

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on : 09.02.2021****Judgment Delivered on : 18.02.2021****HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Appeal No. 580 of 2019****(Arising out of order dated 17.06.2019 passed by the learned Single Judge in WPC No. 1893 of 2019)**

1. Naya Raipur Development Authority (Now known as Atal Nagar Development Authority, Through its Chairman, having office at Composite Building, North Block, Sector-19, Atal Nagar, New Raipur, Chhattisgarh.
2. Chief Engineer, Naya Raipur Development Authority (Now known as Atal Nagar Development Authority, Through its Chairman, having office at Composite Building, North Block, Sector-19, Atal Nagar, New Raipur, Chhattisgarh

---- Appellantsss**Versus**

1. M/s MBL Infrastructure Limited (Through its Authorized Signatory), having its registered and corporate office at Banni Corporate One 308, 3rd Floor, Plot No.5, Commercial District Centre, Jasola, New Delhi-110025
2. State of Chhattisgarh Through the Chief Secretary, Government of Chhattisgarh, Mahanadi Bhawan, New Mantralaya, Atal Nagar, New Raipur Chhattisgarh

---- Respondents

For Appellants	:	Mr. Kishore Bhaduri and Mr. Pankaj Singh, Advocates
For Respondent No.1	:	Mr. Anurag Dayal Shrivastava, Advocate
For Respondent No.2/State	:	Mr. Siddharth Dubey, Dy. GA

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****CAV JUDGMENT****Per P. R. Ramachandra Menon, Chief Justice**

1. Does the Arbitration Tribunal, constituted under Section 3 of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter referred to as 'the Act'), have the power to extend the time to satisfy the deficit Court-fee or should the entire Court-fee ought to have been satisfied along with the Application for Reference, as envisaged under Section 7(3) of the

said Act to make it a 'fit case for adjudication' as mentioned in Section 7(5) of the Act, treating it as 'mandatory', is the basic question mooted. The verdict passed by the learned Single Judge, invoking the power under Article 226 of the Constitution of India and directing the Tribunal to restore the Reference Application (rejected for non-satisfaction of the balance Court-fee) to be dealt with on 'merits' as the deficit Court-fee has already been remitted on the date of rejection of the application for restoration, is put to challenge in the said backdrop.

2. A short factual description is necessary to have proper analyzation of the legal questions framed above. The Appellants issued a Tender Notification in connection with the construction of Head-Quarter buildings of the Department of Water Resource and Department of Forest. On coming out successful, the 1st Respondent was awarded the contract, who had to execute the same within '24 months' from the date of award of the work. Agreement was executed on 05.06.2012 and the work order was issued on 06.06.2012, stipulating that the work had to be started on 20.06.2012, thus to be completed on or before 19.06.2014.
3. Because of the inordinate delay and lapses on the part of the 1st Respondent, the Letter of Intent was cancelled on 14.08.2014. In the said circumstances, the EMD / Security Deposit / Bank Guarantee was forfeited, which was sought to be interdicted by filing an application under Section 9 of the Arbitration and Conciliation Act, 1996 before the District Collector, Raipur. On rejection of the said application, the 1st Respondent moved to the Chief Engineer (E) in terms of Clause 25 of

the Agreement on 20.08.2014, which came to be rejected. The 1st Respondent then approached the Chief Executive Officer, who also declined interference, pursuant to which, the District Court, Raipur was approached against the said order, which did not turn to be fruitful. The EMD and such other deposits were forfeited and the Bank Guarantee was got encashed.

