

THE HON'BLE SRI JUSTICE K.C.BHANU

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Review W.P.M.P (SR) No.56711 OF 2015

IN

WRIT PETITION No.15124 OF 2009

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ORDER:

This Review W.P.M.P. is filed to review the order of this Court, dated 16.11.2011, in W.P.No.15124 of 2009, whereby this Court disposed of the Writ Petition, which reads as follows:

“Heard both sides.

The petitioner filed amendment petition being W.P.M.P.No.18023 of 2010 to amend the prayer in the writ petition as follows:

“It is therefore, prayed that this Hon’ble Court may be pleased to issue a writ in the nature of a “writ of Mandamus” or any other appropriate writ, order or direction declaring G.O.M.S.No.430, Municipal Administration & Urban Development (H1) Department dated 7.7.2009 and the letter No.984 (26)/HMR/2009, dated 16.07.2009 inviting FRQs as illegal and void and set aside the same and direct the respondents to refund the amount paid by the petitioner to the tune of Rs.71.00 crores towards bid security amount and bid offer amount and further declare that the agreement dated 19.09.2008 is frustrated and that the petitioner need not perform the contract and also permit the petitioner to initiate appropriate action for seeking compensation from the respondents on account of the loss and damage suffered by the petitioner pass such other order or orders as the Hon’ble Court may deem fit and proper in the circumstances of the case.”

In view of this amendment, the petitioner is seeking refund of the amount paid by it to a tune of Rs.71.00 crores towards bid security and also damages suffered by it.

A specific plea has been taken by the Government in the counter-affidavit that under Clause 44.3.1 of the Concessionaire Agreement, an arbitration clause is provided, which reads as follows:

“Any dispute which is not resolved amicably by conciliation as provided in Clause 44.2, shall be finally decided by reference to arbitration by a Board of

Arbitrators appointed in accordance with Clause 44.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Hyderabad, and the language of arbitration proceedings shall be English."

Considering the pleadings especially in view of amendment of prayer in the writ petition, various disputed questions of fact arise for adjudication. Ordinarily this Court would not undertake to resolve the disputed questions of fact exercising the powers under Article 226 of the Constitution of India.

Therefore, considering the fact that an arbitration clause is provided in the Concessionaire Agreement, it is desirable that the matter should be referred to an arbitrator by invoking the clause as mentioned in the Concessionaire Agreement.

Accordingly, the writ petition is disposed of giving liberty to the petitioner to avail the arbitration remedy. No costs."

2. In the affidavit filed in support of the review petition, it is stated that Concession Agreement was entered into on 19.09.2008 between the Governor of Andhra Pradesh and M/s. Maytas Metro Limited, for construction, operation and maintenance of Hyderabad Metro Rail Project in Hyderabad; that the said agreement was terminated by the Governor of Andhra Pradesh, vide G.O.Ms.No.430, Municipal Administration & Urban Development (H1) Department, dated 07.07.2009; that questioning the said termination agreement, respondent No.1 herein filed W.P.No.15124 of 2009 before this Court and this Court disposed of the same on 16.11.2011; that as per the direction of this Court, the matter was referred to the Arbitrator by invoking the terms and conditions of the Concession Agreement; that respondent No.1 filed Arbitration Application No.78 of 2013 before this Court for appointment of an Arbitrator and the said application was allowed vide order, dated 24.01.2014; that the parties to the order sought to be reviewed, Concession Agreement and nominated Arbitrators are in terms of Article 44.3.2 of the Dispute Resolution; that the Arbitrator fixed the date of hearing as 12.03.2015 at Hyderabad; that on receipt of notice, the petitioner herein informed the Arbitrator that the

