

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

C.M.A. No.293 of 2007

Between:

The Superintendent Engineer,
Irrigation Circle, Eluru.

...Appellant

And

P. Ramaiah
and three others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 30.08.2017

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

- 
1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes / No
 2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
 3. Whether Their Lordship wish to
see the fair copy of the Judgment? Yes / No

SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

*** THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT**
AND
*** THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

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! Counsel for Appellant : A.G.P attached to the office of AG (AP)

^ Counsel for Respondent No.1 : Sri V. Prasad Rao

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> Head Note:

? Cases referred:

- 1) (1993) 2 SCC 507
- 2) 2016 (6) ALT 7 (SC)
- 3) AIR 2007 SC 509
- 4) 2014 (4) Arb.L.R.1 (SC)
- 5) (1973) ILR 1 Mad 364 = MANU/TN/0736/1972
- 6) AIR 1967 SC 1753 = MANU/SC/0050/1967
- 7) AIR 1980 SC 1285

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

C.M.A No.293 of 2007

JUDGMENT: *(Per Hon'ble Sri Justice U.Durga Prasad Rao)*

Challenge in this CMA is the order dated 11.07.2006 in Arbitration O.P.No.885 of 2004 whereunder the learned Principal District Judge, West Godavari at Eluru dismissed the petition filed by the petitioner under Sections 34 and 2(a)(ii) and b(i) of the Arbitration and Conciliation Act, 1996 (for short "Arbitration Act").

2) The petitioner's case is thus:

a) The contract for the execution of construction of Madavayyapalem outfall Sluice at KM 74.00 of Vashista Godavari Right Bank in West Godavari District, was awarded to the 1st respondent vide S.E's Agreement No.SE/99-2000 dated 18.08.1999. The work was funded by World Bank. As per the terms of Agreement, the work has to be completed within 8 months i.e. by 17.04.2000 and it was a time bound program. During the execution of the work, some deviations took place as per the suggestions of the World Bank team. The 1st respondent applied for extension of time and the same was extended from time to time. The first extension was dated 30.06.2001 without Liquidated Damages (LD); second extension was dated 30.09.2001 without LD and third and final extension was granted on 31.01.2012 without LD. The 1st respondent specifically agreed to complete the work for the amount mentioned in the first agreement dated 18.08.1999

and supplemental agreement dated 18.12.2000. In fact the 1st respondent completed the work and received the final bill on 28.08.2002 without any protest and contract came to an end by 28.02.2002 itself. The 1st respondent has also signed the release and discharge certificate and voluntarily accepted the payment made by the Government towards full settlement of the claim without any protest. He has also taken away the EMD and security deposit and also encashed the bank guarantees. Having thus received the final bill, the 1st respondent is estopped from making any further claims.

b) While-so, the O.F. was originally conceived with casurina piles 100 MM dia, estimated accordingly and included in the bill of quantities and tenders settled. During September, 1999 designing consultants (CE S (I)) of World Bank have inspected the site and given some suggestions regarding foundation treatment with RCC piles, increasing of length of RCC barrel and reduction in the length of D/S wings and some design aspects. Accordingly, revised drawings were prepared in the office of Chief Engineer, Central Design Organization and communicated. Basing on the revised drawings, the 1st respondent quoted his rates for Rs.189 lakhs. However, the Chief Engineer, Major Irrigation approved for 400 MM and 300 MM dia at the rate of Rs.683.30 RMT and Rs.384.60 RMT respectively.

c) With regard to fixation of rates for drilling of bore holes of 400 MM dia, there arose a dispute between department and contractor. As per the terms of contract, the contractor referred the matter to Technical Expert by letter dated 04.01.2001 and requested to adopt the rate derived from the

