

THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN

**ARBITRATION APPLICATION Nos.157, 158, 159, 160 AND 161 OF 2016 AND
32, 33, 34, 35, 36, 37, 38, 39, 40, 41 AND 42 OF 2017**

COMMON ORDER:

These Arbitration Applications are filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act').

2. I have heard the learned counsel for the applicant and the learned standing counsel for the second respondent in all these cases.

3. The applicant in all these Arbitration Applications is one and the same. Though the respondents in these matters are different Gram Panchayats and their Secretaries, the contentions as between the applicant and those respondents are virtually the same. The documents on the basis of which the applicant has filed these Arbitration Applications are similarly worded; rather, stereotype. The arguments advanced by the applicant are collectively on all the Arbitration Applications. The learned standing counsel for the second respondent in all these Applications is the same and he has also made composite submissions in all these matters. The issues arising for decision are also the same. Therefore, these Applications are being disposed of by this common order.

4. According to the applicant-M/s.Water Health India Private Limited (WHIN, for short), it is a Company incorporated under the Companies Act, 1956, which entered into agreements with the respondents along with NAANDI Foundation, which is stated to be a public charitable trust set up under the Indian Trust Act, 1982. Except in two of the captioned matters, NAANDI Foundation is projected as the Associate of the applicant and that Associate had

identified the Panchayats for installation of Community Water Systems (CWS). The plea is that after installation of the CWS, NAANDI withdrew from the workspot and the applicant alone is authorized to operate the CWS so installed. The applications under Section 11(6) of the Act are filed on the ground that there are disputes between the applicant and the respondents which are Panchayats and their Secretaries regarding different claims raised by the applicant as against the Panchayats. Along with the Arbitration Applications, the applicant has produced photocopies of the documents with the caption 'Agreement for Sale'. Those documents contain the provision of arbitration clause, which reads as under.

“In the event a dispute or difference arises in connection with the interpretation or implementation of this Agreement, either Party may refer the dispute by arbitration according to the Arbitration and Conciliation Act, 1996 as amended from time to time or any other law for the time being in force. The arbitration proceedings shall consist of three arbitrators, one to be appointed by WHIN and the other to be appointed by the Panchayat. The two appointed arbitrators shall appoint the third arbitrator. The Arbitration shall be conducted in Hyderabad.”

5. The contentions of the second respondent is that there are no arbitration agreements between the parties and that even if the Sarpanch of any of the Panchayat concerned is shown to have signed any such agreement, that person had no authority to do so by and on behalf of that Panchayat since that person is incompetent to do so, while the authority to do so is with the Secretary. The claims are also disputed by the respondents-Panchayats.

6. The learned counsel for the applicant made reference to the clause extracted above and argued that the Arbitration Applications merit acceptance and are entitled to be allowed in the light of the decision of the apex Court in **North Eastern Railway vs. Tripple**

Engineering Works¹ and to make appointment of a single arbitrator even when the parties have agreed for a multi member Arbitral Tribunal. **Per contra**, the learned standing counsel for the second respondent relied on the law laid down by the apex Court in **Ahmedabad Municipal Corporation vs. Rajubhai Somabhai Bharwad**², to argue for the position that the Sarpanch has no authority to take a decision by himself or herself and there is no material on record to show that the Sarpanch of the Panchayats involved in these applications are conferred with any authority to enter into any such arbitration agreement.

7. The proposition canvassed by the learned counsel for the applicant that in exercise of authority under Section 11(6) of the Act, the measure can be taken, deviating from the appointment procedure agreed to between the parties, cannot be in dispute since the authority in terms of Section 11(6) of the Act is to take “the necessary measure”, and when such measure becomes necessary, on the given facts and circumstances of a case, it may be possible to take recourse to such procedure, at least when there is violation of the agreed appointment procedure. But that issue is not of much relevance in the case on hand for reasons more than one, as would be noted hereinafter.

8. In view of the challenge levied by the Panchayats as to the agreements and the so-called action of the Sarpanches in entering into the agreements, the applicant has placed on record reply affidavits asserting, among other things, that the Panchayats had drawn up proceedings whereby it was resolved to allocate village pond/tank/water source as village drinking water pond. I have

¹ (2014) 9 SCC 288

² (2015) 7 SCC 663

examined those documents. The so-called proceedings of the Panchayat meetings do not disclose the identity of any village pond/tank/water source. It also does not authorize the Sarpanches to enter into any of the agreements, much less any arbitration agreement, which should satisfy the prescriptions of Section 7 of the Act.

