

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).16686/2010

(From the judgement and order dated 10/02/2010 in AC No.9/2009
of The HIGH COURT OF M.P AT JABALPUR)

AJAY KUMAR OJHA

Petitioner(s)

VERSUS

STATE OF M.P.& ANR.

Respondent(s)

(With prayer for interim relief and office report)

SLP(C) NO. 29622 of 2011

(With appln. For exemption from filing c/c of the impugned
order and office report)

SLP(C) NO. 29617-29618 of 2011

(With appln. For exemption from filing O.T and vacating stay
and exemption from filing c/c of the impugned order and
permission to file addl. Documents and permission for
withdrawal of amount office report)

SLP(C) NO. 29624 of 2011

(With appln. For exemption from filing c/c of the impugned
order and prayer for interim relief and office report)

WITH SLP(C) NO. 26350 of 2011

(With prayer for interim relief and office report)

SLP(C) NO. 31682 of 2011

(With appln. For c/delay in filing SLP & c/delay in refiling
SLP and prayer for interim relief and office report)

SLP(C) NO. 31684 of 2011

(With appln. For c/delay in filing SLP & c/delay in refiling
SLP and prayer for interim relief and office report)

SLP(C) NO. 26605 of 2011

(With prayer for interim relief and office report)

Date: 17/04/2012 These Petitions were called on for hearing today.

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CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MRS. JUSTICE GYAN SUDHA MISHRA

For Petitioner(s)

Mr. Neeraj Shekhar, Adv.
Mr. Harsh Pathak, Adv.

Mr. Atul Jha, Adv.
Mr. Sandeep Jha, Adv.
Mr. Dharmendra Kumar Sinha, Adv.

Mr. Mishra Saurabh, Adv.

Mr. Vikas Upadhayay, Adv.

Mr. B.S.Banthia, Adv.

For Respondent(s)

Mr. Raj Kamal Singh, Adv.
Mr. Mahesh Pandey, Adv.
Ms. Annapurna Tiwari, Adv.
Ms. Mridula Ray Bhardwaj, Adv.

Mr. T.S. Chaudhary, Adv.
Mr. B.K. Satija, Adv.

Mr. Vijendra Kumar, Adv.
Mr. Shaikh Chand Saheb, Adv.
Mr. Sumit Attri, Adv.
Mr. Anand Dixit, Adv.

Mr. Naveen Sharma, Adv.
Mr. B.S. Banthia, Adv.

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

SLP(C) Nos. 16686/2010, 29622/2011, 29624/2011, 26350/2011,
31682/2011, 31684/2011 and 26605 of 2011:

One of the questions that has been raised
by the respondents is whether the provision of

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Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983
have no application to the case at hand as the
petitioner is not an undertaking of the State
Government, it being a society under the Registration
of the Societies Act. Learned counsel for the
petitioners submit that this point has been raised
for the first time in the counter affidavit filed on
their behalf. He seeks a short adjournment to file
a rejoinder affidavit and place on record documents
that would show that the petitioner qualifies to be
described as an undertaking of the State Government.

Post on 02.05.2012.

Rejoinder to the counter affidavit already
filed may be filed in the meantime with an advance
copy of the respondent.

In case the rejoinder is not filed, the Chief
Executive Officer of the petitioner shall remain
personally present along with the relevant record.

SLP (C) NOS. 29617-29618 OF 2011:

Leave granted.

The appeals are allowed in terms of the
signed order.

(Shashi Sareen)
Court Master

(N.K. Goel)
Court Master

(Veena Khara)
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3666-3667 OF 2012
(Arising out of SLP (C) NOS. 29617-29618 OF 2011)

State of Chhatisgarh & Ors.

Appellant (s)

Versus

M/s. R.S. Bajwa & Company

Respondent (s)

O R D E R

Leave granted.

A reference of disputes between the parties in relation to a Works Contract culminated in the making of an award in favour of the respondent by the Sole Arbitrator, who happened to be a retired Superintending Engineer of the State Government. The contractor respondent in these appeals who was held entitled to recover from the appellants a sum of Rs. 1,32,000/- plus interest @ 9% per annum filed execution proceedings before the District Court, Sarguja, Chhatisgarh. An objection to the validity of the award appears to have been taken before the executing court primarily based on the provisions contained in Section 7 of the Chhatisgarh Madhtham Adhiniyam, 2005 (for short 'the Act'). In terms of the said provision any dispute in relation to a Works Contract was referable for adjudication only to the Tribunal established under Section 3 of the said Act. The executing court found favour with that objection who held that the award made in favour of the contractor respondent herein was a nullity. The execution proceedings were on that basis dismissed. Aggrieved by the above order, the contractor respondent herein filed Writ Petition No. 3700 of 2008 in the High Court of Chhatisgarh at Bilaspur. A Single Judge of the High Court concurred with the view taken by the executing court and dismissed the writ petition holding that the award made in favour of the contractor was indeed without jurisdiction and therefore a

nullity. The respondent then challenged the said order of the Single Judge before a Division Bench who, relying upon the decision of this Court in VA TECH ESCHER WYASS FLOVEL LTD. vs. MADHYA PRADESH STATE ELECTRICITY BOARD AND ANOTHER, (2011) 13 SCC 261, held that the Madhya Pradesh Act stood repealed by reason of the Arbitration and Conciliation Act, 1996 (for short "the Central Act of 1996"), passed by the Parliament. The Division Bench, accordingly, held the reference to the Sole Arbitrator made under Section 11(6) of Arbitration and Conciliation Act of 1996 to be a valid reference and the award made by the Sole Arbitrator legally enforceable. A review petition against the said judgment having failed, the present appeals by the State Government assail the correctness of the Judgment of the High Court in the appeal as also in the review petition.

Learned counsel for the appellants argued that the judgment of the Division Bench proceeds entirely on the basis that the 1996 Act passed by Parliament repealed the earlier State Act. The High Court has held so relying upon the decision of this Court in VA TECH ESCHER WYASS FLOVEL LTD. (supra). The decision of this Court in VA TECH ESCHER WYASS FLOVEL LTD. (supra) however no longer holds the field, inasmuch as the same has been reversed by this Court in MP RURAL ROAD DEVELOPMENT AUTHORITY & ANR. VS. M/S. LG CHAUDHARY ENGINEERS & CONT., 2012 (1) SCALE 688. It was argued that although there is a partial difference of opinion between the Judges comprising the Division Bench on one of the questions that arose for consideration, the Court was unanimous in holding that the Central Legislation, has not repealed the State enactment. That being so the order passed by the High Court was according to the learned counsel, no longer sustainable.

Learned counsel appearing for the respondent - company on the other hand submitted that although the decision of this Court in VA TECH ESCHER WYASS FLOVEL LTD. (supra) has

been reversed by the subsequent decision referred to above, there are other points that would require consideration of this Court or by the High Court if the matter is remitted back to it for a fresh disposal. Learned counsel urged that the request for a reference in this case had been made at a point of time when the Tribunal had not been established under the State Act. He further argued that the appellants had never raised the question of jurisdiction of the Sole Arbitrator to adjudicate upon the disputes referred to him in the course of the arbitration proceedings. It was also contended by the learned counsel that the State had preferred an appeal against the award before the District Judge, Sarguja, Chhatisgarh, which appeal was dismissed but which order of dismissal has not been further assailed by the State. Under the circumstances, contended the learned counsel, that the appellant State was estopped from raising any question touching the validity of the reference or the award made pursuant thereto.

The Division Bench of the High Court has reversed the view taken by the Single Judge as also the executing court relying upon the decision of this Court in VA TECH ESCHER WYASS FLOVEL LTD. (supra). It is evident from the plain reading of the impugned order that it has not adverted to any other aspect or issue which learned counsel for the respondent sought to raise before us. In the circumstances and keeping in view the fact that the decision of this Court in VA TECH ESCHER WYASS FLOVEL LTD. (supra) has been reversed, the only option available to us is to set aside the order passed by the High Court and remand the matter back to the Division Bench for a fresh hearing and disposal in accordance with law. It is true that we could ourselves have looked into these aspects also, but we would not have in that case the advantage of the opinion of the High Court on those aspects.

In the result, we allow these appeals, set aside the impugned judgment and order and remit the matter to the

High Court with a request to it to hear and dispose of the appeals afresh in accordance with law. Needless to say that all contentions and questions are left open for consideration by the High Court. In view of the fact that the matter is fairly old, we request the High Court to expedite the hearing and disposal of the appeal as early as possible.

As the appellants have succeeded in these appeals, we direct that the amount deposited by the appellants together with interest, if any, earned on the same, shall be refunded to the appellant/State of Chhatisgarh.

Parties are left to bear their own costs.

.....J.
(T.S. Thakur)

.....J.
(Gyan Sudha Misra)

New Delhi,
April 17, 2012