

CASE NO.:
Appeal (civil) 703 of 2008

PETITIONER:
STATE OF CHHATTISGARH & ORS.

RESPONDENT:
RAMAVTAR ROAD CONSTRUCTIONS PVT. LTD.

DATE OF JUDGMENT: 22/01/2008

BENCH:
ALTAMAS KABIR & P. SATHASIVAM

JUDGMENT:
JUDGMENT

O R D E R
(Arising out of SLP(C) No. 3942/06)
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 29 of the Agreement which provides as follows :-

Clause 29 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 abandonment thereof shall be referred to the Superintending Engineer in writing for his decision for his decision, within a period of 30 days of such occurrence. There upon the Superintending Engineer shall give his written instructions and/or decisions within a period of 60 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 60 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 30 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 90 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, 1996 as amended till the date of such reference.

It is to be noted that arbitration proceedings in the State of Madhya Pradesh were being conducted under the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983, which provided for the constitution of an Arbitration Tribunal. Pursuant to the Madhya Pradesh State Reorganization Act, 2000, the State of Chhattisgarh was carved out of Madhya Pradesh with effect from 1st November, 2000. In terms of the aforesaid Act the Tribunal constituted under the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983, 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 Madhyastham Adhikaran Adhiniyam, 1983, continued to have jurisdiction in the State of Chhattisgarh upto 31st October, 2002. The said Tribunal, thereafter, ceased to have jurisdiction in the State of Chhattisgarh with effect from 1st November, 2002.

As it appears from the materials on record, the State Government of Chhattisgarh adopted the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983, and restyled the same as Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983, and the Arbitration Tribunal was constituted by the State of Chhattisgarh under Section 3 of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 with effect from 1st March, 2005. However, the said Tribunal, so constituted by the State Government, started functioning only with effect from 2nd September, 2005.

The respondent herein, along with others, filed six different applications before the Chhattisgarh High Court under Section 11 of the Arbitration and Conciliation Act, 1996, 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 2005. 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, inasmuch as, the Arbitration Tribunal had already been constituted on 1st March, 2005, the subsequent applications under Section 11 of the 1996 Act were not maintainable, and, in any event, should have been transferred to the Tribunal when it started functioning. Having regard to the provisions of clause 29, the High Court of Chhattisgarh held that pending applications under Section 11 of the Arbitration and Conciliation Act, 1996, prior to coming into operation of Arbitration Tribunal were maintainable 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 maintainable. 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 Madhyastham Adhikaran Adhiniyam, 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 19th 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, PMGSY, 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.