

SUPREME COURT OF INDIA

Jindal Vijayanagar Steel (JSW Steel Limited)

Vs

Jindal Praxair Oxygen Company Limited

Appeal (Civil) 3773 of 2006 (Arising Out of Slp (C) No. 7078/2006)

(Dr. Ar. Lakshmanan and L. S. Panta, JJ)

29.08.2006

JUDGMENT

DR. AR. LAKSHMANAN, J.

Leave granted.

The above appeal was filed by the appellant seeking special leave to appeal against the final order dated 02.03.2006 passed by the High Court of Bombay in Arbitration Petition No. 459 of 2004. By the said order, the High Court, according to the appellant, has wrongly assumed jurisdiction to entertain petitions under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') despite holding that the entire cause of action has arisen outside its territorial jurisdiction.

In other words, the appellant seek to impugn the judgment dated 02.03.2006 whereby the High Court has held that jurisdiction of the Court under the provisions of the Arbitration Act may be assumed by a Court exercising jurisdiction in a place where no part of the cause of action has arisen, if the respondent being a Company has a Corporate Office at the place where the Court is moved.

The facts leading to the filing of the above appeal are as follows:

The appellant was in the process of setting up an integrated steel plant having the capacity of 1.25 million tonnes of the manufacture of iron and steel in Bellary District, Karnataka. For its manufacturing operations, the appellant required large quantities of industrial gases, namely, oxygen, nitrogen and argon for such production. To this end, the appellant, in conjunction with M/s Praxair Pacific Limited decided to enter into agreements to incorporate the respondent-Company in Karnataka. The respondent- Company was to set up an Air Separation Plant (ASP) in the same complex in Bellary, Karnataka for the purpose of supplying the appellant with the required quantities of industrial gases.

The respondent-Company was incorporated in Bangalore with a 50:50% share holding between the appellant and the Praxair Pacific Limited, which was subsequently changed to 26:74%. On 19.02.1996, Pipeline Supply Agreement (PSA) was entered into between the appellant and the respondent at Bangalore wherein the respondent would supply to the appellant its requirement of industrial gases, namely, gaseous oxygen, gaseous nitrogen and the gaseous argon. Product Supply Agreement was entered into between the respondent and Praxair India Private Limited (PIPL), a wholly-owned subsidiary of Praxair Pacific Limited at Bangalore for supply of liquid oxygen, nitrogen and argon to PIPL. This agreement was entered into on 01.06.1996. As several disputes/issues of technical and commercial nature in relation to the implementation of the PSA and the performance of the ASPs had arisen between the parties, the representatives of the appellant, respondent, Praxair Pacific Limited, Praxair Inc. and PIPL made in Singapore to resolve the issues. On 23.06.2002, an agreement was arrived at between the parties (Settlement Agreement). The Settlement Agreement was approved by the Board of Directors of both the parties in Bangalore. The interpretation of the obligations of parties under various provisions of the Settlement Agreement including the above provisions and the PSA is presently in dispute in arbitration invoked by the respondent against the appellant.

Accordingly, the respondent implemented those provisions of the Settlement Agreement which were favourable to it, whilst delaying the implementation of terms favourable to the appellant. As a result thereof in various issues/disputes including all power norms, reimbursement of excise duty and income-tax claims, maintenance of adequate quantities of suppliable liquids in the storage tanks of the respondent etc. arose between the parties.

To settle the disputes, the respondent invoked dispute resolution process pursuant to Article 17 of the PSA by issuing a notice from Bellary, Karnataka to the appellant in Bellary Karnataka.

Article 17 of the Dispute Resolution reads as follows: "17.1. In the event that a party to this Agreement has reasonable grounds to believe that the other Party hereto has failed to fulfill any obligations hereunder or, that its expectation of receiving due performance under this Agreement may be impaired, such Party will promptly notify the other party in writing of the substance of its belief. The party receiving such notice must respond in writing within thirty (30) days of receipt of such notice and either provide evidence of cure of the condition specified, or provide an explanation of why is that its performance is in accordance with the terms and conditions of this Agreement, and also specify three (3) dates, all of which must be within thirty (30) days from the date of its response, for a meeting to resolve the dispute. The claiming party will then select one (1) of the

three (3) dates, and a dispute resolution meeting will be held at the place specified by the responding party. Each party shall have the right to require that individuals representing Buyer and Seller who have the authority to execute this Agreement or amendments thereto, be in attendance at the dispute resolution meeting. If the parties cannot, in good faith discussions, resolve their dispute, they shall submit the dispute to arbitration in the manner set forth below in Article 17.2

17.2 Any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination, non-performance, interpretation of the respective rights and liabilities of the parties under the Agreement; or invalidity thereof which cannot be fully and satisfactorily resolved or settled by the parties hereto pursuant to Section 17.1 shall, at the request of either party, be submitted to, and be settled by arbitration, which shall, except to the extent provided herein, be held in accordance with the Rules of the U.N. Commission of International Trade Law (UNCITRAL) ("Rules") in effect on the date of this Agreement except as modified by this Article 17.2. This Article 17.2 shall supercede any Conflicting provision of the Rules.

"(i) The number of arbitrators shall be two (2), one (1) each appointed by the respective parties. The two arbitrators shall within 30 days of the appointment of the second arbitrator appoint an Umpire. If the two arbitrators are unable to agree upon the appointment of the Umpire within the aforesaid period, then either party may ask the Secretary General of the Permanent Court of Arbitration at the Hague to appoint the Umpire. The arbitrators and the Umpire shall have expertise in the area of corporate law and shall be disinterested persons of either Indian, English or United States nationality except that the Umpire shall be of British or Swiss nationality and shall have had no previous dealing or relationship, direct or indirect, with either of the parties. The arbitration shall be conducted in Bombay, India. Any decision or resolution of the dispute shall be based on Indian law (except that British law shall apply to procedural matters such as appeals), shall be a unanimous decision of the arbitrators or the Umpire if the arbitrators cannot agree, and shall be set forth in a reasoned written opinion, based on applicable law, stating the reasons with legal basis for the decision. The proceedings shall be conducted in English in facilities, arranged for by the arbitrators and Umpire held at such time, as the arbitrators and Umpire shall direct.

