

**SUPREME COURT OF INDIA**

State of Orissa

Vs.

Gokulananda Jena

C. A. No. 5313 of 2003

(N. Santosh Hegde and B. P. Singh JJ.)

30.07.2003

**JUDGEMENT**

**Santosh Hegde, J.**

1. Leave granted.
2. Heard learned counsel for the parties.
3. State of Orissa in this appeal has challenged the order of the High Court of Orissa at Cuttack dated 8-4-2002 made in O. J. C. No. 1483 of 2002. In the said with petition, the State of Orissa had challenged the validity of an order made by the Judge designated by the Chief Justice of the said Court for appointing an Arbitrator under S. 11(6) of the *Arbitration and Conciliation Act, 1996* (the 'Act').
4. The High Court after referring to a judgment of this Court delivered by a Constitution Bench in the case of *M/s. Konkan Railways Corporation Ltd. and Anr. v. M/s. Rani Construction Pvt. Ltd.*<sup>1</sup> came to the conclusion that a writ petition under Article 226 of the Constitution of India questioning the correctness of an order made by the Designated Judge under S. 11(6) of the Act is not maintainable because the said order is an administrative order and this Court in the case of *M/s. Konkan Railway (supra)* has held that such an order cannot be challenged before this Court under Article 136 of the Constitution of India. Drawing an analogy from the said judgment, the High Court came to the conclusion that even a writ petition under Article 226 of the Constitution of India will not be maintainable.
5. We think this view of the High Court as to the non-maintainability of a writ petition against an order made by the Designated Judge under S. 11(6) of the Act cannot be sustained.
6. It is to be noted that an administrative order is amenable to the writ jurisdiction under Article 226 of the Constitution of India and we find such an order made by the Designated Judge under S. 11(6) of the Act is not an exception to this rule. The power of the High Court under Article 226 to entertain a writ petition cannot be equated with the power of the

Supreme Court to entertain an appeal under Article 136 of the Constitution of India. The power of the High Court to entertain a writ petition is an original power while power of this Court while entertaining an appeal under Article 136 of the Constitution is an appellate power.

7. The Constitution Bench in the case of M/s. Konkan Railway (supra) itself has held that an order which is the subject of the petition for special leave to appeal under Article 136 must be an adjudicatory order, that is, an order which has adjudicated upon the rival contentions of the parties. In that context, this Court in M/s. Konkan Railways case has held that an order made by the Designated Judge under S. 11(6) of the Act is not an order in which the Designated Judge adjudicates parties rights, hence, it is in the nature of an administrative order against which an appeal under Article 136 does not lie. This Court in that judgment has not stated that an order being an administrative order, same cannot also be challenged under Article 226 of the Constitution for good and valid reasons. Therefore, in our opinion, the High Court was wrong in coming to the conclusion that an order made by the Designated Judge under S. 11(6) of the Act is not amenable to the writ jurisdiction of the High Court.

8. However, we must notice that in view of S. 16 read with Ss. 12 and 13 of the Act as interpreted by the Constitution Bench of this Court in the M/s. Konkan Railway (supra) almost all disputes which could be presently contemplated can be raised and agitated before the Arbitrator appointed by the Designated Judge under S. 11(6) of the Act. From the perusal of the said provisions of the Act, it is clear that there is hardly any area of dispute which cannot be decided by the Arbitrator appointed by the Designated Judge. If that be so, since an alternative efficacious remedy is available before the Arbitrator, writ Court normally would not entertain a challenge to an order of the Designated Judge made under S. 11(6) of the Act which includes considering the question of jurisdiction of the Arbitrator himself. Therefore, in our view even though a writ petition under Article 226 of the Constitution is available to an aggrieved party ground available for challenge in such a petition is limited because of the alternative remedy available under the Act itself.

9. Having come to the conclusion that a writ petition under Article 226 is maintainable as against the order made by the Designated Judge under S. 11(6) of the Act on limited grounds, we will now consider whether such grounds are available to the petitioner to challenge the order of the designated Court in the case in hand. For this purpose, we have noticed the grounds raised in the said writ petition, a copy of which has been enclosed with this petition.

10. The challenge of the appellant in the writ petition against the order of the Designated Judge is based on the following facts:

“(i) The contract between the parties was executed before the Act came into force, hence, the act does not apply,

(ii) Dispute is a stale one having arisen nearly 20 years ago;

(iii) Clause 23 of the agreement contemplates the adjudication of a dispute by a company arbitrator.

(iv) No person other than an arbitrator nominated in Clause 23 of the argument has any jurisdiction to entertain the disputes.

10A. All these grounds of attack, in our opinion, can very well be raised before the Arbitrator appointed by the Designated Judge, hence, on the facts of the case, we find the writ petition of the appellant was liable to be dismissed by the High Court. For this reason, we do not think it appropriate to remand the matter back to the High Court. Therefore, we dismiss this appeal permitting the appellant to raise all its contentions before the arbitrator appointed by the Designated Judge.

C.A. No. 5314/2003 (arising out of SLP (C) No. 592/2003).”

11. Leave granted.

12. Heard learned counsel for the parties.

13. The issues involved in this appeal both on facts and in law being identical with the issues involved in the C. A. No. 5313/2003 @ SLP (C) No. 478/2003, this appeal is also liable to be dismissed for the reasons mentioned in the said civil appeal. The appeal is dismissed. No costs.

Order accordingly.

<sup>1</sup>(2002 (2) SCC 388)