivastava, Adv.

For Respondent(s) Mr. Siddharth yadav, Adv.
Mr. P r aveen Swarup, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is dismissed in terms of the signed order.

The interim order passed in the Special Leave Petition is
vacated.

(Ganga Thak u r)
P.S. to Registra r

(Virandra Ku m a r)
Court Master

Signed order is placed on the file.

CIVI L AP P E L L A T E JUR I S D I C T I O N
I N T H E S U P R E M E C O U R T O F I N D I A

CIVI L AP P E A L NO. OF 2 0 0 8
(Arising out of SL P (C) No. 3 9 4 2 / 0 6)

STA T E OF CHHA T T I S G A R H & ORS.

...A P P E L L A N T (S)

Versus

RAMA V T A R ROA D CONS T R U C T I O N S P V T . LT D.

..R E S P O N D E N T
(S)

O R D E R

Leave granted.

The respondent herein appears to have entered into contracts with different departments of the State of Chhattisgarh for execution of certain works. The contracts entered into between the parties provide for reference of disputes between the parties to arbitration. The said provision is contained in clause 2 9 of the Agreement which provides as follows :-

"Clause 2 9 - Except as otherwise provided in this contract all questions and disputes relating to be meaning of the specifications, designs drawings and instructions herein before mentioned as to thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimate, concerning the works, or the execution or failure to execute the same, whether arising during the progress of the work, or after the completion or abandon ment thereof shall be referred to the Superintending Engineer in writing for his decision for his decision, within a period of 3 0 days of such occurrence. There upon the Superintending Engineer shall give his written instructions and/or decisions within a period of 6 0 days of such request. This period can be extended by mutual consent of parties.

Upon receipt of written instructions or decisions, the parties shall promptly proceed without delay to comply such instructions or decisions. If the Superintending Engineer fails to give his instructions or decisions in writing within a period of 6 0 days or mutually agreed time after being requested and if the parties are aggrieved against the decision of the Superintending Engineer the parties may within 3 0 days prefer an appeal to the Chief Engineer who shall afford an opportunity to the parties of being heard and to offer evidence in support of his appeal. The Chief Engineer will give his decision within 9 0 days. If any party is not satisfied with the decision of the Chief Engineer he can refer such disputes for arbitration to an Arbitration Tribunal to be constituted by the State Government. In case such an Arbitration Tribunal is not constituted by the State Government, then the aggrieved party shall invoke Arbitration and Conciliation Act, 1 9 9 6 - as amended till the date of such reference."

It is to be noted that arbitration proceedings in the State of Madhya Pr adesh were being conducted under the Madhya Pr adesh Madhyastha m Adhikar a n Adhiniya m, 1 9 8 3 , which provided for the constitution of an Arbitration Tribun al. Pur s u a nt to the Madhya Pr adesh State Reorganization Act, 2 0 0 0 , the State of Chhattisgarh was carved out of Madhya Pr adesh with effect from 1 st November, 2 0 0 0 . In terms of the aforesaid Act the Tribunal constituted under the Madhya Pr adesh Madhyastha m Adhikar a n Adhinyam, 1 9 8 3 , continued to

function to exercise jurisdiction over the State of Chhattisgarh for a period of two years from the appointed day. According to the above, the Arbitration Tribunal constituted under the Madhya Pradesh Madhyastha m Adhikar a n Adhiniyam, 1 9 8 3 , continued to have jurisdiction in the State of Chhattisgarh upto 3 1 st October, 2 0 0 2 . The said Tribunal, thereafter, ceased to have jurisdiction in the State of Chhattisgarh with effect from 1 st November, 2 0 0 2 .

As it appears from the materials on record, the State Government of Chhattisgarh adopted the Madhya Pradesh Madhyastha m Adhikar a n Adhiniya m, 1 9 8 3 , and restyled the same as Chhattisgarh Madhyastha m Adhika r a n Adhiniyam, 1 9 8 3 , and the Arbitration Tribunal was constituted by the State of Chhattisgarh under Section 3 of the Chhattisgarh Madhyastha m Adhika r a n Adhiniyam, 1 9 8 3 with effect from 1 st March, 2 0 0 5 . However, the said Tribunal, so constituted by the State Government, started functioning only with effect from 2 n d September, 2 0 0 5 .

The respondent herein, along with others, filed six different applications before the Chhattisgarh High Court under Section 1 1 of the Arbitration and Conciliation Act, 1 9 9 6 , for appointment of arbitrators to adjudicate upon the disputes arising between the said parties and the State of Chhattisgarh before the Arbitration Tribunal under the Chhattisgarh Act began to function with effect from 2 0 0 5 . The said applications were taken up by the High Court and appropriate orders were passed therein.