(ii) The arbitration proceeding shall be initiated by a Party lending an arbitration demand to the other party. The demand shall be sent in accordance with Article 17.2 of this Agreement. The demand shall be sent to the Party at the address and to the individual specified in Article 17.2.

(iii).....

(iv).....

(v)....."

A meeting was held at Mumbai between the representatives of the parties on 04.10.2004. However, the respondent filed a petition under Section 9 of the Act in the Bombay High Court being Arbitration Petition No. 459 of 2004. The respondent, on 14.10.2004, issued notice of arbitration pursuant to Article 17.2 of the PSA. The notice of arbitration was issued by the respondent in

Bellary, Karnataka and served upon the appellant in Bellary and Bangalore, Karnataka. The appellant wrote a letter pointing out that unilateral action threatened by the respondent was contrary to the letter and spirit of the PSA read with the Settlement Agreement, as the respondent was under the obligation to first meet the product requirements of the appellant. The appellant, in view of the urgent need to protect its interests, filed Arbitration Petition No. 9 of 2005 before the Principal District Judge, Bellary on 06.02.2005 seeking appropriate orders to restrain the respondent from breaching the PSA read with the Settlement Agreement. On 07.02.2005, an interim order was passed by the Principal District Judge, Bellary restraining the respondent from insisting upon an artificial ceiling of 40 TPD of LAR. The respondent filed an I.A. No.4 in the said arbitration petition under Section 151 of the CPC read with Section 42 of the Arbitration Act to dismiss the arbitration petition filed by the appellant at Bellary. On 05.03.2005, the Principal District Judge, Bellary dismissed I.A. No. 4 in arbitration petition and held that as the entire cause of action had arisen in Bellary, the Bellary Court had jurisdiction to decide the matter. An appeal was preferred by the respondent against the order passed by the Principal District Judge, High Court of Karnataka which allowed the appeal filed by the respondent and directed that the issue of jurisdiction would have to be decided by the Bombay High Court in respondent's Arbitration Petition No. 459 of 2004. By the impugned order dated 02.03.2006, the Bombay High Court held that it had the jurisdiction to entertain Arbitration Petition No. 459 of 2004. Hence the present appeal. The High Court, in para 16 of its order, has held as under:-

"16. Under the circumstances, by virtue of clause 12 of the Letters Patent, this Court has jurisdiction to entertain this Petition as the respondent is having corporate office in Mumbai from where it was carrying on its business. Moreover, since during the pendency of this petition the registered office of the respondent has also been shifted to Mumbai, it is needless to say that the respondent is carrying on business in Mumbai. Therefore, this Court has jurisdiction to entertain the petition. I, therefore, reject the contention raised on behalf of the respondent that this Court has no jurisdiction to entertain the petition filed under Section 9 of the Arbitration & Conciliation Act, 1996."

We heard Mr. R.F. Nariman, learned senior counsel for the appellant and Mr. C.A. Sundaram, learned senior counsel for the respondent. Mr. R.F. Nariman submitted that:

a) The High Court erred in rejecting the contention of the appellant that the Bombay High Court had no jurisdiction to entertain the petition filed by the respondent in the Bombay High Court under Section 9 of the Act;

b) The High Court erred in holding that by virtue of Clause 12 of the Letters Patent Act, the Bombay High Court has jurisdiction to entertain the petition filed by the respondent in the Bombay High Court;

c) the High Court failed to appreciate that as per Section 2(1)(e) of the Act, only a court having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, would have jurisdiction under the act;

d) The High Court failed to appreciate that being a special enactment for arbitration, the provisions of the Act would prevail over the provisions of the Letters Patent when determining questions under the Act, including questions as to jurisdiction;

e) the High Court ought to have appreciated that for a court to exercise jurisdiction under section 9 of the Act, the court must be a "Court" as defined under Section 2(1)(e) of the Act and where the cause of action has arisen;

f) the High Court, after observing in paragraph 7 of the Impugned Order that no part of the cause of action had arisen at Mumbai failed to appreciate that it was only the Bellary Courts, which had the jurisdiction to entertain disputes arising from the PSA and the Settlement Agreement since the entire cause of action had arisen in Mumbai;

g) the High Court erred in ignoring the settled law that it is the situs of cause of action and not the place of business, which is the deciding factor in determining jurisdiction under Section 2(1)(e) of the Act;

h) The High Court failed to appreciate that the mere venue of arbitration, and situs of the corporate office of the respondent does not vest jurisdiction in a court under Section 2(1)(e) of the Act. It is also contended that the judgment of this Court in Food Corporation of India vs. Evdomen Corporation, is per incuriam.

It is the contention of Mr. Nariman that the High Court has failed to notice and appreciate that the cause of action as set out hereunder arose in Bellary:

a) The disputes raised by both the parties emanate from the maintenance of product levels stored/supplied from the plants of both the parties, which are situated in Bellary, Karnataka;

b) At the relevant time, the registered office of the appellant was situated in Bellary, Karnataka;

c) The registered office of the respondent is situated in Bellary, Karnataka;

d) The action threatened by the respondent to limit the supply of Liquid Argon ("LAR") up to 40 Tonnes per day ("TPD") was proposed to be made in Bellary,

Karnataka;

e) the consequences of such actions would also have an effect on the plant of the appellant and the ancillary units in the same situated in Bellary;

f) The entire chain of events leading to the unilateral threat issued by the respondent to restrict the supply of Liquid Argon occurred in Bellary.

