

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.8995 Of 2020
(Through hybrid mode)**

State of Odisha

....

Petitioner

Mr. Subir Palit, Senior Advocate

-versus-

***M/s. Nayagarh Sugar Complex Ltd.
and others***

....

Opposite Parties

CORAM: JUSTICE ARINDAM SINHA

**ORDER
10.05.2022**

**Order
No.**

6.

1. Mr. Palit, learned senior advocate appears on behalf of petitioner and submits, impugned is order dated 7th February, 2020, whereby, inter alia, his client's application for deleting it as party in the arbitration reference, was disposed of by the arbitrator on deferring the adjudication. His client, before seeking admission of the writ petition by direction of issuance of notice, had filed application for amendment to include in the challenge, orders dated 7th February, 2019 and 20th April, 2022 passed by the arbitral tribunal.

2. He submits, his client was facilitator in the sale evidenced by agreement dated 20th June, 2004. There was specific clause in the agreement excluding his client from being in any way involved in the

transaction. He relies on sub-clause 7.1 under representations and warranties clause-7. The clause is reproduced below.

“The purchaser acknowledges it has not entered into this Agreement in reliance upon any representation or warranty, whether of fact or opinion or otherwise, relating to the subject matter of this Agreement or, without limitation, in reliance upon any information, warranty, statement or silence on the part of the DPE, the Seller, or any officer, employee, agent or adviser of the Registrar, DPE or the Seller other than representations or warranties expressly provided in this Agreement. Unless required by statute or expressly provided in this Agreement, all representations, warranties and conditions, express or implied, statutory or otherwise, in respect of the Assets and Business are expressly excluded. The Purchaser agrees that the exclusion of representations and warranties as provided here is reasonable.”

He submits further, astronomical claims have been made in the reference. Being in no way connected, his client faces peril of having award made against it on being compelled to be party to the reference. The Tribunal failed to appreciate that his client is not a signatory to the agreement through any of its functionaries. In the circumstances, in event award is made against his client, to challenge his client will have

to put in security. As such, this becomes rarest of rare case, wherein judicial review in the arbitration reference is required. Mr. Palit wants to submit on other contentions but this Court felt, they were irrelevant regarding the question of maintainability of the writ petition.

3. On perusal of impugned order dated 7th February, 2020, it appears petitioner had earlier made similar application, disposed of by order dated 7th February, 2019 observing that whether petitioner is necessary party to the reference being mixed question of fact and law, it could not be adjudicated at that stage and would be taken up with the merit of the claim, while passing award. Petitioner appears to have accepted said order, at least for while, after which this writ petition challenging the refusal on its second attempt at having its name struck out as a party in the reference. On query from Court Mr. Palit submits, his client did not prefer Special Leave Petition against order dated 7th February, 2019 passed by the arbitral Tribunal.

4. The agreement provides for exclusion of representations and warranties. There are recitals in connection with or in relation to representations or warranties in mentioning Government of Odisha as substantial share holder in the seller and having had acted through Registrar of Cooperative Societies. Department of Public Enterprises in the Government of Odisha has also been mentioned. Court has not

made further scrutiny of the agreement but is convinced that in event there is a breach of any of the clauses therein regarding involvement or exclusion of Government of Odisha, the allegation of breach must be adjudicated upon in the reference since it has been made a party thereto.

5. In circumstances aforesaid the writ petition does not reveal rarest of rare case requiring intervention by judicial review in a pending arbitration reference. That is the requirement of law declared by the Supreme Court in judgment dated **6th January, 2021** in **Civil Appeal no.14665 of 2015 Bhaven Construction v. Executive Engineer Sardar Sarovar Narmada Nigam Ltd.**

6. The writ petition is dismissed.

(Arindam Sinha)
Judge

Sks