

THE HIGH COURT OF TRIPURA
AGARTALA

Arb. P. No. 08 of 2015

Applicant/Petitioner:

National Projects Construction Corporation Ltd. (In Short NPCC),

A Government of India enterprise represented by its project manager having its office at 31, Harish Thakur Lane, P.O. Agartala, P.S. West Agartala, Dist. West Tripura, Pin-799001.

By Advocate :

Mr. A. Bhowmik, Adv.

Respondent :

1. The State of Tripura,

Represented by the Executive Engineer, Ambassa Division, PWD (R & B), Govt. of Tripura, P.O: Ambassa, P.S. Ambassa, Dist. Dhalai-Tripura.

2. Er. Animesh Das,

Learned Sole Arbitrator,
Addl. Chief Engineer,
Public Works Department (Water Resource)
P.O : Kunjaban, District: West Tripura.

By Advocate :

Mr. J. Majumder, Adv.

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **5th March, 2015.**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

On 26th February, 2015 this Court had expressed a prima facie view that the petition may not be maintainable in this Court because the High Court is not the Principal Civil Court of original jurisdiction.

[2] Sri J. Majumder, learned counsel for the respondent has drawn the attention of this Court to the judgment of the Apex Court in ***State of West Bengal & Others Vrs. Associated Contractors : 2014 AIR SCW 5844*** wherein the Apex Court after considering the entire law on the subject held as follows:

"20. As noted above, the definition of "court" in Section 2(1)(e) is materially different from its predecessor contained in Section 2(c) of the 1940 Act. There are a variety of reasons as to why the Supreme Court cannot possibly be considered to be "court" within the meaning of Section 2(1)(e) even if it retains seisin over the arbitral proceedings. Firstly, as noted above, the definition is exhaustive and recognizes only one of two possible courts that could be "court" for the purpose of Section 2(1)(e). Secondly, under the 1940 Act, the expression "civil court" has been held to be wide enough to include an appellate court and, therefore would include 16Page 17 the Supreme Court as was held in the two judgments aforementioned under the 1940 Act. Even though this proposition itself is open to doubt, as the Supreme Court exercising jurisdiction under Article 136 is not an ordinary Appellate Court, suffice it to say that even this reason does not obtain under the present definition, which speaks of either the Principal Civil Court or the High Court exercising original jurisdiction. Thirdly, if an application would have to be preferred to the Supreme Court directly, the appeal that is available so far as applications under Sections 9 and 34 are concerned, provided for under Section 37 of the Act, would not be available. Any further appeal to the Supreme Court under Article 136 would also not be available. The only other argument that could possibly be made is that all definition sections are subject to context to the contrary. The context of Section 42 does not in any manner lead to a conclusion that the word "court" in Section 42 should be construed otherwise than as defined. The context of Section 42 is merely to see that one court alone shall have jurisdiction over all applications with respect to arbitration agreements which context does not in any manner enable the Supreme Court to become a "court" within the meaning of Section 42. It has aptly been stated that the rule of forum conveniens is expressly excluded by section 42. See: JSW Steel Ltd. vs. Jindal Praxair Oxygen Co. Ltd., (2006) 11 SCC 521 at para 59. Section 42 is 17Page 18 also markedly different from Section 31(4) of the 1940 Act in that the expression "has been made in a court competent to entertain it" does not find place in Section 42. This is for the

reason that, under Section 2(1)(e), the competent Court is fixed as the Principal Civil Court exercising original jurisdiction or a High Court exercising original civil jurisdiction, and no other court. For all these reasons, we hold that the decisions under the 1940 Act would not obtain under the 1996 Act, and the Supreme Court cannot be "court" for the purposes of Section 42."

The conclusions of the Apex Court read as follows:

"25. Our conclusions therefore on Section 2(1)(e) and Section 42 of the Arbitration Act, 1996 are as follows:

(a) Section 2(1)(e) contains an exhaustive definition marking out only the Principal Civil Court of original jurisdiction in a district or a High Court having original civil jurisdiction in the State, and no other court as "court" for the purpose of Part-I of the Arbitration Act, 1996.

(b) The expression "with respect to an arbitration agreement" makes it clear that Section 42 will apply to all applications made whether before or during arbitral proceedings or after an Award is pronounced under Part-I of the 1996 Act.

(c) However, Section 42 only applies to applications made under Part-I if they are made to a court as defined. Since applications made under Section 8 are made to judicial authorities and since applications under Section 11 are made to the Chief Justice or his designate, the judicial authority and the Chief Justice or his designate not being court as defined, such applications would be outside Section 42.

(d) Section 9 applications being applications made to a court and Section 34 applications to set aside arbitral awards are applications which are within Section 42.

(e) In no circumstances can the Supreme Court be "court" for the purposes of Section 2(1)(e), and whether the Supreme Court does or does not retain seisin after appointing an Arbitrator, applications will follow the first application made before either a High Court having original jurisdiction in the State or a Principal Civil court having original jurisdiction in the district as the case may be.

(f) Section 42 will apply to applications made after the arbitral proceedings have come to an end provided they are made under Part-I.

(g) If a first application is made to a court which is neither a Principal Court of original jurisdiction in a district or a High Court exercising original

jurisdiction in a State, such application not being to a court as defined would be outside Section 42. Also, an application made to a court without subject matter jurisdiction would be outside Section 42. The reference is answered accordingly."

[3] Faced with this situation, Sri A. Bhowmik submits that he may be permitted to withdraw the petition with liberty to file a petition before the competent Court.

Liberty is granted.

[4] The petitioner can apply for exclusion of the time spent in pursuing the present petition and the same shall be decided by the Court concerned in accordance law.

[5] Petition is disposed of as withdrawn.

CHIEF JUSTICE