The High Court also is not correct in holding that since during the pendency of the petition filed by the respondent before it, the Registered Office of the appellant had shifted to Mumbai, the appellant was carrying on business in Mumbai, and that this would vest jurisdiction in the Bombay High Court under Section 9 of the Act, in relation to disputes which had arisen prior to the shifting of the Registered Office. According to learned senior counsel, the subsequent events do not retrospectively confer jurisdiction upon Courts to entertain pending cases, where there was no jurisdiction to entertain them at inception and that the sole intention of the respondent in filing a petition under Section 9 of the Act before the Bombay High Court was to oust the jurisdiction of the competent Court under Section 2(1)(e) of the Act and that the High Court by claiming jurisdiction rendered the petition filed in the Bellary Court by the appellant nugatory and ineffective. Mr. Nariman also submitted that the test under Section 2(e) of the Act applies uniformly across India and that the principle in the explanation to Section 20 CPC should be applied to Clause 20 of the Bombay Letters Patent. Concluding his argument, Mr. Nariman submitted that the High Court in passing the impugned order has mis-interpreted the provisions of the Act and Clause 12 of the Letters Patent and the net effect of the impugned order is that it renders nugatory the competency of the Courts having jurisdiction where admittedly the entire cause of action has arisen. Further it affords jurisdiction to courts on the basis of an enactment, namely, the Letters Patent which would not apply since in arbitration matters, jurisdiction must be solely determined by Section 2(1)(e) of the Act.

Mr. C.A. Sundaram, learned senior counsel appearing for the respondent submitted that an order holding that the Court has no jurisdiction to entertain, try and dispose off an arbitration petition under Section 9 of the Act would necessarily imply or entail a refusal to grant relief under Section 9 of the Act and that such an order would, therefore, be an order under Section 9 of the Act and would, therefore, be appealable. In other words, where a Court holds that it has jurisdiction to entertain, try and dispose off a petition under Section 9 of the Act, such determination of an issue would be one in aid of determination of an issue under Section 9 and would, therefore, also be a decision under Section 9 of the Act. It is, therefore, submitted that an order on the issue of jurisdiction to entertain, try and dispose off an arbitration petition under Section 9 of the Act is clearly an appealable order under Section 37(1)(a) of the Act. Since the matter was argued on merits, we do not propose to consider the submission on the maintainability of the appeal in this Court and we proceed to consider the rival claims on merits as advanced by the respective senior counsel appearing on either side.

According to Mr. Sundaram, the Bombay High Court has jurisdiction to entertain, try and dispose off the said arbitration petition for the following reasons:

a) The High Court of Bombay is a Chartered Court under the Letters Patent;

b) Clause XII of Letters Patent prescribes the jurisdiction of a Chartered Court; Clause XII of the Letters Patent reads as under:-

"Original jurisdictions as to suits.- and We do further ordain that the said High Court of Judicature at Bombay, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immovable property such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court or if the defendant at the time of the commencement of the suit shall dwell or carry on business, or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Bombay, or the Bombay City Civil Court."

According to learned senior counsel, the Bombay High Court would have jurisdiction under Clause XII of the Letters Patent; if a defendant dwells or carries on business or works for gain within the limits of Mumbai. Where the cause of action has accrued wholly or in part within or without the limits of the said jurisdiction is wholly irrelevant in the circumstances. Explaining further, Mr. Sundaram submitted that, in the present case, at the time of filing of Section 9 petition, the appellant had its Corporate Office at Mumbai and was, therefore, carrying on business within the local limits of the Ordinary Original Jurisdiction of the Bombay High Court. During the pendency of the said Section 9 petition, the Registered Office of the appellant was transferred to Mumbai. At the time when the issue of jurisdiction was argued before the learned Single Judge, the Registered Office of the appellant had already been transferred to and was situated in Mumbai within the local limits of the Ordinary Original Jurisdiction of the Bombay High Court.

It is submitted that by Section 120 of the CPC, various sections of the Code including Section 20 thereof, are made inapplicable to Chartered High Courts like the Bombay High Court. Therefore, it is submitted that for determining the question of jurisdiction of the Bombay High Court as a Chartered Court, the provisions of Section 20 of the CPC are inapplicable and that only the provisions of Clause XII of the Letters Patent are applicable. Mr. Sundaram submitted further that the jurisdiction of a Court under Section 2(1)(e) of the 1996 Act is not in any manner restricted to the situs of the cause of action and that it is inconceivable that the legislature could have intended to restrict or circumscribe the scope and ambit of the jurisdiction of the Court under Section 2 (i) (e) of the 1996 Act and make it inferior to the jurisdiction of the Court prescribed under the Code of CPC or Letters Patent. We have given our careful consideration to the rival submissions made by the learned senior counsel appearing for the parties. We shall now consider the arguments advanced by both the learned senior counsel.

This case deals with the original civil jurisdiction of the Bombay High Court which is governed by its Letters Patent. Clause XII whereof founds its jurisdiction. By virtue of Section 120 CPC Sections 16, 17 and 20 CPC are expressly made inapplicable to the Bombay High Court. Mr. Nariman submitted that the Division Bench decision of this Court in Food Corporation of India vs. Evdomen Corporation, (supra) has, without reference to the squarely applicable and binding precedent in the Patel Roadways Limited, Bombay vs. Prasad Trading Company, , wrongly held that despite the disjunctive term 'or' used in the explanation to Section 20 CPC, a Corporation would be deemed to be carrying on business at its principal office and also at the subordinate office situated at the place in which the cause of action arose. He submitted that the said Division Bench decision is per

incuriam the decision of this Court in Patel Roadways Limited case (supra) and, therefore, cannot be said to have laid down the correct law in this regard. He would further submit that the Division Bench of this Court in Food Corporation of India case (supra) also erred in failing to consider the crucial question of whether the provisions of Letters Patent should be interpreted in the light of the principles enshrined in the pari materia provisions of the CPC. He would further submit that a three-Judge Bench of this Court in the case of Patel Roadways Limited case (supra) held that the explanation to Section 20 is purely clarificatory and does not extend the principle enunciated in Section 20. Further, it has held that in view of the term 'or' used in the explanation to Section 20 CPC a Corporation would be deemed to be carrying on business only at the place at which the cause of action arose, provided that it had a subordinate office at that place, failing which, it would be deemed to be carrying on business only at the place at which it maintained its principal office. It is, therefore, submitted that the same principle in Section 20 including the clarification made by the explanation, should be read in Clause 12 of the Letters Patent. In our opinion, no good reason has been made out in reconsideration of the judgment in Food Corporation of India case (supra). The reasons are as under:

In our view, a judgment of this Court will not be reconsidered unless a subsequent Bench believes it has laid down wrong principles of law by ignoring a provision of law or otherwise not following a direct binding precedent. In the instant case, this Court in Food Corporation of India case (supra) followed the provision of law i.e. Clause 12 of Letters Patent and Section 120 CPC which itself made the provisions Section 16, 17 and 20 CPC inapplicable. The judgment of this Court will not be referred for reconsideration by a subsequent coordinate Bench merely because the subsequent Bench may have arrived at a different conclusion had there not been an earlier judgment. That law is the principle of stare decisis adopted and followed in the Indian Courts. None of the conditions necessary for reconsidering an earlier direct precedent has arisen in the instant case. Hence, the submission made by Mr. Nariman in this context has no force.

