



WEB COPY



Rev.P.No.2 of 2018 in OP.No.25 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.11.2023

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Rev.P.No.2 of 2018
in O.P. No.25 of 2017

M/s.Ashok Leyland Limited,
Rep. by its Authorised Signatory
No.1, Sardar Patel Road,
Guindy, Chennai-600 032.

... Petitioner

Vs.

State Express Transport Corporation,
Tamil Nadu Limited (SETC),
Rep. by its Managing Director,
Thiruvallur House,
No.2, Pallavan Salai,
Chennai-600 002.

... Respondent

Prayer: Review Petition filed under Order 47 read with Section 114 of the Code of Civil Procedure to review the orders passed in O.P.No.25 of 2017 dated 23.08.2017.

For Petitioner:	Mr.V.Kuberan For M/s.Rank Associates
For Respondent:	Mr.Silambanan, Additional Advocate General Assisted by Mr.L.S.M.Hassan Fizal, Additional Government Pleader



Rev.P.No.2 of 2018 in OP.No.25 of 2017

ORDER

WEB COPY

This application for review has been filed by Ashok Leyland Limited seeking review of an order passed by this Court in O.P.No.25 of 2017 on 23.08.2017. The original petition had been filed under Section 11(6) of the Arbitration and Conciliation Act, 1986 (in short 'Act') read with Clause 5 of the Madras High Court appointment of Arbitrator's Scheme, 1996.

2. The petitioner had participated in a tender for supply of (BS-III and BS-IV) passenger bus chassis in Tender No.15/chassis/CP/IRT/2011 (tender document). The tender document refers to arbitration of disputes arising out of that contract in clause CC-33 thereof.

3. The petitioner had produced the following documents at the time of hearing of the Original Petition:

(i) IRT contract No.15/CP/IRT/2011 dated 21.11.2011 along with the following annexures:

- | | | |
|--------------|-----|---|
| 1)Annexure A | ... | Approved rate details |
| 2)Annexure B | ... | Allotment of chassis to STUs wise |
| 3)Annexure C | ... | Terms & Conditions |
| 4)Annexure D | ... | Specimen forms for Contract Agreement |
| 5)Annexure E | ... | Spare Parts Requirements and its price list |

(ii) Purchase Order dated 28.11.2011

(iii) Amended Purchase Order dated 02.02.2012

(iv) Performance Bank Guarantee dated 12.04.2012.



Rev.P.No.2 of 2018 in OP.No.25 of 2017

4. The respondent had filed a copy of the letter in Lr.No.15/CP/IRT/2011 dated 21.11.2011 along with annexures, being the same as those set out in point (i) above. This Court had dismissed the Original Petition being of the view that there had been no document produced by the petitioner that would establish consensus ad idem between the parties to the effect that they intended to resolve the disputes by alternate dispute redressal mechanism.

5. The cases that had been cited had been distinguished on the ground that in those matters, the tender, including the specific page containing the arbitration clause had been signed by both the parties and hence the meeting of minds between the parties on the method of dispute resolution had been established.

6. The Petition had thus come to be dismissed accepting the stand of the respondent that agreement dated 12.04.2012 being the Performance Bank Guarantee in terms of which the appointment of Arbitrator had been sought, was a unilateral document executed only by the petitioner and nowhere had the respondent acquiesced to the same.

7. Mr.Kuberan, learned counsel appearing for the Review Petitioner reiterates the submissions made at the time of hearing of the Original Petition relying additionally on the following decisions:



(i) *M. Dayanand Reddy v. A.P. Industrial Infrastructure Corporation Ltd. and Ors.*¹

(ii) *J.K. Jain and others v. Delhi Development Authority and others*²

(iii) *Laxmikant Revchand Bhojwani and another v. Pratapsing Mohansing Pardeshi*³

(iv) *Pyrites, Phosphates and Chemicals Ltd. v. Sebilan Compania and another*⁴

8. He would also rely upon the fact that the transactions between the parties are admitted, supplies have been effected and payments made. Hence, the factum of the transactions qua the parties and is not in dispute. In these circumstances, the respondent cannot shy away from the arbitration clause that is part of the tender document.