4. On 27.11.2014, the 1st Respondent approached this Court by filing ARBA/38/2014 for appointment of an Arbitrator. Infact, the Appellants, though initially had turned down the request of the 1st Respondent to appoint a Sole Arbitrator under Clause 25 of the Agreement (as it was not submitted in the prescribed format), an Arbitrator was appointed later, as per order dated 22.01.2015, which was challenged by the 1st Respondent by filing WPC 615/15 before this Court. However, after 3 years, the Petitioner withdrew the said writ petition on 13.07.2018 so as to enable them to proceed in terms of the verdict in ***Madhya Pradesh Rural Road Development Authority and Another v. L.G. Chaudhary Engineers and Contractors*** reported in ***(2012) 3 SCC 495*** to pursue the remedy under the Act.
5. After withdrawal of the above writ petition, a Reference Application bearing No.14/2019 was moved by the 1st Respondent before the Chhattisgarh Arbitration Tribunal, Raipur on 13.12.2018. However, as against the requisite Court-fee of Rs. 17,62,085/-, only a sum of Rs. 99,000/- was paid along with the Reference Application. An application was filed for extension of time to pay the balance Court-fee. It is pointed out by the Appellants that the time was extended thrice (on 03.01.2019,

05.02.2019 and 27.03.2019), despite which the balance Court-fee was not satisfied, under which circumstance, the application for Reference was rejected as per order dated 02.04.2019. On rejection of the application, the 1st Respondent quite strangely satisfied the balance Court-fee of Rs. 16,63,085/- on that day itself i.e., 02.04.2019 and an application was filed under section 17-A of the Act (inherent power) for restoration of the case. The Tribunal rejected the said application, holding that it did not have any power for review; which was subjected to challenge in WPC No.1893/2019. According to the Appellants, the learned Single Judge wrongly invoked the power and jurisdiction under Article 226 of the Constitution of India and granted the relief sought for by setting aside the order passed by the Tribunal and directing the matter to be restored and considered on merits, simply observing that since the deficit Court-fee had already been satisfied, the 1st Respondent / writ petitioner was interested in contesting the Reference on merits. Pursuant to the said verdict, Application for Reference has been restored and the Tribunal has issued notice to the Appellants; which made them to file this appeal along with a petition to condone the delay of 117 days in filing the same.

6. As mentioned already, the matter involves a legal question. Hence, after hearing Mr. Kishore Bhaduri, the learned counsel for the Appellant, Mr. Anurag Dayal Shrivastava, the learned counsel for the 1st Respondent and Mr. Siddharth Dubey, the learned counsel for the 2nd Respondent/ State, we find it appropriate to condone the delay. It is ordered accordingly.

7. With regard to the merit, Mr. Kishore Bhaduri, the learned counsel for the Appellant submits that, by virtue of the specific usage of the expression "shall" in sub-Section (3) of Section 7 of the Act, the prescribed fee ought to have been satisfied along with the Reference. The Act does not provide for extension of time to satisfy the Court-fee / balance Court-fee or to condone any delay in this regard and as such, the extension of time ordered three times by the Tribunal itself was wrong and contrary to the scheme of the statute. When the Tribunal itself does not have the power to extend time to remit the balance Court-fee, it cannot be granted by this Court invoking the jurisdiction under Article 226 of the Constitution of India, which will virtually go against the clear provisions in the statute, where the learned Single Judge has gone wrong. It is also pointed out that, since the balance Court-fee was not satisfied even within the extended time, the Application for Reference was rejected by the Tribunal on 02.04.2019 and it was thereafter, that the balance Court-fee was remitted on the same day, by the 1st Respondent. An application was filed seeking to invoke the inherent power and jurisdiction of the Tribunal under Section 17-A of the Act and to have the Application for Reference restored. This having been dismissed by the Tribunal (having no power for review), it ought not to have been interdicted by the learned Single Judge without any reason, merely holding that since the balance Court-fee had already been remitted by the 1st Respondent, the said Respondent was to be held as interested in pursuing the Reference.

8. Mr. Kishore Bhaduri, the learned counsel for the Appellants submits that the inherent power under Section 17-A of the Act is virtually akin to the power of the Civil Court under Section 151 of the Code of Civil Procedure (CPC) and both the above provisions are almost similarly worded. But, so far as the CPC is concerned, Section 149 grants power to make up the deficit Court-fee, enabling the Court to pass such orders, in its discretion, at any stage and Section 148 of the CPC provides for enlargement of time, where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by the Court, to enlarge such period, in its discretion, for a period not exceeding thirty days, even if the period originally fixed or granted had already expired. The contention of the Appellants is that, similar provisions as contained in Section 148 and 149 of the CPC are not contained in the Act and as such, the inherent power under Section 17-A of the Act cannot be used to grant such enlargement of time or to enable the party concerned to make up the deficit Court-fee, for want of any power or authority.