data approved in the case of some other work (Nakkala outfall sluice). The Technical Expert by letter dated 18.12.2002 arrived at a decision in favour of the 1st respondent by recommending the rate derived from the rate adopted in respect of Nakkala outfall sluice. However, the Superintending Engineer, Irrigation Circle, Eluru informed 1st respondent vide letter dated 10.01.2003 that the rate recommended by the Technical Expert was not acceptable to the department and therefore, as per the contract, the matter need to be referred to arbitration and instructed the 1st respondent to suggest his arbitrator. The 1st respondent suggested Dr. P.Karunakar Rao as his arbitrator as per clause 25-3(A) of the contract. Then, the Institute of Engineers of India, Hyderabad appointed Sri A.S.Murthy, Chief Engineer (Retd.) as presiding arbitrator who in turn appointed Sri S.M.A.A. Jinnaah, Chief Engineer (Retd.) as third arbitrator. The Arbitral Tribunal issued a notice to the petitioner to attend the proceedings. Thereupon, the petitioner reported to the Arbitral Tribunal that it had no pecuniary jurisdiction to entertain the matter in view of G.O.Ms.No.20 I&CAD (PW) dated 31.01.1989 which ordains that the claim beyond Rs.50,000/- shall be decided by a Civil Court of competent jurisdiction by way of regular suit and not by way of arbitration. However, the Arbitral Tribunal without considering the objection raised by the petitioner passed an award dated 28.09.2004 in favour of 1st respondent for Rs.20.78 lakhs in respect of several claims made by him which were not made before the Technical Expert.

d) Aggrieved, the petitioner filed Arbitration O.P.No.885 of 2004 in the Court of District Judge, West Godavari at Eluru challenging the arbitration

proceedings. The Tribunal, however, erroneously dismissed the OP without considering the valid points raised by the petitioner and confirmed the award of the Technical Expert.

Hence the CMA.

3) Heard arguments of learned Assistant Government Pleader attached to the office of Advocate General (AP) and Sri V.Prasad Rao, learned counsel for 1st respondent.

4a) Severely castigating the order of Court below, learned AGP firstly argued that Arbitral Tribunal committed grave mistake in holding that the dispute could be referred to arbitration as per the terms of contract, despite the G.O.Ms.No.20 I&CAD(PW) Department dated 31.01.1989 held that when the claim exceeds Rs.50,000/- the matter could be settled only by a Civil Court of competent jurisdiction and not by arbitration. Though the GO was not incorporated in the contract, still its efficacy and applicability, being the executive order of the Government, should not have been ignored by the Tribunal and Court. He argued, the existence of GO and its operational sphere over the subject contract was brought to the notice of Arbitral Tribunal sufficiently ahead of commencement of proceedings. Despite, the Arbitral Tribunal set petitioner—department ex-parte and passed the award. Hence, the award is void and nonest in the eye of law for lack of jurisdiction. He placed reliance on the judgments of the Apex Court reported in *Hiranjilal Shrilal Goenka vs. Jasjit Singh*¹ and *Velugubanti Haribabu vs. Parvathini Narasimha Rao*².

¹ (1993) 2 SCC 507

² 2016 (6) ALT 7 (SC)

b) Nextly, he would argue assuming the Arbitral Tribunal had jurisdiction, still its award suffers from vice of exceeding the scope of arbitral reference. In expatiation, learned AGP would submit, the 1st respondent approached the Technical Expert only on one issue i.e. with regard to the rate variation in drilling bore holes and the Technical Expert fixed the rate at Rs.937/-. Except it, neither the 1st respondent put-forth nor the Technical Expert did admit and adjudicate any other claim as is evident from the Technical Expert's report dated 18.12.2002. Further, the 1st respondent did not express any grievance against the report of the Technical Expert. It was only the Department being aggrieved by the report, wrote a letter to 1st respondent informing that it was proposing to move the arbitration and asked the 1st respondent to choose his arbitrator, though arbitration is against the spirit of G.O.Ms.No.20. In that back drop, the only issue before the Arbitral Tribunal could be *whether the rate arrived at by the Technical Expert was technically correct*. Having gone through the Technical Expert's report, Arbitral Tribunal should have well understood the scope of the reference and ought to have decided accordingly, despite the absence of petitioner before them. However, surprisingly the 1st respondent put-froth many more claims before the Tribunal and the Tribunal coolily entertained them and adjudicated and passed award. Learned AGP would thus submit the award in respect of claims 1 to 3 is totally uncalled for and beyond the scope of arbitration. He would submit that the 1st respondent specifically agreed to complete the work for the amounts mentioned in the first agreement dated 18.08.1999 and supplemental agreement dated 18.12.2000 and accordingly completed

the work and received the final bill on 28.02.2002 without any insinuation of protest and thus, the contract came to an end by 28.02.2002 itself. Further, he also signed the release and discharge certificate and accepted the payments made by the Government towards full settlement of his claim. He also received his EMD and Security Deposit and encashed bank guarantees. In that view, putting forth additional claims before Arbitral Tribunal would tantamount to novation on the part of 1st respondent and admitting those claims and adjudicating would amount to acting beyond the scope of arbitration and thus the award is hit by Section 34(2)(iv) of Arbitration Act. In this context, he relied upon the judgment of the Apex Court in *Ramnath International Construction vs. Union of India*³.

