

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ARBA No. 49 of 2015**

M/s Ramavtar Agrawal Road Construction Pvt. Ltd. Through Its Director, Ramavtar Agrawal S/o Satyapal Agrawal, Aged About 60 Years, R/o First Floor, V. R. Plaza, Link Road Bilaspur, Police Station And Post Bilaspur, Civil And Revenue District Bilaspur, Chhattisgarh

---- Applicant**Versus**

1. State Of Chhattisgarh Through - Secretary, Public Works Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur, Chhattisgarh
2. Secretary, Public Works Department, Government Of Chhattisgarh, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur, Chhattisgarh
3. Executive Engineer, Public Works Department, Korba Division, Korba Darri, District Korba, Chhattisgarh

---- Respondents

For Applicant	:	Mr. Manoj Paranjpe, Advocate
For State	:	Mr. Mateen Siddiqui, Dy. A.G. and Mr. Sudeep Verma, Dy. G.A

Hon'ble Shri Justice P. Sam Koshy**Order On Board****05.11.2020**

1. The present application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred as "the Act of 1996") was preferred by the applicant way back in the year 2015 for appointment of an Arbitrator.
2. The fact which led to the filing of the present arbitration application is

that. against the NIT published for construction of the road connecting Bilaspur-Katghora-Korba-Champa under the BOT scheme, the applicant had participated and was found suitable and LOI was issued on 11.02.2002. Thereafter, an agreement between the parties was entered on 06.03.2002. As per the agreement, the applicant was permitted to erect 3 toll barriers for collection of toll ensuring recovery of the investment that the applicant has made for construction of the aforesaid road. Subsequently, on 22.12.2002 an order was issued notifying that the applicant would be permitted to operate only 2 toll barriers instead of 3 which led to the reduction of toll collection and the applicant was put to some loss. The executive engineer of the respondents quantified the loss and made a recommendation to the higher authorities in the Department. However, the Secretary of the department vide its order dated 31.12.2014 rejected the same.

3. The applicant thereafter within a period of one year moved an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 before this Court on 10.09.2015 seeking for appointment of an Arbitrator for redressal of the grievance of the applicant in terms of the agreement. Notices were issued. The respondents have entered appearance and they have also submitted their reply. In the reply, the State has taken a stand that the arbitration application as such would not be maintainable for the reason that the nature of contract which was entered into would fall within the definition of "works contract" and therefore, the remedy available/open to the applicant would be that of invoking the provisions of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter referred as "the Adhiniyam, 1983").
4. At this juncture, learned counsel for the applicant submits that when the

application under Section 11(6) of the Act of 1996 was filed, there were judgments of the Madhya Pradesh High Court on identical set of facts stating that since the agreement between the parties was under the BOT scheme, it would not fall under the ambit of works contract and therefore, the matter would not go before the Madhyastham Adhikaran and the only remedy available was the provisions of the Arbitration Act of 1996.

5. However, this legal position subsequently stood changed in the light of the full bench judgment of the Madhya Pradesh High Court in the case of Viva Highways Ltd. Vs. M. P. Road Development Corporation Ltd., 2017 (2) MPLJ 681 wherein the full bench of the Madhya Pradesh High Court overruled the judgment rendered earlier and have held that even if the agreement is under a BOT scheme, it could still be a “works contract” as defined under Section 2 (1) (i) of the Adhiniyam, 1983.
6. This view of the full bench of the Madhya Pradesh High Court has further been upheld and affirmed by the Supreme Court in SLP No. 4018/2018 in an SLP preferred by the State of Madhya Pradesh against the judgment that stood prior to the decision of the full bench in the case of Ashoka Infraways Ltd. and Ors. vs. State of M.P. and Ors., 2016 (2) MPLJ 685. That the Supreme Court has set aside the order of the High Court in the case of Ashoka Infraways (supra) and has affirmed the order passed by the Full Bench holding that the matter is one which would be seized under the Adhiniyam, 1983.
7. In view of the aforesaid legal position as it stands, this Court has no hesitation in reaching to the conclusion that the present application also in the aforementioned factual backdrop would not be sustainable under the Arbitration and Conciliation Act, 1996. The remedy available to the

applicant would be for approaching the Madhyastham Adhikaran established by the State of Chhattisgarh under the Adhiniyam, 1983.

8. In view of the same, reserving the right of the applicant to approach the concerned Tribunal, this arbitration application at this juncture stands disposed of. The applicant before the Tribunal shall also move an application for condonation of delay explaining the delay caused for approaching the Tribunal. The Tribunal in turn shall in view of Section 14 of the Limitation Act consider the period spent by the applicant before this Court pursuing the remedy under Section 11 (6) of the Act of 1996 and shall decide the same liberally.
9. It is made clear that this Court has not expressed any opinion on the merits of the claim of the applicant and the concerned Tribunal shall decide the matter purely on the merits based on the contentions and objections that the parties would be raising.

**Sd/-
P. Sam Koshy
Judge**