

% *Date of decision: 18th February, 2019.*

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

CM. No. 7677/2019 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

FAO(OS) 36/2019

1. The challenge in this appeal is to the order dated January 7, 2019 passed by the learned Single Judge in IA 38/2019 which is an application for modification of orders dated October 22, 2018 and November 14, 2018, which read as under:

“Order dated October 22, 2018

“5. Learned counsel for the Respondent/UOI submits that the All India Radio is a relevant party and ought to be impleaded in the present case, and that the Respondent is moving an application to the said effect. 6. Since the equipment allegedly supplied by the Petitioner was supplied to All India Radio, it is directed that a senior official of All India Radio and Mr. Sinha shall appear before the learned Arbitrator on the next date i.e. on 5th November, 2018 at 2:00 pm.”

Order dated November 14, 2018

“Mr. V.P. Yadav, Deputy Director General (Purchase), All India Radio has entered appearance pursuant to the order passed yesterday. The copy of the application for impleadment of All India Radio (AIR) has been perused by the Court. The application for impleadment has been moved on the grounds that AIR was the indentor of the supplies made by the Plaintiff vide tender enquiry No.EI/7/210/0099/21-l-88/87Cell066/COAD/1214. He assures the Court that the AIR will appear before the learned Arbitrator-Justice S.P. Garg, who was appointed by this Court on 25th July, 2018.”

2. The stand of the appellant All India Radio in IA 38/2019 was, it is neither a necessary nor a proper party. It was the case that the procurement of the equipments was done by DGS&D, which has since merged with the Ministry of Commerce. It was the case that it had not purchased the equipments, but was the beneficiary.

3. As the DGS&D was dealing with the purchase of the materials with regard to Government Departments and has since merged with Ministry of Commerce, an application was filed for impleadment of All India Radio. The learned Single Judge, after noting the orders passed by her from time to time, has in Para 5 stated as under:

“5. The official from AIR in fact assured the Court that it would appear before the Ld. Arbitrator. The dispute being raised as to which department of the Government ought to represent the UOI is not for this Court to decide. It is upto the Government to decide as to which of the different

departments is the contesting party in the arbitration proceedings. The stand of AIR may be placed by AIR before the learned Arbitrator, if deemed appropriate. Learned Arbitrator to rule comprehensively on the issues raised including as to which of the parties on behalf of the Government is the correct department. AIR is directed to make its submissions before the learned Arbitrator. Learned counsel for the AIR submits that they do not have any documents relating to the arbitration. If that is so, AIR is directed to obtain all the relevant documents from the Ministry of Commerce.”

4. We have been informed that after January 7, 2019, learned Arbitrator has passed an order rejecting the request of the All India Radio, for deletion. If that be so, the present appeal *per se* is not maintainable as subsequent to the impugned order, the learned Arbitrator has applied his mind and passed the order rejecting the request of the All India Radio. The said order of the learned Arbitrator is not a subject matter of the Appeal. Accordingly, the appeal is dismissed.

CM. No. 7676/2019 (for Stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

FEBRUARY 18, 2019/jg