JURISDICTION OF THE COURT:

Mr. Nariman submitted that the test under Section 2(e) of the Act applies uniformly across India. The Arbitration and Conciliation Act, 1996 is the Central Act and lays down a single, uniform law in respect of arbitration and conciliation for the whole of India and, therefore, submitted that it must be read to lay down principles that apply uniformly across the country.

It is submitted that Section 2(e) of the 1996 Act defines the term 'court' and in doing so, it lays down the test to determine which the court has the jurisdiction to supplement and complement arbitration proceedings. It is submitted that Section 2(e) must be read to lay down one uniform test to determine the 'court' of competent jurisdiction for application across the country, regardless of whether the principal Civil Court of ordinary jurisdiction referred to in the said test is a High Court or a District Court.

In our view, an arbitration petition is required to be filed in a Court having jurisdiction. The definition of the "Court" under the 1996 Act is as follows:-

"Sec.2(e): "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court Of Small Causes;" § (emphasis supplied)

"Court" has been defined in the Arbitration Act, 1940 as follows:-

"Sec. 2(c): "Court" means a Civil Court having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been the subject-matter of a suit, but does not except for the purpose of arbitration proceedings under section 21 includes a Small Cause Court;"

The definition of "Court" in the two sections are, therefore, *pari materia* except that under the 1996 Act, the definition restricts Subordinate Courts competent to hear such matters to the Principal Civil Court and expressly includes High Courts in exercise of their original civil jurisdiction. On a plain reading of the definition of "Court" under section 2(e) of the 1996 Act, it is evident that the Arbitration Petition can be filed before:-

(i) a principal Civil Court of original jurisdiction in district.

(ii) a High Court in exercise of its original civil jurisdiction having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of a suit.

For the purpose of the present Petition under Section 9 of the 1996 Act, we are concerned with the jurisdiction of the Bombay High Court which is a Chartered High Court under the Letters Patent exercising Original Civil Jurisdiction. It is relevant that there are only three Chartered High Courts in India which exercise jurisdiction under their respective Letters Patent which continue to apply in full force and effect which Letters Patent are *inter alia* protected by Article 225 of the Constitution.

Mr. Nariman submitted that the principle in the explanation to Section 20 CPC should be applied to Clause 12 of the Bombay Letters Patent. It is submitted that although admittedly, Section 20 of the CPC does not, in terms, apply to the High Court in exercise of its original civil jurisdiction, it is settled law that the principles of the CPC should nevertheless be applied, as far as possible, to proceedings of a civil nature, even where the application of the CPC has been barred. This Court has, in the case of *Sarguja Transport Service vs. State Transport Appellate Tribunal, M.P. Gwalior & Ors.*, held that principles from the CPC can and should be applied even to writ proceedings, despite the fact that the explanation to Section 141 of the CPC, expressly states that the stipulation in Section 141 that the procedure provided in the CPC shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction, does not apply to proceedings under Article 226 of the Constitution.

It is submitted that Clause 12 of the Bombay Letters Patent is in *pari materia* with Section 20 of the

CPC. Both provisions deal with the jurisdiction of a court of ordinary original civil jurisdiction, and they set out similar tests for the determination of where a suit may be filed. Clause 12 of the Letters Patent states that a suit may be filed in either the Madras, Calcutta or Bombay High Court in the following circumstances:

"if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain, within such limits".

It may thus be noted that Section 20 of the CPC and Clause 12 of the Letters Patent lay down the same test for determining the court of appropriate jurisdiction in which to proceed against a non-corporate defendant. It is submitted that in the absence of any reason to believe that there was any intention to apply different tests in the CPC and the Letters Patent to determine the appropriate forum to sue a corporate defendant, it cannot be said that the two statutes provide different tests, and that the principles in one cannot be used to interpret the principle in the other.

The above argument was countered by Mr. C.A. Sundaram under Section 120 of CPC, 1908. The provisions of Sections 16, 17 and 20 of the Code of CPC are inapplicable to Chartered High Courts exercising Original Civil Jurisdiction under the Letters Patent. Section 120 reads as follows:

"Section 120"- Provisions not applicable to High Court in original civil jurisdiction- (1) The following provisions shall not apply to the high Court in the exercise of its original civil jurisdiction, namely, section 16, 17 and 20."

Thus for the purpose of determining the Original Civil Jurisdiction of the Bombay High Court, Section 20 of the CPC 1908 has been specifically excluded and has no application. Only the provisions of clause 12 of the Letters Patent are required to be considered to determine the jurisdiction of the Hon'ble Bombay High Court.

Under Clause 12 of the Letters Patent, the Bombay High Court would have jurisdiction to entertain and try an Arbitration Petition even if no cause of action has arisen within its jurisdiction, provided the Respondent has an office at Mumbai.

This Court in Food Corporation case while considering the definition of "Court" under section 2(c) of the 1940 Act has held that:

(i) jurisdiction of a Chartered High court is to be determined by clause 12 of the Letters Patent.

(ii) by virtue of the section 120 of the CPC, 1908, the provisions of section 20 of the CPC do not apply to Chartered High Courts (such as Bombay) exercising original civil jurisdiction.

(iii) that under clause 12 of the Letters Patent, the Bombay High Court would have jurisdiction over the subject matter of arbitration if the Respondent has an office in Mumbai, regardless of the fact that no cause of action may have arisen at Mumbai. By such judgment this Hon'ble Court merely expressed the law as it stands and as is ex facie clear from the applicable Statutes/provisions of law.