9. He draws attention to letter dated 21.11.2011 issued by the Institute of Road Transport ('IRT') appointed as a nodal agency for and on behalf of Tamil Nadu State Transport Corporation Limited (TNSTC/Respondent) to receive the bids from chassis manufacturers.

10. In letter dated 21.11.2011 reference is made to Tender No.15/chassis/CP/IRT/2011 and the letter itself states that the offer of the petitioner for supply of 2029 passenger buses has been accepted (*as per the terms and conditions laid down in the tender vide reference cited*). The terms

1 [1993 AIR 2268]

2 (1995) 6 SCC 571)

3 [(1995) 6 SCC 576]

4 [(2002) 9 SCC 353]



Rev.P.No.2 of 2018 in OP.No.25 of 2017

and conditions that have accompanied letter dated 21.11.2011 contains an arbitration clause at being Clause 31 of Annexure-D.

11. Additionally, respondents circulate a copy of G.O.Ms.No.125

Transport (A) Department, dated 26.08.2011 reading as follows::

‘ABSTRACT

Transport – Purchase of 3000 New buses to all STUs for the year 2011-12 with the Government Share Capital Assistance / Short Term Loan and with the Financial assistance of Tamil Nadu Transport Development Finance Corporation Ltd., - Orders – Issued.

Transport (A) Department

G.O.(Ms). No.125

Dated: 26.8.2011

ORDER:

In the Floor of Assembly, on 04-08-2011, the Hon’ble Minister for Finance has in his Budget Speech announced that 3000 new buses will be purchased for all STUs for the year 2011-12. In the Budget Estimate for the year 2011-12, a sum of Rs.125/- crore as Share Capital and a sum of Rs.137.50 crore as Short Term Loan have been allocated.

2.The Government accord sanction for the purchase of 3000 new buses to all STUs with the financial assistance of Government and loan from Tamil Nadu Transport Development Finance Corporation Ltd., as Indicated below:-

.....
5.In respect of State Express Transport Corporation Ltd., 60 chassis bus body building shall be constructed in its in-house body building unit and the remaining 413 chassis bus body building shall be constructed by outsourcing by following the Transparency Tender Act. In respect of other STUs, the chassis bus body building shall be constructed in their own in-house body building units.

6.This order issued with the concurrence of Finance Department vide its U.O.No.43392/BPE/2011, dated 25.08.2011.

(By Order of the Governor)



WEB COPY



Rev.P.No.2 of 2018 in OP.No.25 of 2017

*Md.Nasimuddin,
Secretary to Government.'*

12. Some correspondences between the petitioner and the respondent are now produced by the petitioner. In some of those letters the respondent makes reference to its Purchase Order dated 28.11.2011 wherein reference is made to communication dated 21.11.2011 from IRT that, in turn, incorporates the Tender document containing the arbitration clause.

13. In all, the submissions of the petitioner are that the above documents unambiguously indicate that the respondents had consented to arbitration as a method of dispute resolution. The terms and conditions in the tender had been incorporated in letter dated 21.12.2011 issued by IRT and hence the arbitration clause stood incorporated by reference.

14. The respondents represented by Mr.Silambanan, learned Additional Advocate General for Mr.L.S.M.Hassan Fizal, learned Additional Government Pleader, for their part, rely on the order sought to be reviewed stating that all material has been brought to the notice of the Court at the first instance.

15. The parameters for review of an order have been set out in Order 47 Rule 1 of the CPC and are limited to the situations contained therein. Such situations are where relevant material has been omitted to be produced before or



Rev.P.No.2 of 2018 in OP.No.25 of 2017

taken into consideration by the Court or any other event that the Court believes would require review of the order.

