Kanpur Jal Sansthan & Another

v.

M/s. Bapu Construction

(Supreme Court Of India)

HON'BLE MR. JUSTICE ANIL R. DAVE HON'BLE MR. JUSTICE DIPAK MISRA

Civil Appeal No. 26 Of 2014 (Special Leave Petition (Civil) No. 27572 Of 2013) | 03-01-2014

Dipak Misra, J.

1. Leave granted.

2. Calling in question the defensibility of the order dated 17.7.2013 passed by the High Court of Judicature at Allahabad in FAFO No. 875 of 2013 whereby the Division Bench, after admitting the appeal, while dealing with the application for stay, directed the appellants to deposit the entire amount awarded by the arbitrator in the court below with a further direction permitting the claimant- respondent to withdraw half of the said amount without furnishing security and remaining half after furnishing security to the satisfaction of the District Judge, Kanpur with a further stipulation that in case of default in making the deposit, the order of stay shall automatically stand vacated.

3. The essential facts which are to be stated for adjudication of this appeal are that an agreement was executed between Kanpur Jal Sansthan, the appellant herein, with the respondent, M/s. Bapu Construction, on 10.06.1987 for "supply of sand for slow sand filter" for a value of Rs.21,43,200/-. As per the conditions contained in the agreement the work was to commence 23.5.1987 and was to be completed within one year. During the subsistence of the contract disputes arose between the parties as a consequence of which the respondent moved an application under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996 (for brevity "the Act") for appointment of an arbitrator. After the learned Arbitrator was appointed, he proceeded with the arbitration and, eventually, passed an award on 20.1.2009 allowing the claim of the respondent by awarding a total sum of Rs.32,62,415.30 with a further stipulation that the said sum shall carry interest at the rate of 18% per annum from the year 1988. The appellant herein filed an objection under Section 34 of the Act to set aside the award dated 20.1.2009 in Arbitration Petition No. 32 of 2003 on many a ground. The learned District Judge, Kanpur, vide order dated 30.3.2013, rejected the application which was the subject-matter of Misc. Case No. 40/70 of 2009.

4. The failure in sustaining the objection before the learned District Judge compelled the appellant to file FAFO No. 875 of 2013 before the High Court of Judicature at Allahabad. Along with the appeal an application for stay was filed. The Division Bench passed an interim order, as has been mentioned hereinbefore.

5. We have heard Mr. Shail Kumar Dwivedi, learned counsel appearing for the appellants and Mr. Pradeep Kumar Yadav, learned counsel appearing for the respondent.

6. Criticizing the justifiability of the order, Mr. Dwivedi, learned counsel for the appellant, has submitted that the Division Bench has fallen into error by directing deposit of entire award amount and release of the same in favour of the claimant-respondent applying the principle of Order XLI Rule 5 of the Code of Civil Procedure though the said principle is not applicable to the appellant which is an extended wing of the State. It is urged by him that the Division Bench has failed to analyse the merits of the case, namely, the enormous delay in filing the application for appointment of an arbitrator, nature of claims which are absolutely stale and that apart, how the award is flagrantly violative of public policy. It is further urged by him that the principle of Order XLI Rule 5 of the Code has to be read in harmony with Order XXVII Rule 8A of the Code and on such harmonious reading it is clear as sunshine that such a condition is not likely to be imposed on a governmental organization. To buttress his submission he has commended us to the decision in State of Kerala v. Kuruvilla [AIR 2004 Ker 233].

7. Mr. Yadav, learned counsel appearing for the respondent, resisting the aforesaid submissions, contended that after the objection preferred under Section 34 of the Act has been rejected, the award passed by the learned Arbitrator becomes executable by itself and, therefore, it has the status of a money decree and hence, the Division Bench has correctly imposed the conditions and, therefore, no fault can be found with the said order. It is contended by him that Order XLI Rule 5 and Order XXVII Rule 8A should be kept in different compartments failing which the decree holder would not be able to realize the fruits the decree for a considerable length of time and eventually it may become a paper tiger. He has drawn inspiration from the decision in SihorNagar Palika Bureau v. Bhabhlubhai Virabhai & Co. [(2005) 4 SCC 1] to highlight that this Court had applied the principle behind Order XLI Rule 5 to a municipality and a "Jal Sansthan" does not enjoy a better status than a municipality.