The appellant, in the present case, concedes that by virtue of the judgment of Food Corporation of India case (supra), the Bombay High Court would have jurisdiction to entertain and try the Section 9 petition. However, the appellant contends the judgment in the Food Corporation of India case is per incuriam requiring reconsideration and should be referred to a larger Bench of this Court since it failed to consider the judgment of this Court in the case of Patel Roadways Limited (supra).

This Court in Patel Roadways Limited case held:

(i) an action can be filed in a Court where a subordinate office of the Defendant is situated if a part of the cause of action has arisen thereat.

(ii) no action would lie in a court within whose jurisdiction the principal office of the Defendant is situated if no cause of action has arisen thereat. Section 20 CPC reads as under:

"20. Other suits to be instituted where defendants reside or cause of action arises- Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises

Explanation- A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any place where it has also a subordinate office, at such place."

It is ex facie clear from the section that a suit can be filed where a part of the cause of action arises or where the principal office is located meaning thereby that what their Lordships in the Patel

Roadways case held that was that a suit can be filed where a subordinate office is situate if a part of the cause of action arises or otherwise only where the principal office is situate.

In Food Corporation case, this court pointed out that as per section 20 (and a mere perusal of such section would show this is so) a suit can be filed where the cause of action arises or where the principal office is situate. In any event, it is submitted that such observation was merely obiter in seeing out what section 20 CPC stated and formed no part of the judgment and ratio decidendi, since this court then proceeded to hold that section 20 had no application to the Bombay High Court by virtue of section 120 CPC (which was never a matter in issue in the Patel Roadways case) but was the only matter in issue in the Food Corporation case and proceeded to consider the jurisdiction of the Bombay High Court under clause 12 of its Letters Patent. While doing so, an interpretation of section 20 CPC became totally unnecessary for arriving at its decision in the Food Corporation case and in fact was not applied at all. There is therefore, no question of this court in the Food Corporation of India case failing to consider whether the provisions of the Letter Patent should be interpreted in light of the principles of the CPC.

The only ground on which the appellant seeks reconsideration of the Food Corporation case is that as per the appellant the interpretation of Section 20 of CPC in the Food Corporation case (supra) is erroneous and contrary to the judgment of the Supreme Court in the Patel Roadways case (supra) in that it erroneously interprets the explanation to section 20 of the CPC, 1908. As stated above, even assuming without admitting that the appellant is correct, the said statement of the Food Corporation case was purely obiter qua the issue to be decided and the reason behind it therein and can never be the basis for a subsequent Bench to refer the same for reconsideration.

Furthermore, the appellant loses sight of the fact that the judgment in the Patel Roadways case is clearly distinguishable on facts since in that case this Court was dealing with the jurisdiction of the 3rd Assistant City Civil Judge, Chennai who was governed by the CPC and the section 20 therefore and not by the Letters Patent. It is for this reason that in the Patel Roadways case the Court was only concerned with section 20 CPC and was in no way concerned with the Letters Patent jurisdiction. In fact, nowhere in the Patel Roadways judgment is there a whisper on the scope of either the Letters Patent jurisdiction of the High Court or section 120 CPC which will clearly distinguish the Patel Roadways case both on facts and law from the instant case or the Food Corporation case decided by this Court.

The appellant has also urged that:

(i) even if section 20 of the CPC, 1908 is not applicable to the Bombay High Court, the principles of the section and in particular explanation to section 20 would be attracted when corporations are being sued and relies on the judgment of this Court in Sarguja Transport case (supra) where the Supreme Court held that even though section 141 of the CPC, 1908 did not apply to writ petitions, the principles would be applicable.

(ii) that a "Uniformity Rule" on jurisdiction should be applied to all courts in the country since the 1996 Act is a central Statute.

In our opinion, the argument of Mr. Nariman that the principles of Section 20 of the Code can be applied to Letters Patent has no substance and merit.

The principles of Section 20 cannot be made applicable to clause 12 of the Letters Patent since the CPC itself by section 120 specifically excludes the applicability of Section 20 of the CPC to Chartered High Courts. It is submitted that when the CPC itself provides that Section 20 is specifically excluded, the principles of Section 20 cannot be made applicable or be attracted when a corporation is being sued under the Letters Patent. The judgment of this Court in Sarguja Transport case cannot apply for the following reasons:-

(i) the principles of CPC were made applicable to Writ Petitions on the premise that these would not be contrary to the provisions of Article 226.

(ii) If the appellant's argument is accepted it would render section 120 of the CPC nugatory and otiose since section 120 expressly refers to three sections (i.e. sections 16, 17 and 20) and makes them inapplicable.

(iii) The Letters Patent, is a special charter conferring jurisdiction on Chartered High Courts. When there is a special enactment such as the Letters Patent, which expressly lays down the criteria on the jurisdiction of the Chartered High Court, it is totally unnecessary and in fact futile to refer to another legislation such as the CPC (which is not applicable) to determine the jurisdiction of the Chartered High Court.

(iv) The facts in the Sarguja Transport Case (supra) were entirely different since there was no corresponding legislation which laid down the territorial of the Court exercising Writ Jurisdiction. Thus the judgment of this Court in Sarguja transport case cannot be applied in the facts of the present case. Our attention was drawn to the decision of a Constitution Bench of this Court in the case of P.S. Sathappan (dead) by LRs. Vs. Andhra Bank Ltd. and Others, in para 32 this Court has held as follows:-

" To submit that a Letters Patent is a subordinate piece of legislation is to not understand the true nature of a Letters Patent. As has been held in Vinita Khanolkar case and Sharda Devi case a Letters Patent is the Charter of the High Court. As held in Shah Babulal Khimji case a Letters Patent is the specific law under which a High Court derives its powers. It is not any subordinate piece of legislation. As set out in the aforementioned two cases a Letters Patent cannot be excluded by implication. Further it is settled law that between a special law and a general law the special all will always prevail. A Letters Patent is a special law for the High Court concerned. The Civil Procedure code is a general law applicable to all courts. It is well settled law, that in the event of a conflict between a special law and a general law, the special law must always prevail."