Before the High Court an objection was taken on behalf of the appellant herein that, inas much as, the Arbitration Tribunal had already been constituted on 1 st March, 2 0 0 5 , the subsequent applications under Section 1 1 of the 1 9 9 6 Act were not maintain able, and, in any event, should have been transferred to the Tribunal when it started functioning. Having regard to the provisions of clause 2 9, the High Court of Chhattisgarh held that pending applications under Section 1 1 of

the Arbitration and Conciliation Act, 1996, prior to coming into operation of Arbitration Tribunal were maintain able under the 1996 Act in terms of the said clause, and, accordingly, passed appropriate orders thereupon.

It may be relevant to point out that out of the six applications allowed by the common order of the Chhattisgarh High Court, only one Special Leave Petition, namely, against MCC No. 143 of 2005 has been challenged in this Court by way of Special Leave Petition (C) No. 3942 / 06. For reasons best known to the appellant, no further steps were taken with regard to the remaining five applications and we are informed that arbitration proceedings continued in respect of all the six matters, including this matter, and the appellant herein also participated in all the proceedings which are almost at the final stage. We are also informed that in the present matter the hearing has been concluded and only passing of the award is to be effected, but the same has also not been done on account of the order of stay passed by this Court on 9.10.2006.

Appearing on behalf of the appellant, learned counsel submitted that having regard to the constitution of the Arbitration Tribunal under the Chhattisgarh Act on 1st March, 2005, the applications before the High Court under Section 11 of the 1996 Act were not maintain able. It was also submitted that, in any event, the same could not also be saved by the provisions of Section 20(2) of the Madhya Pradesh Madhyastha m Adhikar a n Adhiniya m, 1983, having regard to the fact that, no arbitration proceeding was pending at the time when the Arbitration Tribunal started functioning in the State of Chhattisgarh with effect from 2nd September, 2005. Learned counsel was unable to explain as to how the appellant did not choose to move further in respect of the other five applications.

On behalf of the respondent, it was pointed out that despite the fact that the Arbitration Tribunal had been constituted in the State of Chhattisgarh with effect from 1st

March, 2005, the same did not function prior to
2nd

September, 2005, and it is during this period that the application

was filed by the respondent before the High Court under Section

11 of the 1996 Act. Questioning the submissions made on behalf

of the appellant that no arbitration proceedings were pending

when the Arbitration Tribunal under the Chhattisgarh Act begun

functioning, learned counsel referred to Annexure R- 1 of his

counter which is a notice dated 19

th

October, 2004, addressed to

the Superintending Engineer, Office of the Development

Commissioner, Bilaspur, in relation to the Agreement

whereunder payments appear not to have been made in respect

of the final bill which had been raised.

In the said notice it was

specifically mentioned that the respondent was invoking his rights

under clause 29 of the conditions of the contract.

Learned

counsel also pointed out that since there was no response from

the Superintending Engineer, a further letter was addressed to

the Chief Engineer, Office of the Development Commissioner,
P M G S Y, Raipur, on 6th April, 2005 in respect of the same dispute

and a prayer was made by the respondent for an opportunity of

hearing in person to resolve the dispute. According to the learned

counsel, there was no response by the Chief Engineer as well and

the respondent was, therefore, constrained to move the

application under Section 11 of the Arbitration and Conciliation

Act, 1996, before the Chhattisgarh High Court on 10th

May, 2005.

Learned counsel also pointed out that the said two

opportunities had been given as per the provisions of the 2nd

paragraph of Clause 29 which provided that in case of any

further dispute remaining after the Chief Engineer had an

opportunity to look into the matter, parties would be at liberty to

move the High Court under the provisions of the 1996 Act.

According to the learned counsel, the application under

Section 11 had been made strictly in accordance with the

provisions of the Agreement and also having regard to the fact

that the Arbitration Tribunal under the Chhattisgarh Act was not available at the time when applications were made.

Having heard learned counsel for the respective parties, we see no reason to differ with the order passed by the High Court since in our view the respondent had fulfilled all the conditions even under Clause 29 of the Agreement before moving the application under Section 11 of the Arbitration and Conciliation Act, 1996. It is pertinent to note that when the applications were made, the Arbitration Tribunal was not available so that the respondent could move the said Tribunal.

What is equally significant is the fact that out of the six applications the State of Chhattisgarh chose to prefer this Special Leave Petition in respect of only one of six applications and appear to have accepted the order of the High Court as far as the other five matters are concerned. In our view, the present appeal is also not maintainable on that score as well.

We, accordingly, see no reason to interfere with the judgment of the High Court and the appeal is, therefore, dismissed, but without any order as to costs.

The interim order passed in the Special Leave Petition is vacated.

J .

(A L T A M A S K A B I R)

.....j.
(P . S A T H A S I V A M)

New Delhi,
January 22, 2008 .