c) Next, learned AGP criticized the award in respect of claim No.4 as highly exorbitant and unjust. He also impugned the Tribunal awarding interest at 12% p.a.

d) Finally, he argued that one of the arbitrators did not sign the award and thereby also the award is not a valid one in the eye of law. He thus prayed to allow the appeal.

5a) Per contra, while supporting the award, learned counsel for 1st respondent would firstly argue that G.O.Ms.No.20 is only a qualified one but not an unconditional order, in the sense, the G.O. would apply only when nothing contrary is provided in the contract. In the contract it is specifically mentioned that whichever party is aggrieved by the opinion of the Technical Expert can approach the Arbitration Tribunal. The procedure is prescribed in the Agreement itself. He emphasized that nowhere in the

³ AIR 2007 SC 509

contract, G.O.Ms.No.20 was referred. Therefore, the Tribunal rightly ignored the objection of the petitioner and adjudicated the claims put-forth by the 1st respondent.

b) Secondly, justifying the claims made before the Tribunal, he would argue that even before the Technical Expert, apart from questioning the rates regarding drilling of bores, the 1st respondent also claimed that supplemental agreement was signed by him under duress and therefore the rates mentioned therein are not agreeable to him. The claim was made long before he received the amount. Thus, the claims 1 to 3 put-forth by him before the Tribunal are incidental and ancillary to the main contract and the Tribunal passed a just award in respect of those claims and also awarded interest at 12% p.a. which is quite reasonable. He would thus submit that award suffers no perversity and hence unassailable. On this aspect he relied on the judgment of the Apex Court in *Swan Gold Mining Limited vs. Hindustan Copper Limited*⁴.

6) The points for determination in this CMA are:

- 1) *Whether the award of Arbitral Tribunal is void and nonest for lack of jurisdiction?*
- 2) *If point No.1 is held negative, whether the award passed by the Arbitral Tribunal is hit by section 34(2)(iv) of Arbitration Act?*
- 3) *Whether the rate of interest granted is exorbitant and unsustainable?*
- 4) *Whether the award is invalid for non-subscribing signature by one of the arbitrators?*
- 5) *To what relief?*

⁴ 2014 (4) Arb.L.R.1 (SC)

7) **POINT No.1:** Admittedly, the petitioner and 1st respondent entered into contract on 18.08.1999. Condition Nos.24 and 25 of General Conditions of Contract and Condition No.25.3 of Special Conditions of Contract are germane for deciding point No.1. Hence, they are extracted hereunder:

Conditions of Contract (General)

24. Disputes:

24.1 If the contractor believes that a decision taken by the Engineer was either outside the authority given to the Engineer by the Contract or that the decision was wrongly taken, the decision shall be referred to the Technical Expert within 14 days of the notification of the Engineer's decision.

25. Procedure for Disputes:

25.1 The Technical Expert shall give a decision in writing within 28 days of receipt of a notification of a dispute.

25.2. The Technical Expert shall be paid daily at the rebate specified in the Contract Data together with reimbursable expenses of the types specified in the Contract Data and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Technical Expert. Either party may refer a decision of the Technical Expert to an Arbitrator within 28 days of the Technical Expert's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Technical Expert's decision will be final and binding.

25.3. The arbitration shall be conducted in accordance with the arbitration procedure stated in the Special Conditions of Contract.

Special Conditions of Contract

Extract 25.3 (a)

In case of Dispute of difference arising between the Employer and a domestic contractor relating to any matter arising out of or connected with the agreement, such disputes or differences shall be settled in accordance with the Arbitration

and Conciliation Act, 1996. The arbitral tribunal shall consist of 3 arbitrators one each to be appointed by the Employer and the Contractor. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the Parties and shall act as Presiding Arbitrator. In case of failure of the two arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment of the arbitrator appointed subsequently, the Presiding Arbitrator shall be appointed by the President of the Institution of Engineers (India).