Thus neither of the CPC nor its principles can be made applicable to the Letters Patent qua sections

16, 17 and 20 of CPC. It is therefore not only impermissible but also unnecessary to apply the CPC or import the principles of section 20 of the CPC into the Letters Patent more so when the court has already held in the FCI case that the jurisdiction of the Civil Court under section 20 of CPC is different from the jurisdiction of the High Court under clause 12 of Letters Patent.

The appellant has urged that P.S. Sathappan's case will apply only in case there is a conflict between the Letters Patent and the CPC and that there is no conflict. Such a submission, in our view, is clearly fallacious for the following reasons:

(i) the Letters Patent and CPC operate in separate fields i.e. The Letters Patent specifically conferring jurisdiction on Chartered High Courts and the CPC conferring jurisdiction on all other courts.

(ii) There is clearly a difference between the scope of the Letters Patent and the CPC. The difference being evident upon a plain reading of section 120 of the CPC.

Mr. Nariman, in reply to the above submission of Mr. Sundaram, contended that the above decision supports the appellant's stand, since there is no conflict whatsoever between relevant provisions of the Letters Patent and the CPC in the instant case. It is submitted that clause 12 of Letters Patent and Section 20 of CPC are in pari materia and sets out similar test for the determination of where a suit may be filed and that the appellant is merely seeking to apply the additional clarificatory principle relating to corporate defendants stated in Section 20 of CPC to Clause 12 of the Letters Patent. It is, therefore, submitted that the decision of this Court in P.S. Sathappan case (supra) does not detract from the appellant's contention but in fact supports its contention.

UNIFORMITY RULE:

There is no question of uniformity rules applying since section 2(e) of the 1996 Act expressly recognizes that not only district courts but also High Courts exercising original civil jurisdiction would have jurisdiction under the 1996 Act. The Act thus recognizes that Chartered High Courts exercising Original Civil Jurisdiction would exercise jurisdiction. It is submitted that apart from the 3 Chartered High Courts who are governed by the Letters Patent only two other High Courts in the country (Delhi and Jammu & Kashmir under their respective High Courts Acts) exercise original civil jurisdiction. This issue is therefore not question of all India application as it does not affect jurisdiction of most High Courts. There is therefore no question of a "uniformity rule" being required to be applied. There cannot be a rule of uniformity applied between unlikes. The appellant seeks to apply such uniformity rule between the subordinate Courts (governed by the CPC) and the High Courts (governed by the Letters Patent).

The appellant further cited:

(i) Globe Cogeneration Power Ltd vs. Sri. Hiranyakeshi 2005 AIR(Kar) 94 (Karnataka High Court)

(ii) Kamal Pushp Enterprises vs. Chairman Cum Managing Director, Gas Authority of India Ltd., (Vol.31 DRJ 651) (Delhi High Court). for the proposition that the jurisdiction of the Court is not to be determined on the basis of the residence of the respondent but only on the basis of where the subject matter of arbitration is situated. In our view, neither of the two judgments above are applicable and in any event can be distinguished for the following reasons:-

(a) (i) The judgment of the Karnataka High Court in the Globe Cogeneration case(supra) was one where the litigant had initiated the proceedings in the City Civil Court (exercising jurisdiction under section 16(d) of the CPC, 1908) which is admittedly not a Chartered High Court Exercising jurisdiction under the Letters Patent. The city Civil Court was following 16(d) of CPC.

(ii) Further the Karnataka High Court was dealing with a case under section 16(d) of the CPC dealing with disputes relating to immovable property. It is well settled that an action can be instituted only in a Court where the immovable property is situated. Thus clause 12 of the Letters Patent never arose for consideration.

(b) (i) The judgment of the Delhi High Court in the Kamal Pushp Enterprise case (supra) was one where the Delhi High Court was interpreting section 20 of the CPC and not clause 12 of the Letters Patent. That this was clearly the case is made evident from the fact that the learned judge (Hon'ble Justice Lahoti as he then was) who rendered this judgment was a party to the Bench of this Court in the FCI case which was concerned with clause 12 of the Letters Patent and applies with full force in this case.

(c) the interpretation of the key words "the questions forming" the subject matter have been completely overlooked and/or not given effect to by the Karnataka High Court and the Delhi High Court. The respondent submits that the subject matter of arbitration may be situated anywhere but a Chartered High Court would nonetheless have jurisdiction to decide "the questions" forming subject matter of arbitration if the requirements of clause 12 of the Letters Patent are satisfied.

(d) This Court in the FCI case which arose while interpreting section 2(c) of the Arbitration Act (which is in pari materia with section 2(e) of the 1996 Act) qua clause 12 of the Letters Patent has held that Bombay High Court would have jurisdiction under clause 12 of the Letters Patent if the respondent has an office in Mumbai even if no part of the cause of action has arisen thereat. The appellant also relied upon the judgment of the High Court in Dayanand Prasad Sinha vs. Hindustan Steel works Construction Ltd. 2000 Indlaw CAL 86 to contend that where there is a conflict between the place of residence and of carrying business and the place where the cause of action has arisen, the Court must apply the test of forum conveniens and accept the place in respect of the cause of action as having overriding value over the place of residence and business. It is submitted that under domestic law i.e. CPC or Letters Patent as the case may be, a plaintiff has the option of instituting proceedings in any of the courts which would have jurisdiction, the test of forum non convenience cannot be applied under Domestic Law and if applied would wrongfully restrict or

negate the amplitude of the provisions of CPC and of the Letters Patent. The view of the Calcutta High Court is clearly erroneous in the light of the observation of this Court in the case of "Khaleel Ahmed vs. Hatti Gold Mines Co. Ltd. 8 where this court has observed that " It cannot always be said in view of section 20 of the Code, that only one Court will have jurisdiction to try the suit". The said judgment of the Calcutta High Court is therefore erroneous and cannot and ought not to be relied upon. In any event the rule of Forum Conveniens is expressly excluded by section 42 of the Arbitration Act, 1996 which mandates that all future actions be filed only in the court where the first application with regard to a arbitration was filed.

