

SUPREME COURT OF INDIA

Madhya Pradesh Rural Road Development Authority

Vs.

Backbone Enterprises Limited

C.A.No.4011 of 2018

(Adarsh K.Goel and R.F.Nariman,JJ.,)

18.04.2018

ORDER

SLP(C)No.31682 of 2011

1. Delay condoned. Leave granted.
2. In view of judgment of this Court in *Va Tech Escher Wyass Flovel Ltd. v. MPSE Board & Another¹*, having been overruled and as the High Court has relied on Judgment in C.R. NO.353 of 2004, Mahesh Chandra Garg v. State of M.P. and Ors. decided on 23.2.2010 which was based on Va Tech (supra), the impugned order is set aside and the matter is remanded to the M.P. Arbitration Tribunal so that the said Tribunal can deal with the matter on merits in accordance with law.
3. The appeals are disposed of.
4. The parties may appear before the Tribunal for further proceedings on 9th July, 2018.
5. The appellant may serve a copy of this order on the respondents.

ORDER

6. Delay condoned. Leave granted.
7. We have heard learned counsel for the parties and perused the record.
8. In view of judgment of this Court in *Madhya Pradesh Rural Road Development Authority and Anr. v. L.G. Chaudhary Engineers and Contractors²*, and the order passed by this Court on 8th March, 2018 in the same matter, the M.P. Arbitration Tribunal constituted under the M.P. Madhyastham Adhikaran Adhiniyam, 1983, (M.P. Act) has the exclusive jurisdiction to deal with the dispute in question. Accordingly, the impugned direction under Section 11 of the Arbitration and Conciliation Act, 1996 cannot be sustained and is set aside.

9. The parties are relegated to M.P. Arbitration Tribunal which may decide the dispute as per provisions of M.P. Madhyastham Adhikaran Adhiniyam, 1983 (M.P. Act). The appeals are disposed of.

10. The parties may appear before the Tribunal for further proceedings on 9th July, 2018. It will be open to the respondents to file the very same claim which has already been filed before the Arbitrator.

ORDER

11. Delay condoned. Leave granted.

12. We have heard learned counsel for the parties and perused the record.

13. An agreement was executed between the parties on 11th May, 1984 for construction of Assembly building in the State of Madhya Pradesh. Dispute arose from the agreement. The High Court of Delhi appointed an arbitrator vide order dated 13th December, 1988. The Arbitrator gave the award on 21st June, 1989 which was made Rule of the Court by Delhi High Court on 28th September, 1989. Execution proceedings were taken by the appellant. Learned Single Judge allowed the execution vide Order dated 6th September, 1991 against which an appeal was filed before the Division Bench of the High Court.

14. The Division Bench vide order dated 5th July, 2012 directed that the enforceability of the decree will depend upon the fate of another appeal which was pending between the parties. The said appeal, FAO (OS)No.23/1998, is still pending but the High Court has deferred the same pending decision of larger Bench of this Court in pursuance of judgment of this Court in *Madhya Pradesh Rural Road Development Authority and Anr. v. L.G. Chaudhary Engineers and Contractors, (Supra)*. It may be noted that the larger Bench has decided the matter on 8th March, 2018. In terms of the said decision the dispute between the parties has to be settled in accordance with the provisions of the M.P. Madhyastham Adhikaran Adhiniyam, 1983 (M.P. Act).

15. However, since in the present case the award has been rendered long back which was not challenged by the respondents and the matter is pending at the stage of execution, we direct that the award be treated to have been rendered under the M.P. Act.

16. In view of above, we transfer pending proceedings before Delhi High Court being FAO (OS)NO.23/1998 and connected matters to High Court of Madhya Pradesh at Jabalpur to be treated as revision petition under the M.P. Act.

17. Another dispute between the parties was referred to arbitration vide order dated 19th May, 1993. However, before the arbitration proceedings could be decided the arbitrators are said to have expired.

18. In the circumstances pending Arbitration proceedings shall stand transferred to the M.P. Arbitration Tribunal under the M.P. Act, to be dealt with as per provisions of the M.P. Act in accordance with law. The proceedings may be carried out in continuation of earlier proceedings.

19. The parties may take steps by moving the High Court or any other forum for transfer of records to the transferee courts in the light of this Order.

20. The appeal is accordingly disposed of.

21. The parties may appear before the High Court/Tribunal for further proceedings on 9th July, 2018.

ORDER

22. Leave granted. Heard learned counsel for the parties.

23. Our attention has been drawn to the definition of "dispute" under Section 2(d) of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 ("1983 Act") which is as follows:

"dispute' means claim of ascertained money valued at Rupees 50,000 or more relating to any difference arising out of the execution or non-execution of a works contract or part thereof."

24. We consider it appropriate to clarify that the expression "ascertained money" as used in Section 2(d) of the 1983 Act will include not only the amount already ascertained but the amount which may be ascertained during the proceedings on the basis of claims/ counter claims of the parties.

25. Our attention has also been drawn to Section 4(3)(iii) of the 1983 Act to submit that consistent with the policy of law and the judgment of this Court in *Indian Oil Corporation Ltd. and Ors. vs. Raja Transport Private Ltd.*³, an employee of a party to the dispute cannot be an arbitrator. Section 4(3)(iii) of the 1983 Act is in the following terms:

"4. Chairman and members of Tribunal and their qualifications.-

(3) No person shall be qualified for appointment as a member of the Tribunal, unless-
(iii) he is or has been :-

(a) Chief Engineer in the service of the State Government in Public Works, Irrigation or Public Health Engineering Department; or

(b) a Chief Engineer in the service of the Madhya Pradesh Electricity Board; or

(c) a Senior Deputy Accountant General of the Office of the Accountant General, Madhya Pradesh, for a period of not less than five years:

Provided that in the case of clause (iii), in exceptional circumstances, the State Government may relax the prescribed minimum period of five years to three years.”

26. We clarify that the State of Madhya Pradesh will not appoint as member of the Tribunal, its employee of the concerned department to which the dispute relates.

27. The appeal stands disposed of as above.

ORDER

28. Leave granted. Heard learned counsel for the parties.

29. It is not disputed that the judgment relied upon in the impugned order has since been overruled by a larger bench of the High Court in Viva Highways Ltd. vs. Madhya Pradesh Road Development Corporation reported in 2017 (2) MPLJ 681. Accordingly, the impugned order is set aside and the appeal is allowed.

30. It is made clear that if any arbitration proceedings are pending, the same will now be governed by the above judgment of the High Court.

31. The appeal is disposed of.

Judgment Referred.

¹(2011) 13 SCC 0261

²(2012) 3 SCC 0495

³(2009) 8 SCC 0520