8. To appreciate the rivalised submissions raised at the Bar we think it apt to refer to the Scheme of the Act. Under the Act, after the award is passed by the arbitrator, an application for setting aside the arbitral award is permissible under Chapter VII relating to arbitration under Part I. Chapter VIII occurring in Part I provides about the finality and enforcement of arbitral awards. Sections 35 and 36 which occur in this Chapter are reproduced below: -

"35. Finality of arbitral awards. -Subject to this Part an arbitral award shall be final and binding on the parties and persons claiming under them respectively.

36. Enforcement. -Where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court."

9. On a reading of both the provisions it is clear as day that the award becomes enforceable when the time for making the application to set aside the arbitral award has expired or having been filed it has been refused and further it is enforceable in the same manner as if it were a decree of the Court. Thus, the award has the potentiality of enforcement. Hence, when an appeal is filed against the rejection of the objection preferred under Section 34 of the Act, the enforceability of the award gains absolute ground. If an application for stay has to be filed, it has to be filed relating to stay of the operation of the award passed by the arbitrator. We are disposed to think so as the court rejecting the objection only refuses to entertain the objection and thereafter the award becomes enforceable as if it were a decree. In the present case, it is not clear whether there was prayer for stay of the award. However, we treat it as if there was a prayer for stay of the award and proceed accordingly.

10. At this juncture, we may refer with profit to Section 19 of the Act which occurs in Chapter V of the Act that deals with conduct of arbitral proceedings. It provides for determination of rules of procedure. It reads as follows: -

"19. Determination of rules of procedure. –

(1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.

(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence."

11. Section 2(e) of the Act defines "Court" to mean the principal Civil Court of original jurisdiction in a district and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of arbitration if the same has 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.

12. Section 37 of the Act deals with appealable orders. For the sake of completeness it is reproduced below: -

"37. Appealable orders. –

(1) An appeal shall lie from the following orders (and from no others) to the Court authorized by law to hear appeals from original decrees of the Court passing the order, namely: -

a) Granting or refusing to grant any measure under section 9;

b) Setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie to a Court from an order granting of the arbitral tribunal. -

(a) accepting the plea referred in sub-section (2) or sub- section (3) of section 16; or

(b) granting or refusing to grant an interim measure under Section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

13. At this stage, we are obliged to refer to the decision in ParamjeetSingh Patheja v. ICDS Ltd. [(2006) 13 SCC 322] In the said case question arose whether an award passed by an arbitral tribunal under the Act is a decree for the purposes of the provision of the Presidency Towns Insolvency Act, 1909. The two Judge Bench referred to various provisions of the

Arbitration Act 1899, The Presidency Towns Insolvency Act, 1909 and the Civil Procedure Code, 1908, the concept of decree under the Code, the provisions contained as regards award in Arbitration Act, 1940 and Section 36 of the Arbitration and Conciliation Act, 1996 and opined as follows:-

"In fact, Section 36 goes further than Section 15 of the 1899 Act and makes it clear beyond doubt that enforceability is only to be under CPC. It rules out any argument that enforceability as a decree can be sought under any other law or that initiating insolvency proceeding is a manner of enforcing a decree under CPC."

The learned Judges further discussing the principles proceeded to state as follows.

"Issuance of a notice under the Insolvency Act is fraught with serious consequences: it is intended to bring about a drastic change in the status of the person against whom a notice is issued viz. to declare him an insolvent with all the attendant disabilities. Therefore, firstly, such a notice was intended to be issued only after a regularly constituted court, a component of the judicial organ established for the dispensation of justice, has passed a decree or order for the payment of money. Secondly, a notice under the Insolvency Act is not a mode of enforcing a debt; enforcement is done by taking steps for execution available under CPC for realising monies.