CAUSE OF ACTION:

Mr. Nariman, learned senior counsel submitted that the Bombay High Court has correctly come to the conclusion that no cause of action in relation to the present dispute has arisen in Bombay and that this finding has been recorded at 3 separate places in the impugned judgment and has not been challenged by the respondent. It is submitted that the Registered Offices of both the appellant and the respondent were situated in Bellary District at all relevant times. Further, the plants of both the appellant and the respondent are situated in Bellary, the concerned products are supplied and payment in respect of them is made at Bellary, the alleged actions of the respondent took place at Bellary and the consequences allegedly emanating from these actions would be borne in Bellary. Finally, the correspondence in relation to the threatened action also took place at Bellary. Mr. Nariman further submitted that as per the decision of this Court in Patel Roadways Limited, under Section 20, the place of business of a Corporation, for the purposes of the institution of a suit against it, would be the place at which the cause of action arose, if a subordinate office of the Corporation was located at that place, or failing which, the place of the principal office of the Corporation. Therefore, he submitted that in the Patel Roadways judgment, it was held that the words 'place of business' used in Section 20(a) of the CPC would, in relation to a Corporation, refer exclusively to the place at which the cause of action arose, if a subordinate office of the Corporation was also situated there. In such circumstance, no suit can be initiated in the court with jurisdiction over the principal office of the corporation under Section 20(a). It is only in cases where there is no subordinate office at the place at which the cause of action arose, that a suit may be instituted under Section 20(a) in the court with jurisdiction over the principal office of the corporation. Conversely, no suit may be instituted under Section 20(a) in the court with jurisdiction over the subordinate office unless the cause of action has also arisen within the same jurisdiction.

It is further urged that the contrary dicta of the Division Bench of this Court in the case of Food Corporation of India (supra) is per incuriam the dicta in the Patel Roadways (supra) and further, it is erroneous in that it fails to consider the crucial question of whether the provisions of the Letters Patent should be interpreted in light of the principles enshrined in the pari materia provisions of the CPC. Therefore, it is submitted that the Food Corporation of India case (supra) ought not to be relied upon as a precedent.

It is submitted that the principles governing Section 20 of the CPC as well as Clause 12 of the Letters Patent clearly direct that a suit may not be instituted at the situs of the subordinate office unless the cause of action also arose at such place.

It is, therefore, submitted that the Bombay High Court would not have had the jurisdiction to entertain the respondent's petition under Section 9 of the Act, 1996 had Section 20 of the CPC applied to it. Since Clause 12 of the Letters Patent incorporates and is based upon principles identical to those enshrined in Section 20 of the CPC, it is submitted that the Bombay High Court erred in holding that it had jurisdiction to entertain the said petition under Clause 12 of the Letters Patent. It is submitted that, since admittedly the entire cause of action in relation to the disputes between the parties had arisen in Bellary District, Karnataka, and since admittedly at the time of the institution of the Section 9 Petition filed by both parties, the registered and principal offices of the parties were at Bellary, the only court with jurisdiction to entertain the said petitions was the appropriate court with jurisdiction at Bellary.

We considered the above argument of Mr. Nariman. Our answer to the above argument is as under:-

Though the Bombay High Court has in the impugned order dated 2.3.2006 observed that no part of the cause of action has arisen at Mumbai, it is submitted that the cause of action against the respondents has in fact arisen within the Ordinary Original Jurisdiction of the Bombay High Court for the following reasons: It may be noted that the following sub paragraphs below have been noted by the Bombay High Court in impugned order dated 2.3.2006.

- (a) The parties themselves have chosen Mumbai to be the situs for the Arbitration proceedings (clause 17.2 (i) of the Agreement)
- (b) The arbitration clause specifically provides for a dispute resolution meeting to be held to resolve the dispute between the parties as a pre-condition for invocation of the arbitration clause which meeting was held at Bombay at the request of the appellant.
- (c) The Pipeline Supply Agreement (under which the disputes have arisen) was approved by the Board of Directors of the appellant Company in Bombay.
- (d) The pipeline Supply Agreement as amended was reviewed and discussed by the Board of Directors of the appellant Company in Bombay.
- (e) The Settlement Agreement dated 23.6.2003 was adopted at the meeting of the respondent Board of Directors where the appellant's nominees on the respondents Board were also present.
- (f) That the entire Senior Management of the appellant is located at Mumbai. It may be noted that in *Mayur (H.K) Ltd. & Ors vs. Owners & Parties, Vessel M. V. Fortune Express & Ors. 2006 (3) SCC 100* this Court (in para 27) observed that the principal place of business would be where the governing power of the Corporation is exercised or the place of a Corporation's Chief Executive Offices which is typically viewed as the nerve centre or the place designated as the principal place of business of the Corporation in its incorporation under various statutes.

(g) when the section 9 petition was filed the appellant had its office at Mumbai and was carrying on business at Mumbai and its Directors were stationed in Mumbai.

(h) The appellant had in fact shifted its registered office to Mumbai during the pendency of the section 9 petition in the Bombay High Court as it was more convenient to operate its registered office from Mumbai. It is submitted that where a Court has jurisdiction to try the suit when it comes up for disposal, it then cannot refuse to assume jurisdiction by reason of the fact that it had no jurisdiction to entertain it at the date of institution as held in *Sudhir G. Angur & Ors. vs. M. Sanjeev & Ors.* para 11)

(i) That at the time the question of jurisdiction was heard and gone into and decided by the Bombay High Court, the Registered Office of the appellant had been shifted to and was in fact situated in Mumbai. The Bombay High Court in the case of *Fazlehussein vs. Yusufully* 1955 AIR(Bom) 55, para 2 has held that:

"Even if the Court had jurisdiction to entertain the suit as filed, if by reason of subsequent events the Court has lost jurisdiction to entertain or try the suit, the Court will not be justified in dealing with the suit with reference to circumstances as they existed at the date of the institution of the suit but must proceed to decide the dispute on the footing that if the suit had been filed at the later date, the Court would have been incompetent to grant the reliefs in respect of the properties and of the persons who are not within the limits of the jurisdiction of the Court. Normally, a Court must have regard to circumstances existing as at the date when the issue of jurisdiction is tried and must decide it in the light of circumstances existing as at that date." § (emphasis supplied)

It may be noted that when the section 9 Petition was tried in Bombay on the issue of jurisdiction, the Respondent had transferred its registered office to Mumbai. It is submitted that the ratio for this would be that territorial jurisdiction does not go to the competence of the Court as in the case of a court having jurisdiction on the subject matter of the dispute. That is why if a court has no territorial jurisdiction (but is otherwise competent to hear a matter) should the matter be heard and decided by such Court without demur, the judgment will be valid and not void or non est. It is for this reason that insofar as territorial jurisdiction is concerned, the relevant time to determine the existence of the jurisdiction would be when the matter is heard.