9. In support of the contention that the terminology used as "shall be accompanied" in sub-Section 3 of Section 7 is mandatory, the learned counsel seeks to rely on the verdicts passed by the Apex Court in ***State of Haryana and Another v. Raghubir Dayal*** reported in ***(1995) 1 SCC 133*** (paragraph 5), ***M/s Ram Chand and Sons Sugar Mills Private Ltd. v. Kanhayalal Bhargava and Others*** reported in ***AIR 1966 SC 1899*** (paragraph 5) besides citing the ruling in ***Nasiruddin and Others v. Sita Ram Agarwal*** reported in ***(2003) 2 SCC 577*** (paragraph 37) as to the nature of interpretation to be made when the provision is

unambiguous. The learned counsel further submits that the role of the High Court is only to act as the Revisional Authority under Section 19 of the Act (where the 'power and jurisdiction' is limited) and invocation of the power under Article 226 of the Constitution of India, widening the scope of the provision is not correct or sustainable.

10. Mr. Anurag Dayal Shrivastava, the learned counsel for the 1st Respondent, submits that the Sub-Sections (1) to (4) of Section 7 of the Act relate to the 'procedural aspects' in connection with the filing of Reference Application. If the said procedure is complete in all respects, the matter would be placed before the Tribunal, who, on being satisfied that the Reference is a 'fit case for adjudication', may admit the Reference or may summarily reject the same after recording the reasons, if it is not satisfied. Here the words "fit for adjudication" is with regard to the consideration of the merits, whereas in the instant case, the Tribunal has not considered the merits at all. Invoking the power under Section 10 of the Act, the Madhya Pradesh Madhyastham Adhikaram Regulations, 1985 (hereinafter referred to as 'the Regulations') have been framed by the Tribunal. Regulation 51(c) clearly enables the Tribunal to grant time to satisfy the requisite Court-fee. Though the Application for Reference was rejected on 02.04.2019, for want of satisfaction of deficit Court-fee, the balance Court-fee was remitted on the very same day and an application was filed under Section 17-A of the Act seeking to invoke the 'inherent power' of the Tribunal to cause the Reference Application to be restored, thus showing the *bona fides* on the part of the 1st Respondent / applicant to

pursue the Reference. This however came to be wrongly rejected by the Tribunal, observing that the Tribunal did not have any power of review. The bar as to the power of review mentioned under the 2nd proviso to Section 17-A of the Act is only in respect of the Award (which includes an Interim Award) and since the order under challenge passed by the Tribunal was not an Award in terms of Section 16 of the Act, the right of revision under Section 19 of the Act to approach this Court against an 'Award' passed by the Tribunal is not available; whereas the only remedy is under Article 226 of the Constitution of India, which has been rightly exercised by the learned Single Judge. The learned counsel submits that the inherent power under Section 17-A of the Act has been clearly provided; (i) to meet the ends of justice and (ii) to prevent any abuse of the process of the Tribunal, which requirements stand satisfied in the case of the 1st Respondent. This was omitted to be noted correctly by the Tribunal; but properly set right by the learned Single Judge.