petitioner State was formed with effect from 02.06.2014 and proceedings are not binding on the State of Telangana in terms of the provisions of the Andhra Pradesh Reorganization Act, 2014 (for short, 'the Act') including appointment of Arbitrator and further informed that necessary steps would be taken further; that the petitioner neither succeeded nor substituted for the Government of Andhra Pradesh in terms of Section 104 of the Act; that the State of Andhra Pradesh is party to the Concession Agreement not the Government of Andhra Pradesh, therefore, the State of Telangana is not deemed to be substituted to the legal proceedings in terms of Section 104 of the Act; that the State of Andhra Pradesh is not a party to the order sought to be reviewed, as required under Article 300 of the Constitution of India and Section 79 of the Code of Civil Procedure, 1908, therefore, the State of Telangana cannot be substituted; that in terms of Article 44.2 of the Dispute Resolution, if the dispute is not resolved by Conciliation, then the matter will be referred to the Board of Arbitrators as per Article 44.3.1 of the Dispute Resolution; that as per the order sought to be reviewed, the dispute has to be resolved by the Arbitrators and for that purpose, the Arbitrator may issue further notice and insist the parties for commencement of Arbitration proceedings; that the petitioner herein advised to proceed on any of its administrative activity in accordance with the Act; that in spite of that respondent No.1 has not chosen to add the State of Andhra Pradesh or State of Telangana; that as there is considerable public interest involved in the matter, the review petition may be considered in accordance with the Dispute Resolution of the Concessionaire Agreement by declaring the order passed by this Court in W.P.No.15124 of 2009 as not binding on the petitioner in terms of Section 104 of the Act; that the petitioner has *prima facie* case and balance of convenience in its favour; that the petitioner is new State and not a party to the impugned order and hence, he prays to set aside the impugned order.

3. Respondent No.1 filed counter affidavit denying the averments made in the affidavit filed in support of the petition and stated that respondent No.1 entered into Concession Agreement on 19.09.2008 with the erstwhile State of Andhra Pradesh; that in terms of the said Concession Agreement, respondent No.1 has deposited an amount of Rs.60.00 crores by way of bank guarantee towards bid security; that in addition to that an amount of Rs.11.00 crores was provided by respondent No.1 to the petitioner as bid offer amount; that the petitioner failed to adhere to various obligations that were binding on it on execution of the contract; that post execution of the Concession Agreement, respondent No.1 incurred huge expenditure in relation

to the project and had also mobilized necessary human resources and equipments at huge cost; that respondent No.1 also renewed its bid security from time to time, but without considering these facts and without adverting to the breach of various reciprocal obligations of the erstwhile State of Andhra Pradesh, in a whimsical fashion, arbitrarily terminated the Concession Agreement by issuing G.O.Ms.No.430, dated 07.07.2009; that by issuing the said G.O., the erstwhile State of Andhra Pradesh purported to forfeit the abovementioned amounts paid by respondent No.1; that aggrieved by the said action of the erstwhile State of Andhra Pradesh, respondent No.1 approached this Court vide W.P.No.15124 of 2009 challenging the said G.O. and sought a direction for refund of the amount paid by respondent No.1, which was retained by the erstwhile State of Andhra Pradesh in an unauthorized manner; that this Court disposed of the Writ Petition vide order, dated 16.11.2011; that in terms of the Concession Agreement, respondent No.1 addressed letters to the Principal Secretary to the erstwhile State of Andhra Pradesh (Municipal Administration and Urban Development Department) requesting that the dispute between the parties, be referred to conciliation and further requesting the Principal Secretary to conduct conciliation proceedings as per the terms of the Concession Agreement; that despite such letters to the erstwhile State of Andhra Pradesh and best efforts of respondent No.1 for entering into conciliation, there was no response on the part of the State of Andhra Pradesh; that respondent No.1 nominated Justice D.S.R. Varma as an Arbitrator on its behalf and informed the erstwhile Government of Andhra Pradesh vide letter, dated 16.04.2012; that respondent No.1 repeatedly urged the erstwhile Government of Andhra Pradesh to appoint an Arbitrator by way of its letters, dated 28.05.2012 and 13.09.2012; that in view of the above letters and repeated reminders, a meeting was held on 24.01.2013 between the parties, wherein it was resolved that the Principal Secretary would advise the concerned officials to expedite the process and appoint an Arbitrator for the review petitioner; that since a considerable amount of time had elapsed and no Arbitrator was nominated by the erstwhile State of Andhra Pradesh, respondent No.1 addressed a letter on 16.04.2013 to appoint an Arbitrator as per the terms of Article 44 of the Concession Agreement; that the Principal Secretary, Municipal Administration and Urban Development Department of the erstwhile the State of Andhra Pradesh addressed a letter on 22.04.2013 categorically stating that in view of the order of this Court, dated 16.11.2011, and the letters addressed by respondent No.1, the erstwhile State of Andhra Pradesh was in the process of appointing an Arbitrator

and that the former Advocate General of the erstwhile State of Andhra Pradesh had suggested a suitable person by way of letter, dated 22.04.2013; that despite several reminders, the erstwhile State of Andhra Pradesh failed to appoint an Arbitrator, thereby constraining respondent No.1 to approach this Court under Section 11 of the Arbitration and Conciliation Act, 1996 vide Arbitration Application No.78 of 2013; that despite the fact that respondent No.1 had tried to initiate conciliation proceedings, a plea has been taken in the counter filed in the Arbitration Application that the proceedings were not initiated between the parties and the letter, dated 22.04.2013, addressed by the Principal Secretary, was issued without noticing that the Honourable the Chief Justice has a power to refuse or to appoint an Arbitrator under the Arbitration and Conciliation Act, 1996; that the Hon'ble Chief Justice, after thorough consideration of the case, disposed of the matter by recording the contentions raised by the State with regard to the arbitrability of the dispute as a mere an afterthought; that this Court granted one week time to the erstwhile State of Andhra Pradesh to appoint an Arbitrator and upon the selection of both the Arbitrators, the Award has to be passed within five (5) months from the date of entering upon the reference; that despite the orders of this Court, the erstwhile State of Andhra Pradesh failed to appoint an Arbitrator; that when respondent No.1 tried to bring the same to the notice of this Court vide Application No.123 of 2014 in Arbitration Application No.78 of 2013, the State Government preferred a Special Leave Petition vide SLP (Civil) No.7795 of 2014 against the Arbitration Application No.78 of 2013, which was dismissed by the Hon'ble Apex Court vide order, dated 14.03.2014; that in Application No.123 of 2014 in Arbitration Application No.78 of 2013, this Court observed that in the event the State Government fails to appoint an Arbitrator within a week's time, the Arbitrator appointed by respondent No.1 would act as a sole Arbitrator; that pursuant to the same, the erstwhile State of Andhra Pradesh issued a communication, vide letter No.15147/H1/2010, dated 20.03.2014, wherein it was stated that Sri Justice V.Eswaraiah, Retired Judge, High Court of Andhra Pradesh, was appointed as an Arbitrator on its behalf; that while so, Justice V.Eswaraiah, being the Chairperson, National Commission for Backward Classes, informed that unless he was permitted by the Union Cabinet Minister as a special case, it may not be possible for him to act as an Arbitrator in the matter; that in view of the same, the erstwhile State of Andhra Pradesh sought to appoint Justice C.V.Ramulu, Retired Judge, High Court of Andhra Pradesh, as an Arbitrator on its behalf; that but, subsequently, with the enactment of the Andhra Pradesh

Reorganization Act, 2014, the State of Telangana came into being and in accordance with the provisions of the Act, stepped into the shoes of the erstwhile State of Andhra Pradesh in respect of the legal proceedings or contracts to the extent that they would fall under the geographical territory of the State of Telangana; that during this entire period, the petitioner did not raise any objection whatsoever with regard to applicability of the Arbitration proceedings; that when Arbitration Application No.78 of 2013 had come up for hearing on 27.02.2015, this Court closed Application No.123 of 2014 by recording that no further orders are necessary in view of the fact that the State Government has appointed an Arbitrator; that the State of Telangana was fully aware of the said proceedings and therefore, it prayed to dismiss the review petition.

4. The learned Advocate General (Telangana State) appearing for the review petitioner contended that the contentions raised by respondent No.1 in the counter are prior to formation of the State of Telangana; that in terms of Section 106 of the Andhra Pradesh Reorganization Act, 2014, only where the State of Andhra Pradesh is a party, the State of Telangana succeeds; that the parties are bound by terms and conditions of Concession Agreement; that the Arbitration clause is not preceded by conciliation proceedings and no notice is issued; that Government means not the State; that the alleged letters addressed by respondent No.1 to the Government of Andhra Pradesh for conciliation have not been referred to, in the Arbitration Application as well as the mode of communication of that letters and hence, he prays to allow the review petition.