SUBSEQUENT SHIFT OF REGISTERED OFFICE CANNOT GIVE RISE TO JURISDICTION:

Mr. Nariman contended that the subsequent shift of Registered Office cannot give rise to jurisdiction. He submitted that the Letters Patent specifically and expressly refers to the time of commencement of the suit as the relevant time to determine jurisdiction of the Court. It states that:

" if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant at the time of the commencement of the suit shall dwell or carry on

business or personally work for gain, within such limits".

He further submitted that the very same principle is also reflected in Section 20 of the CPC, which also states that the court of the appropriate jurisdiction to decide a suit would be the court within whose jurisdiction the defendant or each of the defendants resided or carried out business "at the time of the commencement of the suit".

He further submitted that this Court has in a plethora of cases, including Rameshwar and Ors. Vs. Jot Ram and Anr., and Shri Kishan vs. Manoj Kumar, held that the rights of parties are crystallized on the date of the institution of the suit, and subsequent events cannot alter these rights. It is submitted that on the date of the institution of proceedings before the Bombay High Court, it did not have jurisdiction, and therefore the subsequent shifting of the appellant's registered office cannot operate to vest the Bombay High Court with the requisite jurisdiction. It is therefore submitted that the Bombay High Court erred in assuming jurisdiction based on the subsequent change in the appellant's registered office.

FORUM CONVENIENS:

Mr. Nariman's contention that the situs of arbitration is determined by the parties keeping in mind various considerations including convenience of the prospective arbitrators. These same considerations do not apply in deciding which Court would be convenient to supplement or complement the arbitral proceedings. It is submitted that the latter question is to be determined based on the convenience of only the parties i.e. the appellant and the respondent by reference to the cause of action the assets under dispute and the Registered/Principal offices of the parties. Concluding his submission, he submitted that in view of the fact that the cause of action as well as the plant and machinery being the subject-matter of the dispute, is situated in Bellary, that is also where the Registered Offices of both the parties at the commencement of arbitral proceedings, the Court with jurisdiction to entertain a petition under Section 9 of the Act would undoubtedly be the Court at Bellary. Mr. Sundaram submitted that the appellant's contention that Bombay High Court was not a convenient forum is totally fallacious for the following reasons apart from being taken for the first time in the oral submissions before this Court.

- (a) The arbitration hearings are being conducted at Bombay as per the Agreement. (Clause 17.2)
- (b) 8 full days of hearings had already been held before this appeal was heard. Further hearings of 4 days have also taken place on the 7th, 9th, 10th and 11th of August, 2006 and further 5 days hearing for final and submissions are scheduled for 16th to 20th October, 2006.
- (c) The record comprises of several thousand pages of documents compiled in over 12 voluminous box files all available in Mumbai.
- (d) The appellants Directors and Senior Officers are in Mumbai and have been attending the

hearings to instruct their lawyers in Mumbai.

(e) Evidence has been recorded and closed by both parties in the arbitration.

(f) The parties had agreed on Mumbai as a convenient location for the conduct of the arbitration. It is contended that the appellant is indulging in forum shopping to vest jurisdiction at Bellary, Karnataka with an ultimate objective of challenging the Award before the Civil Court at Bellary rather than the Bombay High Court. The appellant has relied upon two judgments, namely,

(i) Rameshwar & Ors. Vs. Jot Ram & Anr. (i) Shri Kishan vs. Manojkumar to urge that the Courts ought to consider the rights of parties which crystallized on the date of the institution of the suit and subsequent events cannot alter these rights.

It is submitted that both the above two cases cited do not apply to the facts of the case and are clearly distinguishable. In the Rameshwar & Ors vs. Jot Ram & Anr (supra), this Court was called upon to consider whether subsequent event of the land owners death at the appellate stage unsettled the right acquired by the tenants or whether the Tribunal must uphold the rights which have crystallized on the date the applications were made. This was a matter under the Punjab Security of Land Tenures Act, 1953. The said judgment did not consider the subsequent events vis-'-vis territorial jurisdiction of the court. In fact, the said judgment can be only relied upon for the proposition that higher Courts pronounce rights of parties as the facts stood when the first Court was approached.

In Shri Kishan vs. Manojkumar (supra) this Court was called upon to consider whether legal rights accrued to the plaintiff and stood crystallized under the law applicable to buildings at that time. This was a case under the Haryana Urban Control of Rent and Eviction Act.

This Court had the occasion to consider whether the suit filed before the expiry of ten years was in any matter, affected due to the fact that during the pendency of the suit the 10 years exemption period ended. This court held that the legal rights had accrued and stood crystallized under the law applicable to buildings at the time of institution of the suit. Once again, the said judgment did not consider jurisdiction of the territorial Court.

The said two judgments are therefore, clearly distinguishable. It is submitted that the judgment of Bombay High Court in case of Fazlehussein vs. Yusufally (supra) clearly applies to the facts of the present case. For the foregoing reasons, we are of the considered opinion that the Bombay High Court has jurisdiction to entertain Section 9 application of the respondents herein. We, therefore, request the Bombay High Court to proceed on merits to determine the matter in accordance with law. For the reasons set out above, the civil appeal ought to be rejected by this Court and we do so accordingly. No costs. In view of this order, the appellant is directed to file their affidavit in reply on merits in the pending Section 9 proceedings.

