

ITEM NO.14

COURT NO.5

SECTION XIA

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 (C) No(s). 14811/2009

(Arising out of impugned final judgment and order dated 17/03/2009  
in WA No. 109/2005 passed by the High Court Of Orissa At Cuttack)

PARADEEP PHOSPHATES LTD.

Petitioner(s)

VERSUS

PARADEEP PORT TRUST

Respondent(s)

(with interim relief and office report)  
(For Final Disposal)

WITH

SLP(C) No. 17490-17491/2010

(With Interim Relief and Office Report)  
(For Final Disposal)

Date : 12/01/2016 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Petitioner(s) Mr. Subramoniam Prasad, Sr. Adv.  
Mr. Abhay Kumar, Adv.  
Mr. R. Raj, Adv.

For Respondent(s) Mr S.B. Upadhyay, Sr. Adv.  
Mr. Pawan Upadhyay, Adv.  
Mr. Anisha Upadhay, Adv.  
Mr. Param Mishra, Adv.  
Mr. Kaustur Pathak, Adv.  
Mr. Sarvjeet Pratap Singh, Adv.  
Ms. Sharmila Upadhyay, Adv.

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

Heard learned counsel for the parties.

Petitioner in both the special leave petitions has an  
award in his favour. The said award was pronounced on  
27.12.2002 on account of an arbitration in terms of

agreement dated 10.8.2001. That agreement postulates, inter alia, that the Arbitration Act, 1940 shall not be applicable to the arbitration and a party aggrieved by the award may make a further reference for setting aside or revision of the award to another authority, namely, the Law Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India. It is not in dispute that the respondent Paradeep Port Trust approached the Law Secretary also who by his order dated 19.10.2009 upheld the award. But before that the petitioner filed execution petition numbered as Execution Miscellaneous Case No. 3 of 2003 before the District Judge, Cuttack. The District Judge took the view that the parties had agreed to settle their disputes outside the Court and even outside the arbitration proceedings because at the relevant time both were creatures of Central Government and were guided by judgment of this Court in the case of Oil and Natural Gas Commission Vs. Collector of Central Excise 1992 Suppl.(2) SCC 432. The execution case was dismissed as not maintainable on the premise that though the adjudication was described as arbitration but it was not meant to be an arbitration under the Arbitration Act. The petitioner challenged the order of District Judge dated 30<sup>th</sup> April, 2004 without any success. Writ Appeal preferred by the petitioner was also dismissed by the Division Bench on 17.3.2009. Against that order, petitioner has preferred SLP(C) No. 14811 of 2009.

The respondent Paradeep Port Trust was aggrieved by the order passed by the Additional Secretary(Law) upholding the award and hence against that order dated 19.10.2009, it preferred Writ Petition(C) No. 11 of 2010 before the Orissa High Court. The High Court passed an order on 24.2.2010 for listing the matter on 31.3.2010 for the purpose of final disposal. As an interim measure, it directed not to give effect to the award and the order of the Appellate Authority until further orders. The second Special Leave Petition(C) Nos. 17490-17491/2010 is directed against the order dated 24.2.2010 and also subsequent interim order dated 2.4.2010.

On behalf of the petitioner, it has been strongly contended that regardless of stipulations in the agreement dated 10.8.2001 that the Arbitration Act, 1940 shall not be applicable and for purpose of revision or setting aside, recourse can be only to the Law Secretary or his nominee, the Arbitration under that agreement will remain an arbitration governed by the statutory provisions applicable at the relevant time, i.e, Arbitration and Conciliation Act, 1996.

His further plea is that the parties cannot enter into contract or agreement so as to deprive themselves of the statutory remedies available to them under the

Arbitration Act. According to Mr. Subramoniam Prasad, learned senior counsel for the petitioner, the provisions in the agreement for making a further reference for setting aside or revising the award has to be ignored in the light of a statutory provision under Section 34 of the Arbitration and Conciliation Act, 1996.

On the other hand, Mr. S.B. Upadhyay, learned senior counsel for the respondent submits that the entire agreement dated 10.8.2001 was in the light of regime enforced by the judgment of this Court in the case of Oil and Natural Gas Commission(supra). Reference to the Arbitration Act, 1940 was clearly a mistake because in 2001 when the agreement was signed, the Act of 1940 had already been replaced by the Act of 1996. He further argued that inspite of stipulation in that agreement that the decision of the Law Secretary shall be final and binding, a party cannot be forbidden by such agreement to approach the High Court to avail the constitutional remedy available under Article 226 of the Constitution of India.

Although the questions of law indicated above are quite inviting but two glaring facts stand out in these proceedings. One is that the petitioner has been left without any remedy for execution of the award in case it is finally held to be valid. Secondly, if the arguments of the petitioner are accepted, the respondent will be

deprived of even approaching the Court of law from testing the correctness or validity of the award. In this situation, we permitted the learned senior counsel for the petitioner to suggest whether it would be appropriate to relegate the respondent to a fresh proceeding by way of application under Section 34 of the Arbitration and Conciliation Act, 1996 or to permit him to pursue pending writ petition wherein the respondent has challenged the award as well as the order confirming the same.

Mr. Subramoniam Prasad, learned senior counsel has fairly submitted that in the facts of the case, the issues raised by the respondent in the writ petition may be permitted to be decided in the writ petition which is pending before the Orissa High Court but the petitioner should also be given liberty to raise all his objections and plead his case fully before the writ Court with a further stipulation that in case the award is upheld, the High Court should ensure its execution also so that the fruits of the award reach the petitioner without any delay.

Mr. S.B. Upadhyay, learned senior counsel appearing for the respondent has though raised some objections but in our considered view, it is in the interest of justice and hence liberty is granted to the petitioner to raise all his pleas and defence before the writ Court.

In the peculiar facts and circumstances of the case, we refrain from deciding the issues raised by the parties and instead dispose of the special leave petitions by relegating the parties to get all the relevant issues decided by the High Court in the pending writ petition. It goes without saying that in view of the liberty granted to the petitioner, it will be entitled to file its defence or counter claims before the High Court at an early date preferably within six weeks, within which time, the parties shall appear so that the High Court may fix another date and hear the pending Writ Petition and decide the same in accordance with law expeditiously, preferably within six months. It is clarified that in case the award is upheld, the High Court shall ensure that it is executed without any delay.

With these observations and directions, the special leave petitions stand disposed of. No costs.

(DEEPAK MANSUKHANI)  
COURT MASTER

(INDU BALA KAPUR)  
COURT MASTER