

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 55 OF 2017

SUDAR INDUSTRIES LTD., REP. THR.
ITS AUT. SIG., SHRI. AKSHAY
DINANATH PHADTE.,

... Petitioner

Versus

STATE OF GOA, THR. CHIEF SECRETARY
AND 3 ORS.,

... Respondents

Mr. Shivan Desai, Advocate with Mr. J. Ramaiyya, Advocate for
the Petitioner.

Ms. P. Bhandari, Additional Government Advocate for
Respondent no. 1 and 2.

Mr. H. D. Naik, Advocate for Respondent no. 3.

Mr. Parag Rao, Advocate for the Respondent no. 4.

Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.

Date:- 17th January, 2017

P.C.:

Heard Shri Shivan Dessai, learned Counsel appearing for the
Petitioner, Ms. P. Bhandari, learned Additional Government
Advocate appearing for Respondents no. 1 and 2, Mr. H. D.
Naik, learned Counsel appearing for the Respondent no. 3 and
Mr. Parag Rao, learned Counsel appearing for the Respondent
no. 4.

2. The challenge in the above Petition is to the conduct of the
Respondent no. 2 in issuing a Transit Permit to the Respondent
no. 4 in respect of the ore purchased in an e-auction by the
Petitioner.

3. Upon hearing the learned Counsel appearing for the respective parties, the dispute essentially appears to be a contractual dispute between the Petitioner on one hand and the Respondent no. 3 and 4 on the other hand.

4. It is now well established that contractual matters between the private parties cannot be decided in a Petition under Article 226 of the Constitution of India. It is also brought to our notice during the course of the hearing that the Petitioner has already moved an application under section 9 of the Arbitration and Conciliation Act which is fixed for hearing today, in the afternoon session.

5. In such circumstances, we find that the question of granting an ad-interim relief based on the rival contentions between the Petitioner and the Respondents no. 3 and 4 would not at all be justified. However, it is clarified that the merits on the rival contentions have not been examined by this Court whilst making such observations.

6. But, however, Mr. Desai, learned Counsel appearing for the Petitioner, vehemently points out that the conduct of the Respondent no. 2 in allowing transit permit despite of the withdrawal of consent by the Petitioner is arbitrary and not at all

justified in law. In normal circumstances, when a contractual dispute is brought to the notice of such authorities, it is expected that the authorities should relegate the parties to get their dispute adjudicated in an appropriate Court of law.

7. In the present case, it is pointed out that though a letter withdrawing the consent was issued on 14.12.2016, 26.12.2016 and on 11.01.2017, transit permit was issued on 05.01.2017. In such circumstances, though it would be appropriate for the Respondent no. 2 to otherwise relegate the parties to get their rival claims adjudicated before an appropriate forum, but as the matter is now under consideration before the learned District Judge, South Goa, Margao, we find that any observations with that regard would not be appropriate.

8. Mr. Parag Rao, learned Counsel appearing for the Respondent no. 4, upon instructions, points out that the Respondent no. 4, presently, is only shifting the ore from one site to another and has not taken any steps to export the ore outside the jurisdiction of the learned District Judge.

9. In such circumstances, the apprehension of Mr. Desai, learned Counsel appearing for the Petitioner that the application may itself become infructuous would not survive.

10. The Petition is, accordingly, disposed of.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

msr