5. On the other hand, learned counsel for respondent No.1 contended that the order of this Court, dated 16.11.2011, in W.P.No.15124 of 2009, which was accepted and acted upon, cannot be questioned at this stage; that the conduct of the parties has become the subject matter of judicial adjudication in a Section 11 petition where the Honourable Chief Justice relied upon the order of this Court and the same has been accepted by both the parties and once the acceptance is made, no review is sought for; that there cannot be any review as the Writ Petition was disposed of on a plea made by the Government of Andhra Pradesh in the Writ

Petition; that the issue is no longer considered as the order of this Court attained finality and principles of *res judicata* will apply, as, in subsequent proceedings, conciliation aspect has been raised and rejected; that a specific plea has been taken in the counter affidavit filed in the Arbitration Application that conciliation has not been complied with and it is deemed that the said objection has been rejected by the Court; that on 5th September, 2013, a sworn affidavit has been filed denying the counter allegations and stated that separate letters were issued for Conciliation and Dispute Resolution to respondents; that the order of the Honourable Chief Justice is a judicial adjudication for appointment of an arbitrator, rejecting the contentions raised by the State of Andhra Pradesh and the same has been confirmed by the Honourable Supreme Court; that an appeal was filed before the Honourable Supreme Court in the name of the State of Andhra Pradesh and therefore, it is assumed that the responsibility of continuation of arbitration proceedings and filing of appeal before the Honourable Supreme Court is prior to Andhra Pradesh Reorganization Act, 2014 came into force; that in pursuance of dismissal of Special Leave Petition, the order of the Honourable Chief Justice would be carried out by nominating a suitable Arbitrator which was given effect to by issuing G.O.Rt.No.558, dated 12.05.2014; that filing of review application after arbitral proceedings have commenced is nothing but an abuse of process of Court; that if the request of State of Telangana is accepted, Review petitions will be filed in several thousands of Writ Petitions, which were disposed of where the Government is a party; that Section 60 of the Act, 2014 squarely applies to the facts of the case and hence, he prays to dismiss the review petition.

6. Several other contentions have also been raised by both the learned Advocate General (Telangana) as well as the counsel appearing for respondent No.1.

7. The Learned Advocate General (Telangana State) placed reliance on the following decisions.

1. In **CHIEF CONSERVATOR OF FORESTS, GOVT. OF A.P. V. COLLECTOR AND OTHERS**, wherein it is held at thus (para 13):

“13. The question that needs to be addressed is, whether the Chief Conservator of Forests as the appellant-petitioner in the writ petition/appeal is

a mere misdescription for the State of Andhra Pradesh or whether it is a case of non-joinder of the State of Andhra Pradesh- a necessary party. In a lis dealing with the property of a State, there can be no dispute that the State is the necessary party and should be impleaded as provided in Article 300 of the Constitution and Section 79 CPC viz., in the name of the State/Union of India, as the case may be, lest the suit will be bad for non-joinder of the necessary party. Every post in the hierarchy of the posts in the government set-up, from the lowest to the highest, is not recognized as a juristic person nor can the State be treated as represented when a suit/proceeding is in the name of such offices/posts or the officers holding such posts, therefore, in the absence of the State in the array of parties, the cause will be defeated for non-joinder of a necessary party to the lis, in any court or tribunal. We make it clear that this principle does not apply to a case where an official of the Government acts as a statutory authority and sues or pursues further proceedings in its name because in that event, it will not be a suit or proceeding for or on behalf of a State/Union of India but by the statutory authority as such.”

2. In **MRS.SAJIDA BEGUM AND OTHERS V. UNION OF INDIA AND OTHERS**, wherein it was held thus (para 197):

“197. The relevant parts of Articles 1 and 3 of the Constitution run thus:

1. *Name and territory of the Union:*

(1) India, that is Bharat, shall be a Union of State.

(2) The States and the territories thereof shall be as specified in the First Schedule.

(3) the territory of India shall comprise-

(a) the territories of the States;

(b) the Union territories specified in the First Schedule; and

(c) such other territories as may be acquired.

3 . *Formation of new State and alteration of areas, boundaries or names of existing States:*

Parliament may by law-

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States by uniting any territory to a part of any State;

(b) increase the area of any State;

- (c) diminish the area of any State;
- d. alter the boundaries of any State;
- e. alter the name of any State:

A perusal of these Articles would reveal in unequivocal terms that wherever the Constitution has used the word “State” without any qualification it means “State” in the ordinary sense of its terms, namely, the State along with its territory or institutions. Article 3 expressly empowers the Parliament to increase or diminish the area or territory of any State. It has no reference to the State Government at all or for that matter to a particular State Government run by a particular party. In my opinion, therefore, the word “State” in Article 131 has also been used in this ordinary sense so as to include only the territory of the State and the permanent institutions contained therein. A dispute arising between the personnel running the institutions is beyond the ambit of Article 131. Furthermore, it would appear that clauses (a) and (b) of Article 131 deliberately and advisedly use the words “Government of India and one or more States.” If the intention was to bring even a State Government as run by the Council of Ministers within the purview of this provision, then the words “one or more State Governments” should have been used instead of using the word “State.” This is, therefore, an intrinsic circumstance which shows that the founding fathers of the Constitution intended that the dispute should be confined only to the Government of India and the States as a polity or a constituent unit of the republic instead of bringing in dispute raised by the Government run by a particular Council of Ministers which does not pertain to the State as such.”

3. In **JAGTU V. SURAJ MAL AND OTHERS**, wherein it was held thus (para 8):

“8. In view of the provisions of Section 79 read with Order 27 Rule 1 and in view of the provisions of the proviso contained in Order 1 Rule 9 of the Code of Civil Procedure, 1908, if any relief is claimed against the State, the State is a necessary party. This view has been reiterated by this Court time and again, as is evident from the judgments in *State of Punjab V. Okara Grain Buyers’ Syndicate Ltd.* (AIR 1964 SC 669); *Ranjeet Mal V. Northern Railways* ((1977) 1 SCC 484); *State of Kerala V. Southern Railway* ((1976) 4 SCC 265); *Chief Conservator of Forests V. Collector* ((2003) 3 SCC 472) and *Collector V. Bagathi Krishna Rao* ((2010) 6 SCC 427).”

4. In an unreported judgment of this Court, dated 20.11.2014, in Writ Appeal No.1317 of 2014, this court held thus:

“No attempt was made to make an application in the direction of deleting the

word 'Government' and to get recorded 'State' in its place. This was not pointed out to the Hon'ble Trial Judge. According to us, reading the constitutional provision above, at the time of filing, the State of Andhra Pradesh not Government of Andhra Pradesh was the sui juris but it was not made party. In other words, litigation was filed against the non-existent party and any order passed against non-existent party is inoperative. Therefore, the defect is absolutely incurable unless *lis* revives, and the judgment rendered at this stage is also void as far as the States are concerned, now, both the States have come into existence.

Therefore, on that ground, we set aside the judgment of the Hon'ble Trial Judge and restore the Writ Petition to file for fresh hearing. The hearing will be taken up, if the writ petitioners file suitable application for amendment of the cause title changing the name of the first and second respondents with a suitable word as per the constitutional provision above and if such an application is made within seven days from the date of receipt of the copy of the order, revived Writ Petition will be heard out in terms of this order afresh. If no such application is made, obviously, the Writ Petition will stand dismissed automatically on that ground as above."

8. On the other hand, learned counsel for respondent No.1 placed reliance on a decision reported in **PUSHPA RAM V. MODERAN CONSTRUCTION Co. (P) Ltd., Kota**, wherein it was held thus (para 13):

"13. Point 1 (2?) Mr.G.C.Kasliwal, Senior Advocate, for the State has contended that under Article 300 of the Constitution of India, the Suit No.15/64 should have been filed in the name of the State, but has been filed against the Government of Rajasthan, and, therefore, the suit is not properly framed. He further contends that under Section 79 C.P.C. the defendant should have been the State, and not the Government of Rajasthan. It can hardly be disputed that in case of a suit against the Government of Rajasthan, the defendant should be named as the State. But, a look at the judgment of the learned District Judge shows that no issue was struck on this controversy. Moreover, the alleged defect is one with regard to misdescription of the parties, and is not fatal. The mere description of the parties can be corrected by the Court at any time, it may also be mentioned here that, so far as the appeal is concerned, it has been filed against the State of Rajasthan and not against the Government of Rajasthan. Therefore, this defect is not fatal to the case of the plaintiff, and point No.1 (2?), as framed is decided accordingly."

9. This is an application filed under Order XLVII Rule 1 of the Code of Civil Procedure, 1908. An application for review of a judgment may be made on any of the following grounds (1) discovery of new and important matter or evidence or (ii) mistake or error apparent on the face of the record or (iii) any other sufficient reason with regard to first ground the rule states that such matter or evidence was not within the knowledge of the applicant nor it could be produced by him even after exercise of due diligence when the decree was passed or order was made.

**It has to be seen whether it is a case where
review powers can be exercised.**

10. There cannot be any dispute that the parties are bound by the terms and conditions of the agreement. The terms of the agreement are entered into between the Government of Andhra Pradesh and M/s. Maytas Metro Limited, Hyderabad. Article 44 of the said Concession Agreement provides for Dispute Resolution, which reads as follows:

“44.1 Dispute resolution

44.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 44.2

44.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

44.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Principal Secretary to Government, MA &UD Department and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If

such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 44.1.1. or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 44.3.

44.3 Arbitration

44.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 44.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 44.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Hyderabad, and the language of arbitration proceedings shall be English.”

A perusal of the above Article provides for Dispute Resolution mechanism. Firstly, it provides that either party may notify in writing any dispute, difference or controversy in accordance with the conciliation procedure and that conciliation procedure has been set out in Clause 44.2 of the Dispute Resolution. Thereafter conciliation proceedings will take place for settlement of dispute.

11. It is stated by learned counsel for respondent No.1 that letter, dated 24.02.2012 addressed to the Principal Secretary to Government was annexed to the rejoinder in the Arbitration Application. But, the learned Advocate General (Telangana) vehemently contended that the said letter was fabricated subsequently and it does not contain any seal or receipt of office concerned and it is nowhere stated how this letter has been communicated to the Government of Andhra Pradesh. The concerned Principal Secretary specifically denied about receipt of the letter by the Government of Andhra Pradesh.

12. This Court while disposing of the Writ Petition solely relied upon Clause 44.3.1 of the Dispute Resolution. It was not brought to the notice of this Court at the time of disposal of the Writ Petition the fact that the dispute, difference or controversy can be resolved by conciliation proceedings in terms of Clause 44.2 of the Dispute

Resolution. Had the relevant Article of the Concession Agreement been brought to the notice of this Court, this Court would have certainly insisted either of the parties in the first instance, to issue notice in writing about the dispute to other party and thereafter, the conciliation proceedings have to be commenced and concluded. If the conciliation proceedings failed, then only the Arbitration clause can be invoked. The parties are bound by terms of the Concession Agreement. The Court cannot take a different view contrary to the terms of Concession Agreement. Therefore, the order passed by this Court in W.P.No.15124 of 2009 requires hearing because clauses 44.1.1 and 44.2 have not been brought to the notice of this Court. The contentions raised by both the counsel are with regard to Sections 60 and 104 of the Andhra Pradesh Reorganization Act, 2014 with regard to the maintainability of the Writ Petition one filed by the Government of Andhra Pradesh in stead of State of Andhra Pradesh; whether the respondents served notice in writing to the Government of Andhra Pradesh for conciliation in first instance; whether conciliation proceedings have been commenced and failed, cannot be decided in the review petition. This Court is of the opinion that the contentions advanced by both the counsel cannot be resolved exercising the powers under Order XLVII Rule 1 of the Code of Civil Procedure, 1908. When there is discovery of a new fact which was not brought to the notice of this Court at the time of disposal of the Writ Petition relating the Concession Agreement, it is a ground for review the order of this Court. Therefore, the review petition has to be allowed.

13. Accordingly, the review W.P.M.P. is allowed setting aside the order, dated 16.11.2011, in W.P.No.15124 of 2009 and the Writ Petition is restored to its file. The contentions raised by both the counsel are left upon to be deiced in the Writ Petition. Post the Writ Petition before appropriate Court having provision after obtaining necessary orders from the Honourable the Chief Justice.

K.C.BHANU, J

APRIL 24, 2015

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Note:

Issue C.C. immediately.

(B/o)

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THE HON'BLE SRI JUSTICE K.C.BHANU

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