42. The words "as if" demonstrate that award and decree or order are two different things. The legal fiction created is for the limited purpose of enforcement as a decree. The fiction is not intended to make it a decree for all purposes under all statutes, whether State or Central."

14. We have referred to aforesaid authority solely for the purpose that whatever may be the status of the award under the Act in respect of any other Statute, but when it is challenged in an appeal under Section 37 of the Act the underlying principle of the Code of Civil Procedure is applicable. We have thought we should clarify the position as it may not be understood that the decision in PramjeetSingh Patheja (supra) conveys that it is not a decree for all purposes and the principles under the Code while an appeal is preferred is not applicable.

15. In M/s. Pandey & Co. Builders Pvt. Ltd. v. State of Bihar and another [AIR 2007 SC 465], it has been held that a forum of an appellate court must be determined with reference to the definition thereof contained in the 1996 Act. The aforesaid decision further reinforces the conclusion that Order XLI Rule 5 in principle is applicable to an appeal preferred before the High Court, for there is no provision in the Act prohibiting the appellate court not to take

recourse to the underlying principles of the Code of Civil Procedure as long as they are in consonance with the spirit and principles engrafted under the Act.

16. Presently to the anatomy of Order XLI. It deals with appeals from original decrees. Order XLI Rule 5 provides for stay by Appellate Court. To have a complete picture, it is necessary to reproduce the Rule in entirety: -

"5. Stay by Appellate Court. –

(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

(2) Stay by Court which passed the decree. - Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub- rule (1) or sub-rule (2) unless the Court making it is satisfied -

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Subject to the provisions of sub-rule (3), the Court may make an ex parte order for stay of execution pending the hearing of the application.

(5) Notwithstanding anything contained in the foregoing sub- rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree."

17. At this stage, regard being had to the schematic content of order XLI Rule 5, we think it appropriate to refer to certain authorities how the language employed in the said Rule has been appreciated and understood by this Court. In KayamuddinShamsuddin Khan v. State Bank of India [(1998) 8 SCC 676] while dealing the command of the provision relating to deposit the Court had to say:

"...that when non-compliance with the direction given regarding deposit under sub-rule (3) of Rule 1 of Order XLI would result in the Court refusing to stay the execution of the decree. In other words, the application for stay of the execution of the decree could be dismissed for such non-compliance but the Court could not give a direction for the dismissal of the appeal itself for such non-compliance."

18. In SihorNagar Palika Bureau v. Bhabhlubhai Virabhai & Co. [(2005) 4 SCC 1], this Court was dealing with the situation where the appellant municipality constituted and governed by the provision of Gujrat Municipalities Act, 1963 had assailed a money decree in appeal and the High Court in appeal had directed stay of the execution of operation of the money decree subject to the condition that the appellant shall deposit a certain sum with interest by a particular date. In that context the Court adverted to Order XLI Rule 1(3) and 5 (5) and opined thus:-

"Order 41 Rule 1(3) CPC provides that in an appeal against a decree for payment of amount the appellant shall, within the time permitted by the appellate court, deposit the amount disputed in the appeal or furnish such security in respect thereof as the court may think fit. Under Order 41 Rule 5(5), a deposit or security, as abovesaid, is a condition precedent for an order by the appellate court staying the execution of the decree. A bare reading of the two provisions referred to hereinabove, shows a discretion having been conferred on the appellate court to direct either deposit of the amount disputed in the appeal or to permit such security in respect thereof being furnished as the appellate court may think fit. Needless to say that the discretion is to be exercised judicially and not arbitrarily depending on the facts and circumstances of a given case. Ordinarily, execution of a money decree is not stayed inasmuch as satisfaction of money decree does not amount to irreparable injury and in the event of the appeal being allowed, the remedy of restitution is always available to the successful party. Still the power is there, of course a discretionary power, and is meant to be exercised in appropriate cases."

[Emphasis supplied]

19. The submission advanced by the learned counsel for the appellants that the provisions contained in Order XLI Rule 5 and XXVII Rule 8A of the Code should be read harmoniously to avoid any conflict. Rule 8A of Order XXVII reads as follows:-

"8A. No security to be required from Government or a public officer in certain cases. -No such security as is mentioned in rules 5 and 6 of Order XLI shall be required from the Government or, where the Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity."

