

**SUPREME COURT OF INDIA**

Utkal Galvanizers Ltd

Vs.

Orissa Hydro Power Corpn. Ltd.

Tarun Chatterjee and Dalveer Bhandari

28.09.2007

**JUDGMENT**

**TARUN CHATTERJEE, J.**

1. Leave granted.

2. This appeal is directed against the judgment and order dated 29th April, 2005 of the High Court of Orissa at Cuttack in MJC No.121 of 2002 by which the High Court had refused the prayer of the appellant for appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 (in short 'the Act'). This Court on 5th of January, 2007 made the following directions :

" Counsel for the petitioner submits that the petitioner is not averse to an arbitrator being appointed who may adjudicate the disputes between the parties. Counsel for the respondents also is not against the appointment of an arbitrator to resolve the disputes between the parties, but he submits that the petitioner may move the State of Orissa which shall refer the matter to arbitration by the Arbitration Tribunal, Bhubaneshwar in accordance with clause 3.39(f) of the General Conditions of Contract. Mr.M.L.Verma, Senior Advocate appearing on behalf of the petitioner submits that the Arbitration Tribunal contemplated by the aforesaid clause does not in fact exist and, therefore, there is no question of asking the State Government for a reference to the said tribunal. He also submits that in view of the provisions of the Arbitration and Conciliation Act, 1996, a later Act, where there is no provision similar to Section 41-A under the Arbitration Act, 1940, there may be some doubt as to whether the tribunal continues to exist in the absence of any similar amendment to the 1996 Act. He, however, submits that if clause 3.39 (f) is applicable, the petitioner is willing to make the security deposit required to be made under the said clause.

With a view to resolve the dispute effectively, we consider it necessary to implead State of Orissa as a party respondent. On an oral prayer made on behalf of the petitioner, State of Orissa, through its Chief Secretary is impleaded as party respondent. Let notice issue to the State of Orissa so that in its presence the question may be considered. Notice be made returnable within three weeks. Dasti Service, in addition, is permitted."

From a perusal of the order of this Court, it would be evident that the appellant was agreeable to resolve the dispute between the parties and refer the disputes to arbitration by Arbitration Tribunal, Bhubaneshwar, Orissa in accordance with Clause 3.39 (f) of the General Conditions of Contract. However, it appears from the said order of this Court that there was some dispute as to whether the Arbitration Tribunal, Bhubaneshwar, Orissa is existent or was existent or not. It is also evident from

the aforesaid order of this Court that the appellant was willing to make the security deposit required to be made under Clause 3.39 (f), if Clause 3.39 (f) was applicable. Accordingly, notice was issued by this Court which would be evident from the aforesaid order, to the State of Orissa after making the State of Orissa as a party respondent as this Court was of the view that the dispute between the parties may be considered in the presence of the State of Orissa.

Learned counsel appearing for the respondent has not raised any objection if the matter is referred to Arbitration Tribunal, Orissa for adjudication. The only submission made on behalf of the respondent was that no reference could be made invoking arbitration unless the appellant furnished a security deposit of a sum determined according to the table given in Clause 3.39 (f) of the Contract and the sum so deposited shall, on the termination of the arbitration proceeding, be adjusted against the cost, if any, awarded by the arbitration tribunal against the party and the balance remaining after such adjustment or in the absence of any such cost being awarded the whole of the sum shall be refunded to him within one month from the date of the award. Learned counsel for the appellant also agreed to the deposit of security amount in compliance with Clause 3.39 (f) of the Contract.

Such being the position and in view of the stand taken by the parties before us and considering the fact that Arbitration Tribunal, Orissa is in existence and is ready to decide the matter, if referred to them, we dispose of the appeal in the following manner :- (1) The appellant is directed to furnish the security deposit of a sum determined according to the table given in Clause 3.39 (f) of the Contract within a period of two months from the date of communication of this order to the respondent. (2) If the amount to be determined is furnished as security deposit within the time specified herein above, the dispute between the parties shall be referred to the Arbitration Tribunal, Orissa for adjudication two weeks from the date of such deposit.

(3) The Arbitration Tribunal, Orissa shall enter the reference and pass its award within a period of three months from the date of entering into the reference.

It is needless to say that the Arbitration Tribunal shall permit the parties to adduce evidence in support of their respective claims and after hearing them the award shall be passed by the Arbitration Tribunal, Bhubaneshwar, Orissa.

The appeal is disposed of in the manner indicated above. There will be no order as to costs.