11. Mr. Siddharth Dubey, the learned counsel representing the Respondent/State makes a reference to Section 8 of the Act dealing with the procedure on receipt of reference. It is only after the scrutiny by the officers concerned and on removal of any defect or deficiency, if discovered, that the matter would be placed before the Chairman, who is to deal with the matter as specified. These procedural formalities are prescribed under Regulations No. 4 and 5 of the Regulations and if the Reference is found in order, after removal of the defect or deficiency, it has to be numbered and placed before the Chairman, to be proceeded

further. So, the steps up to this extent are 'procedural' and as such, the requirements mentioned in the different stages are not liable to be termed as mandatory, but only directory. The learned counsel submits that the inherent power under Section 17-A of the Act is akin to the inherent power of the Civil Court under Section 151 of the CPC and even after rejection of the petition, time can be extended on filing application under Section 17-A of the Act in respect of a procedural aspect. The only rider for exercising such power by the Tribunal is that "if circumstances so warrant", which may vary from case to case. The learned counsel places reliance on the verdict passed by the Apex Court in ***Mahanth Ram Das v. Ganga Das*** reported in **(1961) 3 SCR 763** (paragraph 5) clearly holding that, if circumstances so warrant, the time can be extended. It is also mentioned that even after expiry of the time originally granted, the Court does not become functus officio. Reference is made to the dictum in ***Jet Ply Wood (P) Ltd. and Another v Madhukar Nowlakha and Others*** reported in **(2006) 3 SCC 699** (paragraph 25) to contend that, if the Act is silent on procedure, the inherent power under Section 151 of the CPC can be invoked.

12. Mr. Kishore Bhaduri, the learned counsel for the Appellant submits in reply, that even for exercising the power under Section 17-A of the Act, proper reasons have to be given, whereas in the instant case, no such reason is forthcoming from the part of the 1st Respondent / Applicant as to why the Court-fee was not remitted on time, despite the three extensions given. Similarly, no reason is shown as to how the balance Court-fee came to be remitted on the same day i.e. 02.04.2019, after

rejection of the Reference for non-satisfaction of the balance Court-fee on that day.

13. There is no factual dispute as to the sequence of events. The crux of the contentions of the Appellants is that there is no provision in the Act to grant time and there is no power for the Tribunal to condone the delay in satisfying the deficit Court-fee. According to the Appellants, the entire Court-fee 'shall' accompany the Application for Reference; which is stated as mandatory in view of the expression used in Section 7(3) of the Act.
14. The scrutiny and analysis have to be made with reference to the scheme of the enactment. Preamble of the Act says that it is an enactment to provide for establishment of a Tribunal to arbitrate in disputes to which the State Government or a Public Undertaking (wholly or substantially owned or controlled by the State Government) is a party, and for matters incidental thereto or connected therewith. The term "Public Undertaking" has been defined under Section 2(g) of the Act, to mean a Government Company within the meaning of Section 617 of the Companies Act, 1956 and includes a Corporation or other statutory body, wholly or substantially owned or controlled by the State Government. Chapter III of the said Act deals with the commencement of proceeding before the Tribunal and the procedure of the Tribunal. Section 7 deals with the 'Reference to the Tribunal' while Section 7-B deals with the 'Limitation'. Section 8 refers to the 'procedure' on receipt of Reference. Under Section 10, it is for the Tribunal to make Regulations for transaction of business and as per Regulation No.4, the

Tribunal or Bench can regulate its own procedure as it may think just and fair, notwithstanding anything to the contrary contained in the Arbitration Act, but subject to the Regulations, if any, made under Section 10 of the Act. The Tribunal is to have all the powers vested with the Civil Court under the CPC when trying a suit in respect of the matters prescribed under Section 12 of the Act, mainly dealing with discovery, production of evidence, affidavit etc. The Award passed by the Tribunal under Section 16 of the Act makes it final, subject to the revisional power of the High Court under Section 19 of the Act. Inherent power is given to the Tribunal under Section 17-A of the Act for meeting the ends of justice or to prevent abuse of the process of the Tribunal. However, the said power is not available to grant interim order by way of injunction, stay or attachment before the Award or to review the Award (including the Interim Award) as given under the two different provisos. A distinction is provided under Section 17-B, that the Tribunal can correct the clerical or arithmetical mistakes, as mentioned therein. The Award is to have force of a Decree of the District Court, as specified in Section 18 of the Act. Jurisdiction of the Civil Court is barred under Section 20, while power of the Government to make the Rules is given under Section 29 of the Act.

