



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY, 2025

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

WRIT APPEAL NO. 1427 OF 2021 (T-RES)

BETWEEN:

HUBBALLI DHARWAD SMART CITY LIMITED.,
F BLOCK, 4TH FLOOR, SURVEY NO 121A,
OPP TO INDIRA GLASS HOUSE,
IT PARK, HUBBALLI 580 029.
(REP BY MR C W SHAKEEL AHMED
AGED ABOUT 50 YEARS,
MANGING DIRECTOR)

...APPELLANT

(BY SRI. NAVEEN KUMAR K S.,ADVOCATE)

AND:

MAS CONSTRUCTIONS,
H NO 5-141C, HEJAMADI BLOCK NO. 5,
KAUP, UDUPI 574 103.
(REP BY ITS PROPRIETOR
MRS. SULAIMAN ASIF S/O MR.MOIDU
AGED ABOUT 37 YEARS)

...RESPONDENT

(BY SRI.RAGHURAM.,SENIOR COUNSEL A/W
SRI.C R RAGHAVENDRA., ADVOCATE)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT PRAYING TO SET ASIDE THE IMPUGNED
ORDER DATED 22.09.2021 PASSED BY THE LD SINGLE JUDGE
IN WP 2804/2021.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS
DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
AND
HON'BLE MR JUSTICE G BASAVARAJA

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by SHARADA
VANI B

Location: HIGH
COURT OF
KARNATAKA



ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

This intra Court Appeal presented u/s.4 of the Karnataka High Court Act, 1961 seeks to assail a learned Single Judge's order dated 22.09.2021 whereby respondent's W.P.No.2804/2021 having been favoured, a direction has been issued to the appellant to make good GST after adjusting the amounts of sales tax as provided in the contract document in the light of clarification dated 03.01.2020 issued by the Managing Director, Karnataka Urban Infrastructure Development & Finance Corporation.

2. Learned Sr. Panel Counsel appearing for the appellant drawing attention of the court to clause 39 of the contract document argues that the rates quoted by the respondent shall be deemed to be inclusive of the taxes and therefore the question of reimbursement thereof does not arise. Secondly, he banks upon the Arbitration Clause engrafted in the document to contend that writ court ought not to have granted indulgence in the matter and



instead should have relegated the respondent to arbitration.

3. After service of notice, the respondent contractor having entered appearance through the counsel opposes the appeal making submission in justification of the impugned order and the reasons of the learned Single Judge on which it has been constructed. He also draws attention of the court to the text of clarification issued by the Managing Director of KUIDFC stating that in view of this, there is no arbitrable dispute and that the appellant being an instrumentality of the State under Article 12 of the Constitution, in all fairness abide by the clarification.

4. Having heard learned counsel for the parties and having perused the Appeal Papers, we decline indulgence in the matter broadly agreeing with the reasoning of the learned Single Judge, who has rightly observed at paragraphs 9, 10 & 11 as under:

"9. The Karnataka Urban Water Supply and Sewerage Board had sought for a clarification relating to implementation of GST in relation to



performance of portions of contract after coming into force of GST. The Finance Department by its clarification dated 14.12.2020 has also opined that the tax difference ought to be calculated on each of the works and necessary steps to be taken to decide as to whether contract agreement needs to be changed. While making such clarification, the nature of reconciliation of tax paid in the pre-GST regime as well as taxes as applicable relating to all taxes in post-GST regime has been taken note of. The methodology and impact of change of tax has also been referred to. This stand has been approved by the Additional Chief Secretary to Government, Finance Department. The clarification made in the context of an authority set up under a statute and taking note of the clarification made by the KUIDFC, the respondent is required to act in terms of the clarification made.

10. Further, insofar as tax component is concerned, as the contracts were entered after coming into force of the GST Act, and in light of the opinion expressed by a clarification made on 03.01.2020, the respondent is required to make good the GST after adjusting the amounts of sales tax that was provided for in the contract entered into between the petitioner and the respondent.

11. It is further to be noticed that the tax component is an independent component which the petitioner does not retain as a profit and is a statutory payment to be made. Looking into the nature of such payment of GST, the respondent is required to honour the same in terms of the clarification dated 03.01.2020. The consideration by the respondent to be



made within a period of not later than twelve weeks form the date of release of the order.”

5. The vehement submission of learned Panel Counsel that the clarification in question did not apply to the subject contract and therefore in terms of clause 39 the impugned order has to be invalidated, is difficult to countenance inasmuch as the component of sales tax and all other taxes as well, are subsumed in the GST itself as rightly contended by learned Sr. Advocate Mr.Raghuram appearing for the contractor. The Gujarat High Court judgment in BIPSON SURGICAL (INDIA) PVT. LTD., vs. STATE OF GUJARAT¹ does not much come to the aid of appellant inasmuch as in the contract document involved in that case had clause (13)(b) were differently worded *qua* clause 39.1 of the contract document herein. That apart, when the higher up itself has agreed to give the benefit by virtue of Clarification Circular dated 03.01.2020, which is in response to appellant’s query raised in its letter dated 06.12.2019, it is un-understandable as to how a

¹ (2018) 18 GSTL 795 GUJ



contra stand can be taken up by the entity which is in appeal.

6. The last contention of the Panel Counsel that the contract document incorporates an arbitration clause and therefore the dispute in question ought to have been relegated to arbitration, is difficult to countenance. Existence of arbitration clause is one thing and existence of dispute is another. Both need to concur to non-suit the writ petitioner so that he can invoke arbitration clause. In the absence of a dispute in view of Clarificatory Circular, the question of relegating the respondent contractor to arbitration even remotely would not arise. Such a view gains support from ***M.CHIRANJEEVI vs. THE STATE OF KARNATAKA***². It is not that every question raised *ipso facto* amounts to a dispute. If the question can be answered by referring to statute or instruments of law as broadly construed (such as the Clarificatory Circular herein), the State and its instrumentalities cannot gainfully

² MANU/KA/3973/2022



insist upon reference to arbitration, though no disputed questions of facts arise in the case. The reliance of the Panel Counsel on a learned Single Judge's decision in ***M/S.SKS KARKALA INFRA PROJECTS PVT. LTD., vs. STATE OF KARNATAKA***³ would not support a contra proposition inasmuch as it was rendered in the peculiar fact matrix of the case. Added, the arbitration clause cannot be chanted like mantra to defeat the writ remedies invariably, regardless of facts & circumstances of the case.

In the above circumstances, this appeal being devoid of merits, is liable to be and accordingly dismissed, costs having been made easy.

**Sd/-
(KRISHNA S DIXIT)
JUDGE**

**Sd/-
(G BASAVARAJA)
JUDGE**

Snb/
List No.: 1 Sl No.: 17

³ W.P.No.24701/2022 disposed off on 27.03.2023