8) The above conditions would show that the party aggrieved by the decision of the Technical Expert may approach the arbitrator within 28 days of the said decision and the procedure is laid down as stated supra. Thus, admittedly, the contract contains an arbitration clause. It is also an admitted fact there is no reference about G.O.Ms.No.20 in the contract. At this juncture, it is relevant to extract G.O.Ms.No.20 here.

(G.O.Ms.No.20, Irrigation & CAD (PW) Department dated 31.01.1989)

Order:- x x x x x

“Except as otherwise provided in the contract”, all disputes and differences arising out of or relating to the contract shall be referred to adjudication as follows:

(1) (i) Settlement of all claims upto Rs.50,000/- in value and below by way of arbitration to be referred as follows:-

- | | |
|--|--|
| (a) Claims upto Rs.10,000/- | Superintending Engineer of another Circle, in the same Department. |
| (b) Claims above, Rs.10,000/- and upto Rs.50,000/- | Another Chief Engineer of the same Department. |

The arbitration proceedings will be conducted in accordance with the provisions of the Arbitration Act, to be prepared from time to time. The Arbitrator shall invariably give reasons in the award.

(ii) Settlement of all claims above Rs.50,000/- in value: - All claims above Rs.50,000/- in value shall be decided by a Civil Court of competent jurisdiction by way of a regular suit and not by arbitration.

9) The pith and substance of the contention of AGP is that GO is equivalent to law and therefore despite the same being not mentioned in the contract, the parties are expected to know its existence and act upon accordingly. Hence, the arbitration clause in the contract cannot prevail over G.O. and consequently the arbitration proceedings are void *ab initio* for lack of jurisdiction.

10) We are unable to subscribe our countenance to the argument of learned AGP. The executive fiats of a State Government issued in terms of Article 162 of Constitution for meeting various administrative exigencies cannot be equated with law and have no force of statute passed by the Legislature. It must also be noted that unless such executive orders are issued on the matrix of some statute, they cannot have force of law. Therefore, unless such executive orders i.e. G.Os are specifically mentioned in the contracts, they will not govern the contract but only the terms will govern and bind the parties. That the executive orders have no force of law has been expounded by the Constitutional Courts many a times.

11) In *State of Tamil Nadu vs. Savari Cruz*⁵, the High Court of Madras was considering the validity of the argument that the Madras Educational Rules had the force of law being issued under Article 162 of Constitution of India. Negating such argument, Madras High Court quoted the judgment of the Apex Court in *Fernandez vs. State of Mysore*⁶ wherein it was observed thus:

⁵ (1973) ILR 1 Mad 364 = MANU/TN/0736/1972

⁶ AIR 1967 SC 1753 = MANU/SC/0050/1967

“Para-17: ... Article 162 provides that subject to the provisions of Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws.

The Executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws.

This Article in our opinion merely indicates the scope of the executive power of a State; it does not confer any power on the State Government to issue rules thereunder. As a matter of fact, wherever the Constitution envisages the issue of rules, it has so provided in specific terms...Of course under such executive power, the State can give administrative instructions to its servants how to act under certain circumstances; but that will not make such instructions statutory rules which are justifiable under certain circumstances. In order that such executive instructions have the force of statutory rules, it must be shown that they have been issued either under the authority conferred in the State Government by some statute or under some provisions of the Constitution providing therefore. (Emphasis supplied) It is not in dispute that there is no statute which confers any authority on the State Government to issue rules in matters with which the Code is concerned; nor has any provision of the Constitution been pointed out to us under which these instructions can be issued as statutory rules except Article 162. But as we have already indicated, Article 162 does not confer any authority on the State Government to issue statutory rules.

Relying on these observations, we reject the contention that the rules, upon the violation of which the impugned G.O., is said to be founded, can be said to be rules framed under Article 162 of the Constitution.”

The High Court ultimately held thus:

“Para-18...Under our Constitution, the power to legislate belongs exclusively to the Legislature, and under certain circumstances to the President. The executive can have no power to frame rules having the force of law unless such power is delegated to it under the Constitution, or under an Act passed by the Legislature. Where there is no such power, the instructions issued by the Executive cannot have the force of law.”