16. Government Order dated 26.08.2011 and letters from the respondent dated 09.12.2011, 02.02.2012, 05.05.2012, 29.06.2012, 19.07.2012, 26.02.2013 and 01.04.2013 constitute material that have now been produced before the Court for the first time. No objection has been raised by the respondents to the production of the correspondences at this juncture.

17. In dealing with the matter at the first instance, the Court has omitted to take note of the position that there are two letters dated 21.11.2011 from IRT, one to the petitioner and another to the respondent. Both the letters relate to the same subject matter, that is, procurement of chassis by TNSTU (respondent) and both make reference to the Tender document - IRT contract No.15/CP/IRT/2011 dated 21.11.2011. Specific reference is made to the terms and conditions under that Tender document.

18. The counter filed by the respondent in this review petition clarifies the role played by IRT in the transaction between the parties. At paragraph 12, the respondent states that the Institute of Road Transport (IRT) had been established as a Society under the Societies Registration Act 1860, in 1976 under the administrative control of the Government of Tamil Nadu.



19. The prime objective of the IRT is to conduct Research Studies on the various issues relating to Road Transport Sector with a view to improve the performance of transportation by updating and adopting the latest developments that are taking place around the world. The respondent states that the IRT has been notifying various standards / base conditions and industrial needs and requirements, to have uniform better efficiency in all the State Transport Undertakings in Tamil Nadu.

20. The eligibility conditions and the eligible suppliers are notified by the IRT for the procurements of automobile spares and parts by the STUs. The sequence of events that have transpired are clear that IRT has acted as a nodal agency for the transaction. However, the attempt appears to be to state that the respondent is not bound by the stipulations put forth by IRT with respect to any other aspects of the transaction, apart from the technical features.

21. The respondents further defend their stand stating, at paragraph 13 as follows:

13. It is submitted that IRT had issued Notice Inviting Tender vide Tender No.15/Chassis/CP/IRT/2011, calling for supply of Single Deck Passenger Bus Chassis (BS III & BS IV) to the State Transport Undertakings (STUs). The specifications and laying of bench marks standards had been made by IRT. The said Tender Notification enumerated the process of supply by the successful suppliers. The instructions to the tenderers in



WEB COPY

Part – II carried the clause for referring disputes to arbitration. The Notice Inviting Tender was only an offer made by IRT and was not an agreed contract. In other words, the said Notice Inviting Tender was an offer document, that was required to be accepted by the selected contractor, if the terms were conducive to the tenderer. Thereafter, the selected contractor had to enter into an express agreement accepting the terms after mutual negotiations. TATA Motors and the Petitioner, viz., Ashok Leyland, had been selected for the supply of buses for a period from 2011 to 2012. In the instant case on hand, no agreement had ever been entered into. It is a settled law that offer document cannot be termed to be binding on the parties hereto, more particularly, when the said offer document had never been signed by the Respondent.

22. The above stand has to be tested in light of the fact that the entire Tender document which contains the arbitration clause, (which the respondent brushes away as a Notice Inviting Tender), is what has been incorporated in the letter of IRT dated 21.11.2011 referred to in Purchase Order dated 28.11.2011 duly executed by the Managing Director of the respondent.

23. The Annexure to the Purchase Order, also signed by the MD of the TNSTU confirms that *‘All other terms and conditions are applicable as per CPO/IRT/2011 dated 21.11.2011. Contract agreement shall be executed as per annexure ‘D’ referred in IRT letter dated 21.11.2011 and incorporating the terms and conditions vide annexure ‘C’ therein’.*



Rev.P.No.2 of 2018 in OP.No.25 of 2017

24. It is true that the signature of the authorised representative of the respondent is not found in the contract agreement dated 28.11.2011. However, the entire Tender document stands incorporated in the letter of IRT dated 21.11.2011 and Purchase Order dated 28.11.2011. Then again, there is a confirmation in the Annexure to the PO duly signed by the Managing Director that a contract '*shall*' be executed incorporating the terms and conditions that include the arbitration clause at CC-23 of the General Conditions of Contract.