9. The reference made by the learned standing counsel for the second respondent to the decision in **Ahmedabad Municipal Corporation** (supra), is apposite on the facts of the case in hand. There is nothing on record to show that the Sarpanches were authorized to act on behalf of the Panchayats. Even the so-called resolutions relied on by the applicant do not show the conferment of any authority on the Sarpanches to enter into any agreement with the applicant; at any rate; an arbitration agreement. Along with that, reference made by the respondents to the statutory provisions that govern the field and which prevailed at the relevant point of time is well founded. Section 30 of the Andhra Pradesh Panchayt Raj Act, 1994, governs the field and it does not confer any power on the Sarpanch to perform the functions of the Executive Authority on behalf of the Gram Panchayat.

10. The aforesaid aspects, notwithstanding, I have examined the materials in all these cases which disclose the following:-

(a) NAANDI Foundation, which is referred in the Arbitration Applications as an Associate of the applicant and is shown in different agreements as party thereto; and which is alleged to have left workspot of installation after the transaction; is not party to the arbitration requests.

(b) Out of the 16 captioned cases, in 10 cases, the Non Judicial Stamp Papers, on which the so-called agreements are engrossed, were purchased after the date of the documents, which are produced as the agreements.

(c) In no case, the Non Judicial Stamp Paper was purchased either in the name of the applicant or in the name of any Gram Panchayat.

(d) No date is mentioned on the last page of any agreements.

(e) At least in two cases, there are corrections regarding the date of the document.

11. The following tabular statement will show the respective details that would disclose that 10 out of 16 agreements, were engrossed on Stamp Papers purchased later to the date of the so-called agreements and that all Stamp Papers were purchased in the name of the persons who are not identifiable with reference to either the Gram Panchayat or the applicant.

Sl.No.	Arbitration Application Number	Date of Agreement for Sale	Date of the Non Judicial Stamp Paper	Purchaser of the Non Judicial Stamp Paper	Whether date is mentioned on the last page of the Agreement
1	157/2016*	23.08.2006	29.12.2006	R.Vasu	No
2	158/2016	02.04.2007 (correction in date)	09.03.2007	R.Vasu	No
3	159/2016*	27.04.2007	30.04.2007	R.Vasu	No
4	160/2016	12.06.2009	11.06.2009	B.Vishnu	No
5	161/2016	17.10.2007	04.10.2007	P.Seshachalam	No
6	32/2017*	11.11.2006	11.04.2008	P.Seshachalam	No
7	33/2017*	02.01.2007 (correction in date)	11.04.2008	R.Vasu	No
8	34/2017*	15.09.2006	11.04.2008	P.Seshachalam	No
9	35/2017*	29.03.2006	12.07.2006	Anand Swaroop	No
10	36/2017	22.10.2007	04.10.2007	P.Seshachalam	No
11	37/2017	22.07.2009	11.06.2009	B.Vishnu	No
12	38/2017*	25.10.2006	29.12.2006	R.Vasu	No
13	39/2017	07.07.2007	30.04.2007	R.Vasu	No
14	40/2017*	30.10.2006	29.12.2006	R.Vasu	No
15	41/2017*	20.02.2006	12.07.2006	Anand Swaroop	No
16	42/2017*	20.12.2006	25.04.2007	R.Vasu	No

* The date of document is prior to the date of purchase of Non Judicial Stamp Paper

12. In the light of the aforesaid discussion, it cannot but be held that the documents produced along with the Arbitration Applications are not to be treated as those which can be held to contain arbitration agreements defined in Section 2(b) read with Section 7 of the Act, and no measure under Section 11(6) of the Act can be taken as sought for by the applicant; or otherwise, in its favour.

In the result, these Arbitration Applications are dismissed with costs fixed at Rs.10,000/- (Rupees ten thousand only) per Arbitration Application payable in favour of the respective Gram Panchayat, which is respondent in each of the applications and such amount of costs shall be payable to such respondent concerned through its Panchayat Secretary.



THOTTATHIL B. RADHAKRISHNAN, CJ

27.07.2018
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