20. As far as the Government is concerned, it has been defined in Order XXVII Rule 8B. It reads as follows: -

"8B. Definitions of "Government" and "Government pleader". -In this order unless otherwise expressly, provided "Government and "Government pleader" mean respectively -

a) In relation to any suit by or against the Central Government or against a public officer in the service of the Government, the Central Government and such pleader as that Government may appoint whether generally or specially for the purpose of this Order;

b) (omitted by the A.O. 1948)

c) In relation to any suit by or against a State Government or against a public officer in the service of a State, the State Government and the Government pleader as defined in clause (7) of section 2, or such other pleader as the State Government may appoint, whether generally or specially, for the purpose of this order."

21. The legislature has defined the term "Government" not to allow any room for interpretation and speculation. It means either a Central Government or a State Government and in certain cases public officer in the service of a State. Learned counsel for the appellant has contended that the appellant "Kanpur Jal Sansthan" is an extended wing of the State and, therefore, is a part of the Government. On a bare glance at the aforesaid provisions it is perspicuous that it categorically lays a postulate that as far as the Government or a public officer is concerned in certain cases the stipulations incorporated in Order XLI Rule 5 would not be applicable.

22. Having regard to the aforesaid provisions it is necessary to appreciate the definitive character of the Government in the context it has been used. In UtkalContractors & Joinery Pvt. Ltd. and others v. State of Orissa and others [AIR 1987 SC 1454], it has been laid down that while the words of an enactment are important the context is not less important. It has

also been stated that no provision in the statute and no word of the statute may be construed in isolation. The importance of setting and the pattern are to be kept in mind. In Dy. Chief Controller of Imports & Exports, New Delhi v. K.T. Kosalram and others [(1970) 3 SCC 82] this Court has observed as under:

"What particular meaning should be attached to words and phrases in a given instrument is usually to be gathered from the context, the nature of the subject-matter, the purpose or the intention of the author and the effect of giving to them one or the other permissible meaning on the object to be achieved. Words are after all used merely as a vehicle to convey the idea of the speaker or the writer and the words have naturally, therefore, to be so construed as to fit in with the idea which emerges on a consideration of the entire context. Each word is but a symbol which may stand for one or a number of objects. The context, in which a word conveying different shades of meanings is used, is of importance in determining the precise sense which fits in with the context as intended to be conveyed by the author...."

23. As we perceive, the legislature has used the word "Government" in Order XXVII Rule 8A and defined the same in Order XXVII Rule 8B. The intention is absolutely clear and unambiguous. It means the "Government" in exclusivity. The submission of the learned counsel for the appellants that the appellant being a Jal Sansthan it would come within the extended wing of the Government does not commend acceptation.

24. We have reasons to so conclude. In State of Punjab and others v. Raja Ram and others [(1981) 2 SCC 66], a two-Judge Bench, after referring to a passage from RamanaDayaram Shetty v. International Airport Authority of India and others [(1979) 3 SCC 489] and stating what makes a corporation an agency or instrumentality of the Central Government, opined thus: -

"Even the conclusion, however, that the Corporation is an agency or instrumentality of the Central Government does not lead to the further inference that the Corporation is a Government department."

25. In PashupatiNath Sukul v. Nem Chandra Jain and others [(1984) 2 SCC 404], a question arose whether the Secretary of a State Legislative Assembly is qualified or not to be appointed as the Returning Officer at an election held to fill a seat in the Rajya Sabha. The High Court of Allahabad had returned a finding that the Secretary of the Legislative Assembly was neither an officer of the Government nor of a local authority and hence, could not have been appointed as the Returning Officer under Section 21 of the Representation of the People Act, 1951. Dealing with the said issue, the three-Judge Bench proceeded to analyse whether the expression "Government" used in Section 21 would mean the "Executive Government" in the narrow sense or a liberal construction should be placed. The Court referred to Section 3(23) of the General Clauses Act, 1897 which defines "Government" to mean "Government" or "the Government" to include both the Central Government and any