25. The respondent cannot now be permitted to go back on its clear and stated intention that an ADR clause will govern the parties. The mere fact that Contract Agreement dated 28.11.2011 does not contain a signature of the respondent will thus have no consequence in light of the categorical features of acquiescence noted above.

26. Even the correspondences between the parties produced now make reference to the Purchase Order and the letter of IRT dated 21.11.2011 incorporating the Tender document including the arbitration clause. Importantly, letter dated 05.05.2012 reads thus:

*STATE EXPRESS TRANSPORT CORPORATION TAMILNADU
LTD.*

CHENNAI – 5.

Lr.No.6001/H3/S.E.T.C./11-12

Dt.05.05.2012



Rev.P.No.2 of 2018 in OP.No.25 of 2017

To

M/s.Ashok Leyland Ltd.,
Khivraj Complex-II, 6th Floor,
480, Anna Salai, Nandanam,
Chennai – 600 035.

KIND ATTN: MR.ELANGO VAN

Sir,

*Sub: S.E.T.C. – Purchase – New Chassis – Order placed –
Bank guarantee and Agreement furnished – Incorporating the
deviations – Reg.*

Ref: (1) Lr.No.015/CP/IRT/11-12 dt.21.11.2011

(2) Our P.O. no.319/H3/SETC/11 dt.28.11.2011

*(3) Your letter no.ROS/ME/STU/11-12/69 dated
14.03.2012.*

*Kind attention is invited to the references cited above
wherein we have placed a purchase order for the supply of 473
Nos. of New AL 244 “ (12 Metre) Wheel base Chassis fitted with
BSIII Engine with a condition to furnish a security deposit of 5%
of the purchase order value as per CPO/IRT rate contract
circular.*

*We have received a Bank guarantee and agreement vide
reference 3rd cited with the following discrepancies and we
request you to incorporate the deviations shown below and to
furnish a revised Agreement without further delay;*

- 1) The agreement value does not include VAT amount.*
- 2) Items 5,6 & 9 to 36 in the IRT format have not been in-
cluded in the agreement.*
- 3) Para 9 to 11.10 in the agreement of AL not specified in
the IRT format.*

Earlier action in this regard is requested.

Thanking you,

Yours faithfully,



WEB COPY



Rev.P.No.2 of 2018 in OP.No.25 of 2017

*For STATE EXPRESS
TRANSPORT
CORPORATION
TAMILNADU LIMITED*

Sd/-

For MANAGING DIRECTOR

27. The above letter refers to the *Bank guarantee and agreement* received from the petitioner and the respondent asks the petitioner to incorporate certain deviations to the clause to the Agreement. The deviations relate only to the three subjects specified therein being, VAT as well certain inclusions to be made as per IRT format. There is no deviation that is proposed in regard to the Arbitration clause which the respondent has thus accepted.

28. In *Pyrites, Phosphates and Chemicals Ltd.* (supra), the attention of the Court was drawn to the bill of lading, the opening part of which stipulated that '*all terms and conditions of the relevant charter party are deemed to have been incorporated therein*'. Admittedly, Clause 47 of the charter party contained an arbitration Clause and hence the Court concluded that there was a binding arbitration agreement between the parties.

29. The parties to that litigation had been party to the charter party and hence the arbitration Clause that was contained in the charter party stood incorporated in the bill of lading and amounted to a binding arbitration



agreement. What flows from the above discussion is the respondent has categorically acquiesced to an arbitration clause governing the parties and the error apparent in order dated 23.08.2017 is liable to be corrected.

30. At this juncture, a defence is raised by the respondents in regard to the maintainability of this petition relying upon the decisions in (i) *Jain Studios Limited vs. Shin Satellite Public Co. Ltd*⁵, (ii) *M/s.Electronics and Controls Power Systems Private Limited v. Wep Peripherals Limited*⁶ and (iii) *Kush Raj Bhatia v. Dlf Power and Services Limited*⁷.

31. The respondent argues that no review application is maintainable as against an order passed by the Chief Justice or the designated Judge exercising power under Section 11 (6) of the Act. Per contra, the petitioner submits that there is no bar in this regard post amendment of the Act in 2016, w.e.f. 15.10.2015.

32. This view finds support from the decisions in *Sanjay Gupta V. Kerala State Industrial Development Corporation Limited*⁸, *Manish Engineering Enterprises V. Managing Director, IFFCO, New Delhi & Ors.*⁹,

5 CDJ 2006 SC 526

6 CDJ 2019 Karnataka HC 871

7 CDJ 2022 DHC 829

8 2009 SCC Online Ker 6361

9 SCC Online All 84



Rev.P.No.2 of 2018 in OP.No.25 of 2017

COBRA-CIPL JV V. Chief Project Manager¹⁰, Shivraj Gupta & Ors. V. Deshraj Gupta & Ors.¹¹, N.S.Atwal V. Jindal Steel & Power Ltd.¹², Steel Authority of India Limited V. Indian Council of Arbitration & Ors.¹³ and Inder Mohan Singh V. Tripat Singh¹⁴.

33. In all these cases, it is seen that the orders passed under Section 11(6) of the Act are dated prior to 15.10.2015, whereas the present petition as against which review has been sought, was filed in 2017 post amendment of Section 11(6) by Act 3 of 2016. Section 11(6), pre and post amendment in 2016, with retrospective effect from 23.10.2015, read as follows:

<i>Pre- 23.10.2015</i>	<i>Post- 23.10.2015</i>
‘.... (6) Where, under an appointment procedure agreed upon by the parties,- (a) a party fails to act as required under that procedure; or (b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or (c) a person, including an	‘.... (6) Where, under an appointment procedure agreed upon by the parties,- (a) a party fails to act as required under that procedure; or (b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

10 2021 SCC Online MP 609

11 Manu/DE/0441/2008

12 (2011) 178 DLT 454

13 Manu/DE/3484/2015

14 (2012) 190 DLT 310



WEB COPY

institution, fails to perform any function entrusted to him or it under that procedure,

a party may request the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court “the Chief Justice or any person or institution designated by him” to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.’

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

A party may request [the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.’

34. Prior to amendment, the phrase *‘the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court’* read as *‘the Chief Justice or any person or institution designated by him’*. I am also thus called upon to decide whether there is a bar of maintainability and specifically, what the impact of the 2015 amendment is, in this regard.



35. In the case of *SBP & Co. v. Patel Engineering Ltd. and Another*¹⁵, the Hon'ble Supreme Court held that an order passed under Section 11(6) is a judicial order. The relevant paragraph reads thus:-

‘.....

18. It is true that the power under Section 11(6) of the Act is not conferred on the Supreme Court or on the High Court, but it is conferred on the Chief justice of India or the Chief Justice of the High Court. One possible reason for specifying the authority as the Chief Justice, could be that if it were merely the conferment of the power on the High Court, or the Supreme Court, the matter would be governed by the normal procedure of that Court, including the right of appeal and the Parliament obviously wanted to avoid that situation, since one of the objects was to restrict the interference by Courts in the arbitral process. Therefore, the power was conferred on the highest judicial authority in the country and in the State in their capacities as Chief Justices. They have been conferred the power or the right to pass an order contemplated by section 11 of the Act. We have already seen that it is not possible to envisage that the power is conferred on the Chief Justice as persona designata. Therefore, the fact that the power is conferred on the Chief Justice, and not on the court presided over by him is not sufficient to hold that the power thus conferred is merely an administrative power and is not a judicial power.’

36. The Supreme Court, under Article 137 of the Constitution of India is vested with the power of review of any judgment pronounced or order made by it. As far the High Court is concerned, the power of review is not inherent, but has to be specifically conferred.

¹⁵ (2005) 8 SCC 618



37. In the case of *Adani Enterprises Limited, Mumbai v. Ankiteros Shipping Corporation*¹⁶, a learned Judge of the Delhi High Court had considered the power of review qua an order passed under Section 11(6) of the Act and had taken a decision to review an order passed by him on 21.04.2011, being of the view that the order passed was non est since it had been passed by a Court that lacked inherent jurisdiction.

38. The petitioner there had been located outside India and hence the arbitration proceedings would constitute international commercial arbitration in respect of which the Chief Justice of the Court or his designate did not have the requisite jurisdiction for appointment of arbitrator. In such an event, learned Judge was of the view that correction of that error would fall within the four contours of procedural review which he was entitled to embark upon, since such power was inherent and plenary in every Court.

39. The matter was carried in appeal and the Division Bench of the Delhi High Court in *Ankiteros Shipping Corporation vs. Adani Enterprises Limited, Mumbai*¹⁷ reversed the order of the single Judge. They noticed that though a Court of record, Section 11(6) empowered specifically only the Chief Justice or his designate to exercise the power of appointment of an arbitrator.

¹⁶ 2019 SC Online Bombay 528

¹⁷ Appeal No.533 of 2019 dated 18.02.2020



40. Thus, while a Constitutional Court being a Court of Record would have the inherent power to review its order, the power under Section 11(6) had been exercised not by a Court but by the learned Judge as a designate of the Chief Justice of the Bombay High Court.

41. To be noted that Section 11(7) of the Act states that '*a decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to the Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court is final and no appeal including Letters Patent Appeal shall lie against such decision*'. This provision does not, in my view, stand in the way of a Constitutional Court correcting an error apparent on record.

42. With the vesting of the power in the High Court, with effect from 15.10.2015, such High Court being a Court of Record under Article 215 of the Constitution of India, the inherent power of correcting an error apparent on record, is always available and cannot be denied. Article 215 of the Constitution states that '*every High Court shall be a Court of record and shall have all the powers of such a court including the power to punish for contempt of itself.*'



43. The Supreme Court, in *Patel Narshi Thakershi and others V. Shri Pradyumansinghji Arjunsinghji*¹⁸ reiterated the Administrative Law principle to the effect that the power to review must be explicit. That proposition was laid down in the context of an order passed by the Government and not by a Constitutional Court.

44. In *M.M.Thomas V. State of Kerala*¹⁹, the Hon'ble Supreme Court was concerned with the power to review a decision rendered under the Kerala Private Forests (Vesting and Assignment) Act, 1971 and the issue for consideration was framed thus: '*Power of review conferred on the Supreme Court under Article 135 of the Constitution is not specifically made applicable to the High Courts. Does it mean that the High Court has no power to correct its own orders, even if the High Court is satisfied that there is error apparent on the face of the record?*' (See paragraph 13 of the judgment). In this context, they say at paragraph 14 as follows:

14. The High Court as a court of record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A court of record is undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. The High Court, as a

¹⁸ 1971 (3) SCC 844

¹⁹ (2000) 1 SCC 666



court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it the High Court has not only power, but a duty to correct it. The High Court's power in that regard is plenary.

45. In *Naresh Shridhar Mirajkar V. State of Maharashtra*²⁰ a nine-Judge Bench of this Court has recognised the superior status of the High Court as a court of plenary jurisdiction being a Court of Record. Reference has been made to *Halsbury's Laws of England 4 th Edn., Vol. 10 para 713* to point out the chief distinctions between superior and inferior Courts in connection with jurisdiction, reiterating that the High Court is a Court of universal jurisdiction.

46. Reference may also be made to the judgment of the Hon'ble Supreme Court in *Naresh Shridhar Mirajkar (supra)* (8 Judges Bench) and *M.V.Elizabeth V. Harwan Investment and Trading (P) Ltd.*²¹ . At paragraph 17 of the SCC report, the Bench says, if the power of correction of record is denied to the High Court, even when it noticed apparent errors, the consequence is that the superior status of the High Court will dwindle. Thus, they conclude that the plenary powers of the High Court would and should include the power of review relating to errors apparent on the face of the record.

²⁰ AIR 1967 SC 1

²¹ 1993 Supp (2) SCC 433



47. On the point, is a recent judgment of the Hon'ble Supreme Court in the case of *Municipal Corporation of Greater Mumbai and another V. Pratibha Industries Limited and others*²². An order had been passed by the High Court in an application filed under Section 9 of the Act seeking certain interim relief.

48. In that application, an order was passed on 27.06.2017 noting the consent of the parties to go for arbitration and appointing an Arbitrator. Pursuant thereto, an application was filed on 03.07.2017 by one of the parties for re-call of the above order on the ground that there was no arbitration clause in the contract between itself and the other party.

49. Convinced with the reason adduced, the High Court had recalled the order appointing the Arbitrator. An appeal had been filed under Section 37 before the Division Bench on the ground that there was no provision for the Court to review its own order and hence the application filed on 03.07.2017 was not maintainable. The order passed by the High Court was defended before the Hon'ble Supreme Court on the ground that the power to recall was inherent in the High Court, being a Court of record. On the other hand, the respondent had

²² (2012) 3 SCC 203



Rev.P.No.2 of 2018 in OP.No.25 of 2017

pointed out that the Arbitration Act was a self-contained code with no statutory power of review.

50. After referring to Article 215 of the Constitution, the Hon'ble Supreme Court reiterated that Constitutional Courts being Courts of record are endowed with the power and jurisdiction to recall their own orders in light of several judgments, such as *National Sewing Thread Co. Ltd. V. James Chadwick and Bros. Ltd.*²³, *R.M.A.R.A. Adaikappa Chettiar V. R. Chandrasekara Thevar*²⁴, *Secy. of State for India V. Chellikani Rama Rao*²⁵, *Shivdev Singh V. State of Punjab*²⁶, *M.M.Thomas* (supra) and *Naresh Shridhar* (supra). The order of the Division Bench was set aside.

51. In light of the detailed discussion above, this Review Petition is found maintainable and allowed.

27.11.2023

Index: Yes/No
Speaking order
Neutral citation: Yes
Vs/sl

To

State Express Transport Corporation,

23 AIR 1953 SC 357

24 1947 SCC Online PC 53

25 1916 SCC Online PC 42

26 AIR 1963 SC 1909



Rev.P.No.2 of 2018 in OP.No.25 of 2017

Tamil Nadu Limited (SETC),
Rep. by its Managing Director,
Thiruvallur House,
No.2, Pallavan Salai,
Chennai-600 002.

Dr.ANITA SUMANTH, J.

Vs/sl

Rev.P.No.2 of 2018
in
O.P. No.25 of 2017



WEB COPY



Rev.P.No.2 of 2018 in OP.No.25 of 2017

27.11.2023



WEB COPY



Rev.P.No.2 of 2018 in OP.No.25 of 2017

Review Petition No.2 of 2018
Dr.ANITA SUMANTH,J.

This Review Petition has been allowed on 27.11.2023. Thereafter, there was a mention made for appointment of an Arbitrator.

2. The matter is listed today under the caption 'for being mentioned' for that purpose.

3. Since both learned counsel leave it to the Court to appoint an Arbitrator, only pointing out that the value of the claims would be less than Rs.5.00 crores, Mr.J.Justin David, Retired District Judge, OAK, B1, Maple Orchard, Ben Foundation, Padikuppam Road, Anna Nagar West, Chennai – 600 040 is appointed as Arbitrator. Learned Arbitrator is at liberty to fix the terms of his appointment.

20.12.2023

sl