12) G.O.Ms.No.20 is concerned, it barely lays a policy to the Irrigation and CAD (PW) Department of the Government that all the claims above Rs.50,000/- in value shall be decided by a Civil Court of competent jurisdiction by way of a regular suit and not by arbitration. Learned AGP has not shown any statutory scaffold at the substratum of the G.O. to extend the force of law to it.

13) Admittedly, the G.O. was not referred to in the contract and on the other hand, option was given to the parties that they can approach Arbitration Tribunal in the event of their dissatisfied with the decision of the Technical Expert. Moreover, the GO itself starts with the clause *“except as otherwise provided in the contract”* indicating that sometimes the contract as in the present instance may be provided with arbitration clause than referring the parties to Civil Court irrespective of the value of the dispute. Therefore, the appellant—department is estopped from contending contrary to the terms of contract by doctrine of *Promissory Estoppel*.

14) The applicability of this doctrine was explained in ***Jit Ram Shiv Kumar vs. State of Haryana***⁷ as under:

“Para-39: The scope of the plea of doctrine of promissory estoppel against the Government may be summed up as follows:

(1) The plea of promissory estoppel is not available against the exercise of the legislative functions of the State.

(2) The doctrine cannot be invoked for preventing the Government from discharging its functions under the law.

(3) When the officer of the Government acts outside the scope of his authority, the plea of promissory estoppel is not available. The doctrine of ultra vires will come into operation and the Government cannot be held bound by the authorized acts of its officers.

(4) When the officer acts within the scope of his authority under a scheme and enters into an agreement and makes a representation and a person acting on that representation puts himself in a disadvantageous position, the Court is entitled to require the officer to act according to the scheme and the agreement or representation. The Officer cannot arbitrarily act on his mere whim and ignore his promise on some undefined and undisclosed grounds of necessity or change the conditions to the prejudice of the person who had acted upon such representation and put himself in a disadvantageous position.

(5) The officer would be justified in changing the terms of the agreement to the prejudice of the other party on special considerations such as difficult foreign exchange position or other matters which have a bearing on general interest of the State.”

15) The act of the appellant squarely falls under ground No.4 and hence the doctrine applies. To sum up, the award of the Tribunal do not suffer

⁷ AIR 1980 SC 1285

lack of jurisdiction as argued by the appellant. The cited decisions have no application. This point is accordingly answered against the appellant.

16) **POINT Nos.2 & 3:** The contention of appellant is that the only issue before the Arbitral Tribunal was whether the decision of Technical Expert was correct or not. But the Tribunal unduly permitted the 1st respondent to make claim Nos. 1 to 3, which were not made before the Technical Expert and passed the award, which, in respect of claims 1 to 3, is out of scope of arbitration.

a) It was argued on behalf of 1st respondent that not only the rates for drilling bores, the 1st respondent also questioned the supplemental agreement on the ground that he was made to sign under duress and rates mentioned therein were not agreeable to him.

b) On perusal of the record, we find force in the contention of AGP. As can be seen from the letter No.CRR/TEL/54 dated 04.01.2001 addressed by the 1st respondent to the then Technical Expert—Dr.P.Seethapathi Rao, he made prayers (a) to (d) therein which mainly relate to rate of boring work of concrete piles. The Technical Expert considered various aspects and fixed the rate Rs.937/- per RM for boring operation of 400 MM dia pile excluding the cost of RCC item to fill up the bore.

17a) The 1st respondent did not specifically put-forth claims 1 to 3 before the Technical Expert. Claim No.1 relates to compensation towards loss allegedly sustained by 1st respondent due to sudden stoppage of the work i.e. due to desertion of labour from the site with the advances received. The

Tribunal, on the observation that the 1st respondent paid advance amount of Rs.37,000/- for skilled labour and masons, allowed the claim to that extent.

b) The second claim relates to loss due to overhead charges. The Tribunal observed that the period of prolongation of the work was about 20 months from 18.04.2000 to 31.12.2001 and the delay cannot be attributed to the 1st respondent. The Tribunal further observed during the said prolonged period 1st respondent incurred overhead charges on technical staff and other ministerial staff and awarded Rs.4,60,000/-.