15. Section 7 of the Act dealing with 'Reference to the Tribunal' reads as follows :

"7. Reference to Tribunal.- (1) Either party to a works contract shall irrespective of the fact whether the agreement contains an arbitration clause or not, refer in writing the dispute to the Tribunal.

(2) Such reference shall be drawn up in such form as may be prescribed and shall be supported by an affidavit verifying the averments.

(3) The reference shall be accompanied by such fee as may be prescribed.

(4) Every reference shall be accompanied by such documents or other evidence and by such other fee for service or execution of processes as may be prescribed.

(5) On receipt of the reference under sub-section (1), if the Tribunal is satisfied that the reference is a fit case for adjudication, it may admit the reference but where the Tribunal is not so satisfied it may summarily reject the reference after recording reasons therefor."

Obviously, Sub-Section (1) to (4) of Section 7 deals with various requirements to be specified; after which, if the Tribunal is satisfied that Reference is a 'fit case for adjudication', it may admit the Reference or summarily reject the same after recording reasons as provided under Sub-Section 5 of the Act.

16. Section 7-A mandates that every Reference Application shall include the whole of the claim as on date and if any party omits to refer the same, he shall not be thereafter entitled to refer the matter in respect of such claim or portion of the claim so omitted or relinquished.
17. Limitation is prescribed under Section 7-B of the Act, holding that, the Tribunal shall not admit a reference petition unless - (a) the dispute is referred for the decision of the final authority under the terms of the works contract at the first instance and (b) if such petition is not made within one year from the date of communication of the decision of the final authority, subject to the exception drawn in the proviso. Sub-Section 2-A of Section 7-B starts with a 'non-obstante clause' and places a bar, stipulating that the Tribunal shall not admit a reference

petition unless it is made within three years from the date on which the works contract is terminated or such other circumstances, as mentioned. The stage for issuance of notice to the opposite party comes only after verification of the affidavit and documents by the responsible Officer / Staff of the Tribunal, as authorized and once the Reference is found in order and only after removal of any defect or deficiency, would it lead to placement of the same before the Chairman, after registering and numbering.

18. It is relevant to note that the Tribunal, in exercise of the power under Section 10 of the Act, has framed the Regulations. The procedural aspects on receipt of reference are dealt with under Regulations 4 to 13. Regulations 3, 4 and 5 are more relevant and hence they are extracted below :

"3. Reference to Tribunal.- Reference (petition for arbitration) in the prescribed form shall be presented to the Registrar or an officer authorised by the Registrar in this behalf by the petitioner in person or by his duly authorised agent or advocate, during the working hours of the Tribunal.

4. Procedure on receipt of reference.- As soon as a reference is received in the office of the Tribunal, it along with the affidavit and documents shall be scrutinised by such responsible official of the staff of the Tribunal as the [Chairperson] may, by general or special order, authorise in this behalf.

5. If any defect or deficiency is discovered in the reference, it shall be reported to the Registrar or an officer authorised by the Registrar in this behalf who shall direct the petitioner to remove it within a specified time to be fixed him. [If the petitioner fails to rectify the defect within the time allowed the Registrar may forward the reference to the Chairperson for necessary orders.]"

19. From the above Regulations, it is quite clear that if any defect or deficiency is discovered in the reference, an opportunity is to be given to the petitioner to remove the same within the specified time to be fixed by the Registrar or an officer authorised by him in that behalf. If the petitioner fails to rectify the defects within the time allowed, the Registrar has to forward the same to the Chairperson for necessary orders.
20. Non-satisfaction of the requisite Court-fee is ofcourse a defect and by virtue of the above provisions, both in the Act and the Regulations referred to above, on discovery of such defect, time has to be given to the Applicant to rectify the same within such time to be fixed by the Registrar or the authorised officer. Here, it is to be noted that no time limit is specified, either in the Act or the Regulations, to cure the defects noted in the scrutiny.
21. Once the reference matter reaches the Tribunal what happens next, is discernible from Regulation No.51, which is to the following effect :

"51. Rejection of petition. - The petition shall be rejected in the following cases :-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the petitioner, on being required by the Tribunal to correct the valuation within a time to be fixed by the Tribunal, fails to do so;
- (c) where the relief claimed is properly valued, but the reference is insufficiently stamped and the petitioner on being required to pay requisite court-fee within a time to be fixed by the Tribunal, fails to do so;

(d) where the reference appears from the statement in the petition to be barred by any law.

