

Item-5. 07-02-2024

MAT 2102 of 2023
CAN 1 of 2024

sg Ct. 8

M/s. CLS Limited & Anr.
Versus
Union of India & Ors.

Mr. Debabrata Saha Roy, Adv.

Mr. Neil Basu, Adv.

Mr. Rahul Kumar Singh, Adv.

Mr. Sankha Biswas, Adv.

...for the appellant

Mr. Kishore Datta, Ld. AG

Mr. Biswanath Chatterjee, Adv.

Mr. Sobhan Pathak, Adv.

Mr. S.K. Chatterjee, Adv.

...for the respondent nos. 2 to 7

1. There is no disagreement on the part that the writ was decided both on the grounds of maintainability and merits against the appellant.
2. As rightly pointed out by Mr. Debabrata Saha Roy, learned Counsel appearing on behalf of the appellant, that the learned Single Judge on 8th September, 2023 reserved the judgment on the question of maintainability. However, on 10th October, 2023, the learned Single Judge had decided the matter both on maintainability and merits without the matter being heard on merits.
3. Accordingly, the finding of the learned Single Judge on merits is set aside.
4. However, on the question of maintainability of the writ, we find there is an efficacious alternative remedy available in the agreement which contains an arbitration clause. There cannot be any doubt that the disputes between the parties are arising out of an agreement which

contains an arbitration clause and are covered by the arbitration clause.

5. Mr. Saha Roy has submitted that, irrespective of the fact of existence of an arbitration clause, there is a clear violation of Articles 14 and 19 of the Constitution of India as the Oil Company was supplying cylinders more than the requisition and not contemplating under the agreement.
6. This is essentially a dispute which is required to be decided by the forum agreed upon by the parties and cannot be treated to a case where there has been termination of the agency of an Oil Company. It was only in exceptional circumstances that notwithstanding existence of an arbitration clause or an arbitration agreement between the parties, the Constitutional Court shall exercise its extraordinary jurisdiction. Moreover, it has been assured by the learned Advocate General appearing on behalf of the Oil Corporation that no punitive action is contemplating at this stage. Even if any such steps are being contemplated and disclosed to the appellant, the Arbitration and Conciliation Act, 1997 provides an adequate remedy. The learned Counsel for the parties have consented to the appointment of an Arbitrator by this Court.
7. In view thereof, we appoint Justice Ranjit Kumar Bag (Retired) as an Arbitrator to adjudicate the disputes between the parties.
8. We request the learned Arbitrator to fix the remuneration

commensurate with his status at the first sitting of the arbitral proceeding in consultation with the parties.

9. The remuneration of the learned Arbitrator and all other incidental expenses attached to the arbitral proceeding shall be borne by the parties in equal measures.
10. Both the learned Counsel for the parties have prayed for early disposal of the arbitration proceeding.
11. We request the learned Arbitrator to dispose of the reference preferably within a period of four months from the date of completion of the pleadings.
12. We make it clear that the learned Arbitrator shall decide the matter uninfluenced by any order on merits passed by the learned Single Judge since we have set aside the order of the learned Single Judge in so far as the merits of the dispute is concerned. However, we confirm the finding on the maintainability of the writ petition.
13. The appeal is allowed in part. The appeal and the connected application are, accordingly, disposed of.
14. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)