

HIGH COURT OF CHHATTISGARH, BILASPURArbitration Appeal No.11 of 2016

Public Works Department, Government of Chhattisgarh, Sirpur Bhavan, Civil Lines, Raipur 492001 (C.G.)

---- Appellant

Versus

M/s Telecommunications Consultants (India) Ltd., (Government of India enterprise), TCIL Bhavan, Greater Kailash-I, New Delhi – 110048 (India)

---- Respondent

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| For Appellant / State: | Mr. Chandresh Shrivastava, Dy. Advocate General.  |
| For Respondent:        | Mr. Ratan K. Singh & Mr. Sunil Otmani, Advocates. |

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Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

09/04/2019

1. This arbitration appeal under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') has been filed by the State of Chhattisgarh by which its application under Section 34 of the Act has been rejected and the learned District Judge has refused to set-aside the interim award dated 19-3-2015.
2. The principal dispute raised in this appeal between the parties is that, whether in the subject dispute, the provisions of the Act of 1996 would apply or the provisions of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 would apply, which according to learned counsel for the parties, the Supreme Court has authoritatively dealt with in a decision rendered by Their Lordships in the matter of **Madhya Pradesh Rural Road Development Authority v. L.G. Chaudhary Engineers and Contractors**<sup>1</sup>.
3. Learned counsel for the parties would submit that therefore, in light of the judgment so rendered by the Supreme Court in **L.G. Chaudhary's**

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case (supra), the matter be referred to the Chhattisgarh Madhyastham Adhikaran for proceeding from the stage where it has already been taken-up.

4. I have heard learned counsel for the parties and considered their submissions and also went through the record with utmost circumspection.
5. The Supreme Court in **L.G. Chaudhary's** case (supra) in paragraphs 1 to 3 catalogued the question raised and answered in paragraphs 7 and 8 as under: -

“1. The matter has been placed before this Bench of three Judges pursuant to order dated 24<sup>th</sup> January, 2012 which is as follows :

“In view of some divergence of views expressed in the two judgments delivered today by us, the matter may be placed before Hon'ble the Chief Justice of India for constituting a larger Bench to resolve the divergence.”

2. Appointment of arbitrator in a dispute arising out of execution of a 'works contract' was the subject-matter for consideration before the High Court under [Section 11](#) of the Arbitration and [Conciliation Act](#), 1996.

3. Appellants raised objection that the matter being covered by a special [State Act](#), namely, M.P. Madhyastham Adhikaran Adhiniyam, 1983 (“[M.P. Act](#)”, in short), the application under [Section 11](#) of the Arbitration and [Conciliation Act](#), 1996 could not be entertained. The High Court, however, overruled the said objection relying upon the judgment of this Court in *Va Tech Escher Wyass Flovel Ltd. v. MPSE Board*, (2011) 13 SCC 261.

7. Taking up appeal on merits, we find that the High Court proceeded on the basis of the judgment of this Court in *Va Tech Escher Wyass Flovel Ltd.* (supra) which has been held to be *per incuriam*. The M.P. Act cannot be held to be impliedly repealed.

8. We are, thus, in agreement with the proposed opinion of Hon'ble Ganguly J. in para 42 of the reported judgment which reads as follows:

“42. Therefore, appeal is allowed and the judgment of the High Court which is based on the reasoning of *Va Tech Escher Wyass Flovel Ltd. v. M.P. SEB*, Misc. Appeal No.380 of 2003, order dated 5-3-2003 (MP)

is set aside. This Court holds the decision in *Va Tech Escher Wyass Flovel Ltd. v. M.P. SEB*, (2011) 13 SCC 261 has been rendered in *per incuriam*. In that view of the matter the arbitration proceeding may proceed under [M.P. Act](#) of 1983 and not under the [A.C. Act](#) 1996.”

6. Ultimately, disposing of several appeals, Their Lordships observed as under finally in paragraph 21 and directed for transfer to the State Tribunal: -

“21. However, since it is stated that proceedings are pending before the Arbitrator in pursuance of the impugned order, the same will stand transferred to the State Tribunal and the State Tribunal may proceed further taking into account the proceedings which have already been taken. Learned counsel for the respondent(s) pointed out that in view of [Section 16\(2\)](#), the objection to the jurisdiction could not be raised after statement of defence was filed. This contention cannot be accepted in view of the fact that the SLP was filed prior to the filing of statement of defence wherein this objection was raised.”

7. In view of the aforesaid pronouncement, the impugned award is set aside and the arbitration case, M/s. Telecommunications Consultants (India) Ltd. v. The Project Director, PIU, ADB Project, PWD Raipur, shall stand transferred to the Chhattisgarh Madhyastham Adhikaran at Raipur for hearing and disposal in accordance with law. Copy of the order be sent to the said Tribunal consisting of three Arbitrators and in that event, the Arbitral Tribunal will send the record to the Chhattisgarh Madhyastham Adhikaran at Raipur and thereafter, the Adhikaran shall dispose of the said dispute in accordance with law after noticing and hearing the parties taking into account the proceedings which have already been taken, as directed by the Supreme Court.
8. The appeal is allowed to the extent indicated herein-above. Parties shall bear their own cost(s).

Sd/-  
(Sanjay K. Agrawal)  
Judge