22. Under Clause (b) of Regulation No.51, where the relief claimed is undervalued, power is vested with the Tribunal to require the petitioner to correct the valuation within the time to be fixed by the Tribunal and only on his failure can the Tribunal reject the same. Here, it is to be noted that, if the valuation is to be corrected (in view of the undervaluation noted by the Tribunal), this may naturally involve satisfaction of additional Court-fee and the petitioner will have to satisfy the same, once he gets opportunity to correct the valuation as required by the Tribunal. This Clause also points out to the 'procedure' prescribed by the Tribunal itself, as per the Regulations, in view of the power and authority conferred under Section 10 and 11 of the Act.
23. Coming to Clause (c) of Regulation 51, it deals with an instance when the relief claimed is properly valued, but the reference is insufficiently stamped. Here again, the petitioner will have to be asked to pay the requisite court-fee within a time to be fixed by the Tribunal and only on his failure to do so, can the Tribunal reject the claim.
24. In both the above situations covered by Clauses (b) and (c) of Regulation No.51, no maximum time limit is specified to cure the defects and absolute power is conferred upon the Tribunal in this regard; besides the absolute power given to the Registrar or the authorised representative in terms of Regulation No. 5 to cause the defect noted to be cured within the time to be specified by him.

25. To understand the Scheme of the Act and Regulations, it will be worthwhile to make a peep into the Regulation No.53 as well, which is to the following effect :

"53. Withdrawal and adjustment of reference. - (1)

At any time after the institution of a reference, the petitioner may as against all or any of the respondents abandon his reference or abandon a part of his claim.

(2) Where the Tribunal is satisfied-

(a) that a reference must fail by reason of some formal defect: or

(b) that, there are sufficient grounds for allowing the petitioner to institute a fresh reference for the subject- matter of such reference or part of a claim;

it may, on such terms as it thinks fit, grant the petitioner permission to withdraw from such reference or such part of the claim with liberty to institute a fresh reference in respect of the subject-matter of such reference or such part of the claim.

(3) Where the petitioner -

(a) abandons any reference or part of claim under sub-regulation (1);

or

(b) withdraws from a reference or part of a claim without the permission referred to in sub-regulation (2);

he shall be liable for such costs as the Tribunal may award and shall be precluded for instituting any fresh reference in respect of such subject-matter or such part of the claim.

Clause (2) of the above Regulation enables the Tribunal to grant permission to the petitioner to withdraw the reference; (a) if the reference would fail by reason of some formal defects; or (b) if a fresh reference is possible on sufficient grounds – granting liberty to institute 'a fresh reference' in respect of the subject-matter of such reference or

such part of the claim. Regulation No. 54 makes it clear that, if any fresh reference is instituted on such permission granted under Regulation No.53, the petitioner shall be bound by the law of limitation, in the same manner, as if the first reference had not been instituted.

26. From the above, it is quite evident that the power of the Tribunal is absolute with regard to the 'procedural aspects' in relation to filing of the reference. Insofar as neither the 'Act' nor the 'Regulations' framed by the Tribunal place any fetter / hurdle on the Tribunal in granting sufficient time to cure the defect by suggesting any maximum limit, the version of the Appellant that the terminology in sub-Section (3) of Section 7 of the Act, holding that the reference "shall be accompanied by such fee as prescribed" is mandatory (to hold that the entire fee has to be submitted at the first instance itself) is not correct or sustainable. Similarly, the idea and understanding of the Appellants that there is no provision either in the Act or the Regulations empowering the Tribunal to grant extension of time to satisfy the balance Court-fee (unlike the provisions by way of Section 148 and 149 of the CPC) is wrong and misconceived. Equally wrong is the understanding of the Appellant that the words "fit case for adjudication" under sub-Section (5) of Section 7 of the Act, will take in the satisfaction of the mandatory Court-fee as well. If the case is 'fit for adjudication', the power given to the Tribunal is to admit the reference, whereas if is not so, the power given is to summarily reject the reference after recording the reasons.