c) The third claim is in respect of rise in cost of materials, labour and mobilization charges during the extended period of contract. The Tribunal though noted the objection of the department that the contractor signed the supplemental agreement with the rates mentioned thereon and therefore he was not entitled to seek for enhanced rates, however overruled the objection on the observation that the contractor claimed that he signed the agreement under duress and further, due to prolongation of the contract period there was increase in the prices, awarded Rs.5,45,785/-.

d) The award under the above three claims is factually and legally not sustainable, for the reason that the 1st respondent admittedly received the amounts on completion of the work without any protest. It appears, he has also withdrawn the EMD and bank guarantees. He has not placed on record that he received the amounts only under protest and still he is entitled to extra amount as mentioned in claims 1 to 3. Most importantly, the 1st respondent did not specifically put-forth the claims 1 to 3 before the technical expert. His only claim before the technical expert was regarding

the fixation of rate for drilling the bores. Though he claimed that he signed on the supplementary contract under duress, he did not adduce any plausible evidence in that regard. It is interesting to note that it was the petitioner who initiated the arbitration proceedings having been aggrieved by the decision of the technical expert and not by the 1st respondent. He was not even aggrieved by the decision of technical expert.

e) In all the above circumstances, we firmly believe that the only issue that could be factually and legally adjudicated by the arbitral Tribunal is regarding the correctness of the decision of the technical expert. However, the Tribunal entertained claims 1 to 3 on the ground that there was a compensation clause in the contract. In our view, said clause is not available to the 1st respondent when he signed the supplementary contract and time was extended thrice on his request without LD. Moreover, he received the amounts without registering express protest. So the claims 1 to 3 in the award are hit by 34(2)(iv) of the Arbitration Act. The decision in *Swan Gold Mining Limited*'s case (4 supra) cited by the respondent is of no avail to him. So far as the decision in *Ramnath International Construction*'s case (3 supra) cited by the AGP is concerned, the same is also not applicable as it factually differs.

f) So far as claim No.4 is concerned, the technical expert has given cogent reason as to why the rate adopted by the R & B at Nellore cannot be accepted to the present work. He mentioned that the present work was nearer to the mouth of the sea, where Vashista Godavari arm was joining and the soil was very slushy and boring operations in such soils was very difficult compared to the R & B works taken at Nellore. Thus the technical

expert adopted the rate approved and adopted in Nakkala outfall sluice which was taken up for similar work in the vicinity under the same circle and in the same period. The Arbitrators also approved the same and we find no illegality or perversity in the adjudication thereof.

g) As the rate of interest is concerned, following the 12% interest rate mentioned in clause 43.1 of the contract for the delayed payments, the Tribunal awarded the said rate. We find no fault and hereby approve the same. Thus points 2 and 3 are answered accordingly.

18) **POINT No.4:** This point is concerned, it appears one of the Arbitrators Sri S.M.A.A.Jinnah, did not sign the Award. However, he issued a letter dated 09.08.2004 stating that due to his family compulsions, he was proceeding to USA and in order to avoid the delay, the Award can be passed and signed and published by his colleagues in the Tribunal for which he was giving his unreserved consent in accordance with Sec.31(1) and (2) of the Arbitration Act. Section 31 of the Arbitration Act reads thus:

“Section 31—Form and contents of arbitral award:

(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

(2) For the purposes of sub-section (1) in arbitral proceedings with more than one arbitrator the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

- (3) xx xx ...*
- (4) xx xx ...*
- (5) xx xx ...*
- (6) xx xx ...*
- (7) xx xx ...*
- (8) xx xx ...”*

In view of the above express provision, it does not lie in the mouth of the petitioner to contend about the validity of the Award.

19) **POINT No.5:** In view of the above findings, this CMA is partly allowed by modifying the order in Arbitration O.P.No.885 of 2004 of the District Judge, West Godavari and ordered as follows:

a) The Arbitration Award dated 28.09.2004 in so far as claim no.4 for a sum of Rs.10,35,788/- with interest @ 12% per annum from 46th day of Award till realization is hereby confirmed and the Award in respect of claims 1 to 3 is set aside.

b) No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.



SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

Date: 30.08.2017

Murthy/scs