



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO. 4639 OF 2024

. Ramanaiah Naidu, through its proprietor G. Ramanaiah Naidu Vs. Union of India and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Y.N. Sambre, Advocate for petitioner.
Mr. S.A. Chaudhari, Advocate for respondent No.1.
Mr. C.S. Samudre, Advocate for respondent Nos. 2 to 4.

**CORAM : BHARATI DANGRE &
ABHAY J. MANTRI, JJ.**

DATED : 08-10-2024

1. Mr. Yashovardhan Sambre, the learned Counsel, relying upon the instructions issued on 7.4.2017, by the Civil Engineering Division of the Coal India Limited (CIL) to the General Manager (Civil)/General Manager (CMC) has prayed for reference of the dispute arising out of contract between the petitioner and respondent Nos. 2 to 4 for arbitration.

He do not dispute the fact that a civil suit is already pending between the parties but it is his specific contention that in order to encourage arbitration, a mode of alternative dispute resolution, Coal India Limited has specifically issued the instructions which describe that even in case of the contracts, which are executed in the past or in respect of the existing work order/contract, it is open to refer the dispute to arbitration, though it may not be definitely done merely on issuance of the said guidelines.

Sub-clause 5, therefore, contemplate that before referring the matter for arbitration, consent of the other party/contractor is necessary and once the contractor agree for settlement of dispute arising out of contracts through arbitration, an agreement may be signed between the employer and the contractor, for referring the dispute to a sole Arbitrator, who is to be appointed by Competent Authority of CIL/CMD of the subsidiaries, as the case may be.

On behalf of the petitioner, it is urged before us that the petitioner is all ready and willing to have the dispute referred for arbitration.

2. Mr. Sambre, however face vehement opposition from Mr. Samudre, the learned Counsel representing the respondent Nos. 2 to 4, and by relying upon the guidelines dated 7.4.2017, and in particular clause 5, it is his specific submission that the stipulation contained in the said guideline for referring the disputes to arbitration, is not a mandatory implication and definitely would not constitute an Arbitration Agreement under Section 7 of the Arbitration and Conciliation Act, 1996, as according to him, it is a well settled position of law that an arbitration agreement must disclose a determination and obligation on behalf of the parties to refer the dispute to arbitration.

He would rely upon the decision of the Hon'ble Apex Court in case of *Jagdish Chander Vs. Ramesh Chander*, (2007)5 SCC 719, where it has been categorically held that the words indicated in the clause in order to construe them to be amounting to arbitration clause, must necessarily disclose an obligation on part of the parties to have their dispute referred to arbitration and shall not merely contemplate a possibility of going to arbitration.

Relying upon the observations of the Hon'ble Apex Court to the following effect, it is his submission that the clause No. 5, in the guidelines, even if, incorporated in form of an Arbitration Agreement, would not be construed to be so and he would base his argument on the following observation in particular “*where there is merely a possibility of the parties agreeing to arbitration in future, as contrasted from an obligation to refer disputes to arbitration, there is no valid and binding Arbitration Agreement*”.

3. Mr. Samudre has also placed reliance on case of ***Mahanadi Coalfields Ltd and another Vs. IVRCL AMR Joint Venture, 2022 SCC OnLine SC 960***, where their Lordships of the Hon'ble Apex Court had an opportunity to deal with the very same policy letter dated 7.4.2017 and rejected the contention that, it amounts to an arbitration clause, making reference to arbitration mandatory and we would reproduce the specific observations:

“15. We are unable to subscribe to the submission which has been urged on behalf of the respondent based on the policy letter dated 7 April 2017. The communication which has been issued by CIL refers to the possibility of a consensual resolution of disputes or differences through arbitration as neither the CIL manuals nor the contract document, at the time, contained a clause regarding arbitration. However, it has been submitted that once the contractor has agreed to settle a dispute through arbitration, the agreement may be signed between the employer and the contractor for reference to arbitration, by a person to be appointed by the competent authority of CIL or, as the case may be, the Chairman and Managing Director of the subsidiaries.

*16. The communication dated 7 April 2017 merely indicates a desire on behalf of CIL to have disputes related to work contracts settled by arbitration. It requires both the parties to arrive at a further agreement to proceed to arbitration when the dispute arises. Therefore, in view of the principles laid down in *Jadgish Chander (supra)*, following a line of precedent, clause 5 in the aforesaid communication cannot be construed as an arbitration agreement between the appellants and the respondent in terms of section 7 of the 1996 Act so as to compel the appellants to appoint an arbitrator”.*

4. In the wake of the above, since the respondent authorities cannot be bound by clause No. 5 of the said policy, though the contractor is ready to be referred to arbitration, as it cannot be construed as a voluntary reference of the dispute to arbitration, particularly when the respondent is vehemently opposing the reference, on the count that the civil suit is already pending and it is at the stage of evidence.

Therefore, finding no substance in the petition, the same is liable to be dismissed and is accordingly dismissed.

(ABHAY J. MANTRI, J.)

(BHARATI DANGRE, J.)

R.S.Belkhede, PA.