27. The term "adjudication" envisages a decision on merits and not the technical rejection mentioned in the 2nd limb of sub-Section (5) of

Section 7 of the Act. The adjudication, in turn, will lead to an 'Award'. A statutory duty is cast upon the Tribunal, that it shall, after recording evidence if necessary, and after perusing the materials on record and after hearing the parties, make an Award (which also mentions that the Tribunal may pass an interim Award as well). Rejection of an Application for Reference for non-satisfaction of the procedural requirements in terms of sub-Section (5) of Section 7 of the Act, read with the Regulations discussed above, does not result in any adjudication, leading to any 'Award'. The power of the High Court under Section 19 of the Act (*suo moto* at any time or on application for revision made within three months of the 'Award' by an aggrieved party) is in respect of an "Award" passed under the Act, which hence is not applicable to the case in hand. In the said circumstances, since there is no other effective alternative remedy against rejection of the I.A. filed under Section 17-A of the Act, the writ petitioner was justified in approaching this Court by filing the writ petition and the learned Single Judge is perfectly correct in having dealt with the matter, invoking the power under Article 226 of the Constitution of India.

28. Coming to the scope of inherent power of the Tribunal, Section 17-A reads as follows :

"17-A. Inherent powers.- Nothing in this Act shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such order as may be necessary for the ends of justice or to prevent abuse of the process of the tribunal;

Provided that no interim order by way of injunction, stay or attachment before award shall be granted:

Provided further that the Tribunal shall have no power to review the award including the interim award."

29. The said provision starts with a 'non-obstante clause' in relation to the other provisions in the Act from affecting the inherent power of the Tribunal adversely in any manner and such power can be used by the Tribunal to the extent as may be necessary for the ends of justice or to prevent abuse of the process of the Tribunal. Only two exclusions are mentioned; firstly under the '1st proviso' which says that no interim order by way of injunction, stay or attachment before Award cannot be granted and under the '2nd proviso', there is no power to review the Award (including an interim award). It has been mentioned under Section 17-B that for correction of clerical or arithmetical mistakes, power is of course vested with the Tribunal, either on its own motion or on application by either of the parties.

30. In the instant case, Annexure-P/5 application preferred by the 1st Respondent under Section 17-A of the Act invoking the inherent power was dismissed by the Tribunal as per Annexure-P/1 order dated 04.04.2019, holding that it was having no power to review the same. But since the order rejecting the reference for non-satisfaction of the balance Court-fee was neither an Award nor an Interim Award, the bar under the 2nd proviso to Section 17-A was not applicable to Annexure-P/5 application filed under Section 17-A (seeking to invoke the inherent power). This being the position, the wrong course pursued by the Tribunal was rightly interdicted by the learned Single Judge, observing that satisfaction of the balance Court-fee of Rs. 16,16,085/- on the same date of rejection of the application for reference *i.e.* 02.04.2019

itself clearly revealed the *bona fides* of the writ petitioner/applicant to pursue the reference.