State Government. Thereafter, the Court referred to certain constitutional provisions, namely, Articles 12, 102(1)(a), 191(1)(a), 98, 187, 146, 229, 148(5), 311 and 318 and the decision in PradyatKumar Bose v. Hon'ble Chief Justice of Calcutta High Court [(1955) 2 SCR 1331] and adverted to the concept of local Government, as understood in the context of Entry 5 of List II of the Seventh Schedule to the Constitution, the concept of State in International Law and thereafter to the conception of the federal construction of the Constitution and the conception of governance under the Constitution and, eventually, opined that: -

"From the legal point of view, government may be described as the exercise of certain powers and the performance of certain duties by public authorities or officers, together with certain private persons or corporations exercising public functions. The structure of the machinery of Government and the regulation of the powers and duties which belong to the different parts of this structure are defined by the law which also prescribes to some extent the mode in which these powers are to be exercised or these duties are to be performed (see Halsbury'sLaws of England, Fourth Edition, Vol. 8, para 804). Government generally connotes three estates, namely, the Legislature, the Executive and the Judiciary while it is true that in a narrow sense it is used to connote the Executive only. The meaning to be assigned to that expression, therefore, depends on the context in which it is used."

Thereafter the Court proceeded to further rule thus: -

"We are of the view that the word 'Government' in Article 102(1)(a) and in Article 191(1)(a) of the Constitution and the word 'Government' in the expression "an officer of Government" in Section 21 of the Act should be interpreted liberally so as to include within its scope the Legislature, the Executive and the Judiciary. The High Court erred in equating the word 'Government' occurring in Section 21 of the Act to the Executive Government only and in further holding that the officers of the State Legislature could not be treated as officers of Government for purposes of that section."

[Emphasis supplied]

26. In R.S. Nayak v. A.R. Antulay [(1984) 2 SCC 183], the Court was dealing with as to what the expression "Government" exactly connotes in the context of Indian Penal Code. Answering the issue the Constitution Bench stated thus: -

"There is a short and a long answer to the problem. Section 17 IPC provides that "the word 'Government' denotes the Central Government or the Government of a State". Section 7 IPC provides that "every expression which is explained in any part of the Code, is used in every part of the Code in conformity with the explanation". Let it be noted that unlike the modern statute Section 7 does not provide "unless the context otherwise indicate" a phrase that prefaces the dictionary clauses of a modern statute. Therefore, the expression "Government" in Section 21(12)(a) must either mean the Central Government or the Government of a State."

After so stating the Larger Bench referred to many an authority and proceeded to rule thus:-

"56. There thus is a broad division of functions such as executive, legislative and judicial in our Constitution. The Legislature lays down the broad policy and has the power of purse. The Executive executes the policy and spends from the Consolidated Fund of the State what Legislature has sanctioned. The Legislative Assembly enacted the Act enabling to pay to its members salary and allowances. And the members vote the grant and pay themselves. In this background even if there is an officer to disburse this payment or that a pay bill has to be drawn-up are not such factors being decisive of the matter. That is merely a mode of payment, but the MLAs by a vote retained the fund earmarked for purposes of disbursal for pay and allowances payable to them under the relevant statute. Therefore, even though MLA receives pay and allowances, he is not in the pay of the State Government because Legislature of a State cannot be comprehended in the expression "state Government".

57. This becomes further clear from the provision contained in Article 12 of the Constitution which provides that "for purposes of Part III, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India". The expression "Government and Legislature", two separate entities, are sought to be included in the expression "state" which would mean that otherwise they are distinct and separate entities. This conclusion is further reinforced by the fact that the Executive sets up its own secretariat, while Article 187 provides for a secretarial staff of the Legislature under the control of the Speaker, whose terms and conditions of the service will be determined by the Legislature and not by the Executive. When all these aspects are pieced together, the expression "Government" in Section 21(12)(a) clearly denotes the Executive and not the Legislature."

