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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 3127 of 2004**

Mahanadi Education Society, Nalghar Chowk, Chhotapara Ward,
Raipur (Chhattisgarh).

---Petitioner**Versus**

1. State of Madhya Pradesh through Secretary to the Department of Technical Education and Manpower Planning, Vallabh Bhawan, Bhopal (Madhya Pradesh).
2. State of Chhattisgarh through Secretary to the Department of Technical Education and Manpower Planning, D.K.S. Bhawan, Raipur (Chhattisgarh).
3. The Director of Technical Education, Government of Madhya Pradesh, Satpuda Bhawan, Fourth Floor, Bhopal – 462 004.
4. The Director of Technical Education, Government of Chhattisgarh, D.K.S. Bhawan, Raipur (Chhattisgarh).

---Respondents

For petitioner : Mr. Sachin Singh Rajput, Advocate.

For respondents/State : Mr. Ashish Surana, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****20.11.2017**

1. This writ petition has been preferred against the order passed by learned District Judge by which the application under Section 11(6) of the Arbitration and Conciliation Act, 1996 has been rejected.
2. Mr. Sachin Singh Rajput, learned counsel for the petitioner, would submit that learned District Judge has no power to appoint an arbitrator and such power is vested with Hon'ble the Chief Justice in

view of decision of the Supreme Court in **SBP & Co. v. Patel Engineering Ltd. and another**¹.

3. Mr. Ashish Surana, learned Panel Lawyer appearing for the respondents/State would oppose the petition.

4. I have heard learned counsel for the parties and considered their rival submissions made herein-above.

5. The question, whether District Judge has power to appoint arbitrator or not, has been dealt with by the Supreme Court in **SBP & Co.** (supra) and it has been clearly held that District Judges may not be designated under Section 11(6) of the Act and observed as under:-

“41. Then the question is whether the Chief Justice of the High Court can designate a District Judge to perform the functions under Section 11(6) of the Act. We have seen the definition of “Court” in the Act. We have reasoned that the intention of the legislature was not to entrust the duty of appointing an arbitrator to the District Court. Since the intention of the statute was to entrust the power to the highest judicial authorities in the State and in the country, we have no hesitation in holding that the Chief Justice cannot designate a District Judge to perform the functions under Section 11(6) of the Act. This restriction on the power of the Chief Justice on designating a District Judge or a non-judicial authority flows from the scheme of the Act.

42. In our dispensation of justice, especially in respect of matters entrusted to the ordinary hierarchy of courts or judicial authorities, the duty would normally be performed by a judicial authority according to the normal procedure of that court or of that authority. When the Chief Justice of the High Court is entrusted with the power, he would be entitled to designate another Judge of the High Court for exercising that power. Similarly, the Chief Justice of India would be in a position to designate another Judge of the Supreme Court to exercise the power under Section 11(6)

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of the Act. When so entrusted with the right to exercise such a power, the Judge of the High Court and the Judge of the Supreme Court would be exercising the power vested in the Chief Justice of the High Court or in the Chief Justice of India. Therefore, we clarify that the Chief Justice of a High Court can delegate the function under Section 11(6) of the Act to a Judge of that Court and he would actually exercise the power of the Chief Justice conferred under Section 11(6) of the Act. The position would be the same when the Chief Justice of India delegates the power to another Judge of the Supreme Court and he exercises that power as designated by the Chief Justice of India.

Their Lordships while summing the principle of law, in conclusion, held as under:-

“(v) Designation of a District Judge as the authority under Section 11(6) of the Act by the Chief Justice of the High Court is not warranted on the scheme of the Act.

(xi) Where District Judges had been designated by the Chief Justice of the High Court under Section 11(6) of the Act, the appointment orders thus far made by them will be treated as valid; but applications if any pending before them as on this date will stand transferred, to be dealt with by the Chief Justice of the High Court concerned or a Judge of that Court designated by the Chief Justice.”

6. In view of the principles of law laid down by the Supreme Court in **SBP & Co.** (supra), as abstracted above, I am of the opinion that the impugned order deserves to be set aside and is accordingly set aside. However, the petitioner is liberty to move application for appointment of arbitrator in accordance with law.

7. The writ petition is allowed to the extent indicated herein-above.
No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge