

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

THURSDAY, THE TWENTY FIRST DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SRI JUSTICE N.V.SHRAVAN KUMAR**

WRIT PETITION NO: 21810 OF 2004

Between:

M/s Surendera Enterprises, a Proprietary Concern, at 4, 11th Cross Street, Nungambakka, Contractor Chennai, rep. by its GPA Holder Ch. Baba Prasad Reddy, S/o. late Veera Reddy, aged about 47 yrs, R/o.8-2-693, Road No.12

...PETITIONER

AND

1. Union of India, rep by, Engineer-in-Chief, Engineer-in-Chief's Branch Army Headquarters, Kashmir House, DHO PO New Delhi.
2. The Chief Engineer (R&D), Picket, Secunderabad, D/o Venkateshwarlu, S.G.Teacher, P.S. Makkapally, Gurrampod Mandal, Nalgonda Dist.
3. The Garrison Engineer (I), R&D, Chandrayangutta, Kanchanbagh, Hyderabad.
4. Sri T.K.Saha, Sole Arbitrator C/o. CWE, Kirkee, Ranga Hills Road Kirkee, Pune-411 003.
5. K. Ravi Kishore, CE (QS & C), Sole Arbitrator, Military Engineering Service, Golconda, Hyderabad
6. Sri Satish Chander, Chief Engineer (QS & C) panel of Arbitrators, (Pune), CWE Pune Complex, Gen. Cariappa Merg, Pune Camp, Pune 411001.

(R5 is impleaded as per court order dt. 24-8-2006 in WP.MP.14629/2006)

(R6 is impleaded as per court order dt.11/02/2009 in WP.MP.2683/2009)

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue appropriate writ, order or direction, more particularly a writ of Mandamus, declaring the action of respondent No1. in appointing respondent No.4 herein as sole arbitrator in the matter of CA No.CERD/SEC/17 of 87-88, PROVN OF ACCN FOR ADVANCED ELECTROSLAG TECHNOLOGY FACILITY AT DMRL, HYDERABAD vide letter bearing No.13600/SC/516/EB, dt.24.6.2004 as

illegal, arbitrary and opposed to law and consequently issue necessary directions termination the arbitration proceedings.

I.A. NO: 1 OF 2004(WPMP. NO: 28591 OF 2004)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings before respondent No.4 herein in the matter of CA.No.CERD/SEC/17 of 87-88: PROVN OF ACCN FOR ADVANCED ELECTROSLAG TECHNOLOGY FACILITY AT DMRL, HYDERABAD pending disposal of WP.No. /2004.

I.A. NO: 1 OF 2006(WPMP. NO: 5279 OF 2006)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to set aside orders dt. 17-2-2006 dismissing WP No. 21810/2004 for default and restore the same to its file.

I.A. NO: 3 OF 2006(WPMP. NO: 29310 OF 2006)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to receive the addition material papers viz., extract of Article 48 of the General Conditions of Contract, on record in Writ Petition No. 21810 of 2004.

I.A. NO: 1 OF 2005(WVMP. NO: 2715 OF 2005)

Between:

1. Union of India, rep by, Engineer-in-Chief, Engineer-in-Chief's Branch Army Headquarters, Kashmir House, DHO PO New Delhi.
2. The Chief Engineer (R&D), Picket, Secunderabad, D/o Venkateshwarlu, S.G.Teacher, P.S. Makkapally, Gurrampod Mandal, Nalgonda Dist.
3. The Garrison Engineer (I), R&D, Chandrayangutta, Kanchanbagh, Hyderabad.

...PETITIONERS/RESPONDENTS No.1 TO 3

AND

1. M/s Surendera Enterprises, a Proprietary Concern, at 4, 11th Cross Street, Nungambakka, Contractor Chennai, rep. by its GPA Holder Ch. Baba

Prasad Reddy, S/o. late Veera Reddy, aged about 47 yrs, R/o.8-2-693,
Road No.12

**...RESPONDENT/
WRIT PETITIONER**

2. Sri T.K.Saha, Sole Arbitrator C/o. CWE, Kirkee, Ranga Hills Road Kirkee,
Pune-411 003.
(R2 Not necessary)

**...RESPONDENT/
RESPONDENTS No.4**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim orders passed by this Hon'ble Court on 31-1-2005 in WPMP NO. 28591/2004 in WP No. 21810/2004.

Counsel for the Petitioner: SRI J.PRABHAKAR

**Counsel for the Respondent Nos.1 TO 3: SRI GADI PRAVEEN KUMAR, Dy.
SOLICITOR GENERAL OF INDIA**

Counsel for the Respondent No.4: SRI B.NARAYANA REDDY

Counsel for the Respondent Nos.5 & 6: --

The Court made the following: ORDER

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR

WRIT PETITION No. 21810 OF 2004

ORDER: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr.J.Prabhakar, learned Senior Counsel, for the petitioner.

Mr.Gadi Praveen Kumar, Deputy Solicitor General of India, for the respondent Nos.1 to 3.

2. In this writ petition, the petitioner *inter alia* seeks a writ of Certiorari for quashment of the order dated 24.06.2004 by which the respondent No.4 has been appointed as Sole Arbitrator to adjudicate the dispute between the parties.

3. Facts leading to filing of this writ petition, briefly stated, are that the respondent Nos.1 to 3 invited tenders for making a provision of accommodation for Advanced Electro Slag Technology Facility at DMRL, Hyderabad. The petitioner participated in the aforesaid tender and was the successful tenderer. The tender of the petitioner was accepted on

27.05.1987. The date of commencement of the contract was 30.05.1987 and the same was to be completed up to 31.03.1990. The final bill was prepared on 13.08.1991 in which an amount of Rs.6,31,733/- was sought to be recovered from the petitioner. The petitioner was asked to pay the aforesaid amount on or before 21.11.1994.

4. On refusal of the petitioner to pay the aforesaid amount, the respondent Nos.1 to 3 invoked the arbitration clause and appointed the respondent No.4 as an Arbitrator. The petitioner thereupon has filed this writ petition in which validity of the order dated 24.06.2004, by which the respondent No.4 has been appointed as an Arbitrator, has been assailed.

5. Learned Senior Counsel for the petitioner submitted that the claims of the respondent Nos.1 to 3 are barred by limitation. It is further submitted that in view of amendment to Section 12(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'), a former employee of the respondent Nos.1 to 3 cannot be appointed as an Arbitrator.

In support of his submissions, reliance has been placed on the decision of the Hon'ble Supreme Court in *Ellora Paper Mills Limited v. State of Madhya Pradesh*¹.

6. On the other hand, learned Deputy Solicitor General of India has submitted that the claims of the respondent Nos.1 to 3 are not barred by limitation. It is submitted that instead of Article 137 of the Limitation Act, Article 112 of the Limitation Act, 1963 applies.

7. We have considered the submissions made on behalf of both sides and perused the record.

8. Section 12(5) of the Act, which was amended w.e.f., 23.10.2015, reads as under:

“Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing”.

9. The scope and ambit of the aforesaid amended provision was considered by the Hon'ble Supreme Court in *Ellora*

¹(2022) 3 SCC 1

Paper Mills Limited's case (supra). The Hon'ble Supreme

Court at paragraphs 16 and 17 held as under:

16. As observed hereinabove, the Arbitral Tribunal – Stationery Purchase Committee consisted of officers of the respondent State. Therefore, as per Amendment Act, 2015 – sub-section (5) of Section 12 read with Seventh Schedule, all of them have become ineligible to become arbitrators and to continue as arbitrators. Section 12 has been amended by the Amendment Act, 2015 based on the recommendations of the Law Commission, which specifically dealt with the issue of “neutrality of arbitrators”. To achieve the main purpose for amending the provision, namely, to provide for “neutrality of arbitrators”, sub-section (5) of Section 12 lays down that notwithstanding any prior agreement to the contrary, any person whose relationship with the parties or counsel or the subject matter of the dispute falls under any of the categories specified in the Seventh Schedule, he shall be ineligible to be appointed as an arbitrator. In such an eventuality, i.e., when the arbitration clause is found to be foul with the amended provision, the appointment of the arbitrator would be beyond the pale of the arbitration agreement, empowering the Court to appoint such an arbitrator as may be permissible. That would be the effect of the non obstante clause contained in sub-section (5) of Section 12 and the other party cannot insist upon the appointment of the arbitrator in terms of the arbitration agreement.

17. It cannot be disputed that in the present case, the Stationery Purchase Committee - Arbitral Tribunal comprising of officers of the respondent State are all ineligible to become and/or to continue as arbitrators in view of the mandate of sub-section (5) of Section 12 read with Seventh Schedule. Therefore, by operation of law and by amending Section 12 and bringing on statute sub-section (5) of Section 12 read with Seventh Schedule, the earlier Arbitral Tribunal – Stationery Purchase Committee comprising of the Additional Secretary, Department of Revenue as President and (i) Deputy Secretary, Department of Revenue, (ii) Deputy Secretary, General Administration Department, (iii) Deputy Secretary, Department of Finance, (iv) Deputy Secretary/Under Secretary, General Administration Department, and (v) Senior

Deputy Controller of Head Office, Printing as Members, has lost its mandate and such an Arbitral Tribunal cannot be permitted to continue and therefore a fresh arbitrator has to be appointed as per Arbitration Act, 1996".

10. Thus, it is evident that even in respect of a dispute which has arisen prior to amendment, the Hon'ble Supreme Court has applied the amended provisions of Section 12(5) of the Act subsequent to the amendment. Therefore, in view of the law laid down by the Hon'ble Supreme Court in *Ellora Paper Mills Limited's* case (supra), the order dated 24.06.2004 cannot be sustained in the eye of law and it is, accordingly, quashed. However, liberty is reserved to the respondent Nos.1 to 3 to move this Court by way of petition under Section 11(6) of the Act, if so advised. Needless to state that all contentions are kept upon to be adjudicated in the proceedings, which may be initiated by the respondent Nos.1 to 3 under Section 11(6) of the Act, if so advised.

11. Accordingly, the writ petition is disposed of. There shall be no order as to costs.

As a sequel, miscellaneous petitions, pending if any, stand
closed.

SD/- K.SREERAMA MURTHY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The Engineer-in-Chief, Union of India, rep by, Engineer-in-Chiefs Branch
Army Headquarters, Kashmir House, DHO PO New Delhi.
2. The Chief Engineer (R&D), Picket, Secunderabad., D/o Venkateswarlu,
S.G.Teacher, P.S. Makkapally, Gurrampod Mandal, Nalgonda Dist.
3. The Garrison Engineer (I), RandD, Chandrayangutta, Kanchanbagh,
Hyderabad.
4. One CC to SRI J.PRABHAKAR, Advocate [OPUC]
5. One CC to SRI GADI PRAVEEN KUMAR, Dy. SOLICITOR GENERAL OF
INDIA [OPUC]
6. One CC to SRI B.NARAYANA REDDY, Advocate [OPUC]
7. Two CD Copies

PSK.

GJP

HVS

HIGH COURT

DATED:21/09/2023

ORDER

WP.No.21810 of 2004



**DISPOSING OF THE WRIT PETITION
WITHOUT COSTS.**

8
3/10/23
JH