[Underlining is ours]

27. We have referred to the aforesaid authorities to highlight that in certain contexts the term "Government" may be required to be liberally construed and under certain circumstances it has to be understood in a narrow spectrum. The concept of "State" as used under Article 12 is quite different than what is meant by an "Executive Government". In fact to determine whether a body is an instrumentality or agency of the Government this Court has laid down general principles but no exhaustive tests have been specified. As has been held in ChanderMohan Khanna v. National Council of Educational Research and Training and others [(1991) 4 SCC 578], even in general principles there is no cut and dried formula which would provide correct division of bodies into those which are instrumentalities or agencies of the Government and those which are not. In that case the Court opined that where the financial

assistance from the State is so much as to meet almost entire expenditure of the institution, or the share capital of the corporation is completely held by the Government, it would afford some indication of the bodies being impregnated with governmental character. It may be a relevant factor if the institution or the corporation enjoys monopoly status which is State conferred or State protected. Existence of deep and pervasive State control may afford an indication. It has been laid down therein that if the functions of the institution are of public importance and related to governmental functions, it would also be a relevant factor and these are merely indicative indicia and are by no means conclusive or clinching in any case. It has been further opined therein, after referring to host of decisions, that a wide enlargement of the meaning must be tempered by a wise limitation, for the State control does not render such bodies as "State" under Article 12 of the Constitution. The State control, however, vast and pervasive is not determinative; the financial contribution by the State is also not conclusive. If the Government operates behind a corporate veil, carrying out governmental functions of vital public importance, there may be little difficulty in identifying the body as "State".

28. At this stage, we may usefully refer to a three-Judge Bench decision in RamanaDayaram Shetty (supra) wherein Bhagwati, J. (as his Lordship then was) opined that where a corporation is an instrumentality or agency of Government, it would, in the exercise of its power or discretion, be subject to the same constitutional or public law limitations as Government. The rule inhibiting arbitrary action by Government must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance. This rule also flows directly from the doctrine of equality embodied in Article 14.

29. The reference to the aforesaid authorities by us is only for the purpose that an authority or instrumentality of the State or agency of the State has to act in a fair, non- arbitrary and reasonable manner and, in fact, is controlled by Chapter III of the Constitution but it does not assume the character of "Government" for all purposes. As we find from the language employed in Order XXVII Rules 8A and 8B, it only means the "Government". In fact, Rule 8B clearly states "in relation to any suit by or against the Central Government or against a public officer in the service of the Government" and similar language is used for the State Government. Hence, the legislature has deliberately used a restrictive definition and its scope cannot be expanded to cover an agency or instrumentality of the State by interpretative process.

30. Learned counsel for the appellants, as stated earlier, has commended us to the decision in Kuruvilla (supra) of the High Court of Kerala wherein the Division Bench placing reliance on the decision in Collector, Cuttack v. Padma Charan Mohanty [50 1980 CLT 191] has

basically dealt with the applicability of Order XXVII Rule 8A and grant of stay under Order XLI Rule 5 when the State is the appellant. We do not intend to express any opinion on the correctness of the said decisions as the controversy does not arise in the present case because it is neither the Central Government nor the State Government in that sense in appeal before us. It is the "Jal Sansthan" which claims to be an extended wing or agency of the State has preferred the appeal. We have clearly ruled that Order XXVII Rules 8A and 8B are applicable only to the Government and not to instrumentality or agency of the State. That is the specific and definite language employed by the legislature and for that purpose we have drawn a distinction between the concept of "State" under Article 12 and the "Government" as used in Order XXVII Rules 8A and 8B.

31. Coming to the legal validity of the impugned order we find that the High Court has directed for deposit of the money and withdrawal of the 50% of the same without furnishing security and remaining half after furnishing security. The High Court has not given any justifiable reason for permitting such withdrawal. Without commenting on the merits of the grounds sought to be urged before us (to which we have not referred to in detail not being necessary) we only modify the order that the appellant shall furnish the security for the entire amount to the satisfaction of the concerned District Judge within a period of six weeks. As the scope of appeal is very limited, we would request the High Court to dispose of the appeal by the end of June, 2014.

32. Resultantly, with the aforesaid modifications in the order passed by High Court, the appeal stands disposed without any order as to costs.