31. In the above circumstance, we hold that ample power is vested with the 'Registrar' or authorised officer of the Tribunal at the 1st instance to grant sufficient time, as he deems fit, to the applicant seeking for reference to satisfy the balance Court fees and thereafter upon the Tribunal, by way of second instance, for granting such time as it deems fit. It is also open for the Tribunal to invoke the inherent power under Section 17-A of the Act to restore a reference which came to be dismissed for default, whether it be for non-satisfaction of the balance Court fee or in curing such other defects within the time granted. The only requirements for exercising the said power under Section 17-A of the Act are (a) to meet the ends of justice or (b) to prevent the abuse of the process of the Tribunal.
32. In this context, it is to be noted that the very purpose of constitution of the Tribunal is to deal with and arbitrate the disputes to which the State Government or a Public Undertaking (wholly or substantially owned or controlled by the State Government), is a party, and for the matters incidental thereto or connected therewith as mentioned in the 'Preamble'. As such, the interpretation to be given to the relevant provisions in the Act and Regulations is to give effect to the 'context and purpose' of the provisions, as held by the Apex Court in **Raghubir Dayal's case** (supra). The relevant portion of the said verdict, as contained in paragraph 5, explaining as to how the meaning of the word 'shall' is to be understood is extracted below :

"5. The use of the word 'shall' is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, on consequences to flow from such construction would not so demand. Normally, the word 'shall' prima facie ought to be considered mandatory but it is the function of the court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. The word 'shall', therefore, ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be ascribed to the word 'shall' as mandatory or as directory, accordingly. Equally, it is settled law that when a statute is passed for the purpose of enabling the doing of something and prescribes the formalities which to be attended for the purpose, those prescribed formalities which are essential to the validity of such thing, would be mandatory. However, if by holding them to be mandatory, serious general inconvenience is caused to innocent persons of general public, without very much furthering the object of the Act, the same would be construed as directory."

33. The scope of 'inherent power' of the Civil Court under Section 151 of the CPC has been exhaustively dealt with by the Apex Court in ***M/s Ram Chand and Sons Sugar Mills Private Ltd.*** (supra), holding that the inherent power is in addition to and complimentary to the powers expressly conferred under the CPC. The relevant portion of the observations in paragraph 5 is to the following effect :

"5. Having regard to the said decisions, the scope of the inherent power of a Court under S. 151 of the Code may be defined thus : The inherent power of a Court is in addition to and complementary to the powers expressly conferred under the Code. But that power will not be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions

exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions. Whatever limitations are imposed by construction on the provisions of S. 151 of the Code, they do not control the undoubted power of the Court conferred under Section 151 of the Code to make a suitable order to prevent the abuse of the process of the Court."

34. In ***Nasiruddin's case*** (supra), the main question considered was whether the provision of Section 5 of the Limitation Act, 1963 was applicable where there is a default in depositing the rent within the stipulated time by the tenant. The question came to be considered by the larger Bench pursuant to the reference ordered by a Division Bench of the Apex Court. The dispute between the landlord and the tenant in the Rajasthan High Court, after passing through different levels, had reached the Full Bench of 'five judges', where the majority (three hon'ble judges) held that Section 5 of the Limitation Act was applicable, where there was a default in depositing the arrears of the rent within the specified period and that applicability of the Indian Limitation Act, 1963 was not expressly excluded under the relevant Rent Control Act.
35. After reference to various rulings rendered by the Apex Court at different points of time (with reference to the different State enactments); the Apex Court observed in paragraph 37 that, in the given case the Court can iron out the fabric, but it cannot change the texture of the fabric. It was further held that it cannot enlarge the scope of legislation or its intent when the language used in the statute is plain and not obscure, altering that the Court cannot add or subtract a word or read something more into it (which is not there); which otherwise will amount to re-

writing the law. The Court also observed that the use of expression "shall" or "may" may not be decisive for arriving at a finding as to whether the statute is 'directory' or 'mandatory'. The intention of the legislature is to be elicited from the scheme of the Act. It was accordingly held that, Section 5 of the Limitation Act, 1963 was not applicable where there was a default in depositing the rent by the tenant under Section 13(4) of the Act. This decision does not come to the rescue of the Appellants in any manner in view of the provisions existing in the Act involved here and so also in the Regulations with regard to the course to be pursued on noting the defects during the course of scrutiny and after placing the matter before the Tribunal w.r.t. the inadequacy of Court-fees as discussed above.

36. In the above facts and circumstances, we do not find any merit in the appeal. It is dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge