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C.A.No. 11561-11563 OF 1995  
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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 11561-11563 of 1995@@  
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Ramachandra Reddy & Co. ...Appellant (s)

Versus

The Superintending Engineer & Anr. ...Respondent(s)

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This appeal is by the claimant-contractor against the impugned judgment of the Division Bench of the High Court of Andhra Pradesh, arising out of an arbitration proceeding. The claimant who had been given certain excavation work, raised several disputes which had been referred to a panel of arbitrators. The said panel of arbitrators rejected the claim Item Nos. 1, 2 and 3 on the ground that P.S. 59 of the APDSS disentitles the claimant to make any higher claim. Against the award rejecting claim items 1, 2 and 3, the claimant had approached the Civil Court by filing an application under Section 30 of the Indian Arbitration Act and invoking its power under Section 16 thereof. The Civil Court set aside that part of the award of the Arbitrator and remitted the claim items 1, 2 and 3 for fresh arbitration. Against the said judgment of the Civil Court, the State of Andhra Pradesh filed an appeal under Section 39 before the High Court. The High Court upheld the decision of the Sub-ordinate Judge in relation to claim items 2 and 3 remitting the matter for fresh

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arbitration. The High Court, however, came to hold that the decision on the claim item 1 is not sustainable. While remitting claim items 2 and 3 on consent of parties, instead of the panel of arbitrators, a retired Chief Justice was appointed as the Arbitrator. The aforesaid judgment of the Division Bench of the High Court of Andhra Pradesh became final, not being assailed in any higher forum. The matter on being remitted, the learned Arbitrator allowed the claim of the contractor in relation to claim item no. 3. So far as item no. 2 is concerned, the learned Arbitrator came to hold that the claimant having failed to establish the said claim, is not entitled to any amount. Claim item no. 3 relates to prolongation of contract due to departmental faults, escalation on labour, machinery and overhead charges.

Against the said decision of the learned Arbitrator, the State approached the High Court again and, by the impugned judgment, the High Court having set aside the said award of the learned Arbitrator in relation to claim item no.3, the present appeal has been preferred. Be it stated that the panel of arbitrators had rejected the claim of the contractor

on claim items 2 and 3 on the ground that P.S. 59 of the APDSS debars the claimant from making any higher claim. In appeal when the matter was being considered by the Division Bench of the High Court, the Court relied upon some earlier decision of the said Court which, accordingly to the High Court, had been approved by this Court in Delhi Transport@  
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Corporation case and the Court was of the opinion that in view@  
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of the law declared by the Supreme Court, the aforesaid P.S. 59 cannot be relied upon by the appellant (State of A.P.) in respect of the two claim items 2 and 3 and, therefore, the order of the Sub-ordinate Judge remanding the claim items 2 and 3 for re-determination, has to be upheld.

Mr. Mishra, the learned senior counsel appearing for the appellant, contended that the earlier decision of the High Court in interpreting P.S. 59 of the APDSS and holding that the same clause cannot be relied upon by the State in denying the claim on the claim items 2 and 3 has become final, not being assailed and, therefore, even if the judgments relied upon by the High Court for coming to the aforesaid conclusion, have later on been reversed by this Court, so far as the conclusion between the parties is concerned is binding and the same cannot be reopened, as has been done in the case in hand by the High Court when the matter came to it after the award of the Arbitrator. Mrs. Amreswari, the learned senior counsel appearing for the State of Andhra Pradesh, on the other hand, contended that the remand in question being an open remand and against the earlier judgment of the High Court no appeal having been provided in the Act, it would be open for the State to re-agitate the matter when the Arbitrator passes an award in relation to claim item no.3 and, therefore, the impugned judgment of the High Court holding that the Arbitrator had no jurisdiction to entertain a higher rate for

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claim item no. 3 cannot be held to be invalid in view of the judgment of this Court in Ch. Ramalinga Reddy v.@@  
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Superintending Engineer & Anr. [(1999) 9 SCC 610].@@  
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In view of the rival contentions the only question that arises for our consideration is whether the High Court while disposing of the earlier appeal filed by the State of Andhra Pradesh and while affirming the judgment of the Subordinate Judge directing the remittance of the claim items 2 and 3 for fresh arbitration had considered the applicability of P.S. 59 on which the State relies upon and has come to any particular decision one way or the other and, if so, whether the same not being assailed and reached its finality, can be assailed at a later stage when the Arbitrator appointed by the Court decides the claim and awards a specific amount ?

On examining the judgment of the High Court on the earlier occasion and particularly the very reasons on which the panel of arbitrators had refused to entertain the claim item no. 2 and 3, we have no hesitation to come to the conclusion that P.S. 59 was the subject matter of consideration and, in fact, was the bone of contention between the parties. The panel of arbitrators had rejected the claim of the contractor on claim items 2 and 3 relying upon P.S. 59. The High Court upheld that conclusion and came to hold that P.S. 59 would not stand as a bar for entertaining any claim in regard to claim items 2 and 3 and, therefore, the arbitrable dispute not having been arbitrated upon, the Court



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(With office report)

Date : 28/02/2001 These petition(s)/appeal(s) was/were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAIAK
HON'BLE MR. JUSTICE S.N. PHUKAN
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant (s) Mr. P.N. Misra, Sr. Adv.
Mr. K. Maruthi Roa, Mr. K. Prabhakar,
Mrs. K. Radha, Adv. for
Ms. D. Bharathi Reddy, Adv.

For Respondent (s) Ms. K. Amreswari, Sr. Adv.
Mr. G. Prabhakar, Adv.

UPON hearing counsel, the Court made the following
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The appeals stand allowed in terms of the signed order.

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(J.S. Rawat)
Court Master

(Suneet Bala Sharma)
Court Master

(Signed order is placed on the file)