

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE**

HON'BLE SHRI JUSTICE ANAND PATHAK

ARBITRATION CASE No. 85 OF 2021

BETWEEN:-

**MEINHARDT SINGAPORE PTE. LTD.
HAVING ITS CORPORATE OFFICE AT
PLOT NO.1 & 2 TOWER A, 4th FLOOR
(SMARTWORKS) SECTOR-125, NOIDA
UTTAR PRADESH-201301 THROUGH THE
AUTHORIZED REPRESENTATIVE ARUN
KUMAR GUPTA AGED 76 YEARS, S/O LATE
SHRI M.K.GUPTA, DIRECTOR
(CONTRACTS)**

.....PETITIONER

(BY SHRI SANDEEP S. TIWARI - ADVOCATE)

AND

**BHOPAL MUNICIPAL CORPORATION
(BMC) HARSHWARDHAN COMPLEX, MATA
MANDIR, BHOPAL, MADHYA PRADESH -
462003 THROUGH COMMISSIONER,
MUNICIPAL CORPORATION, BHOPAL**

.....RESPONDENT

(BY SHRI SANJAY K. AGRAWAL - ADVOCATE)

**ORDER RESERVED ON : 28.02.2023
ORDER PASSED ON : 22.06.2023**

This petition having been heard and reserved for order coming on for pronouncement this day, this Court passed the following order:-

O R D E R

With consent heard finally.

1. The present application is preferred under Section 11(5)(6) of the Arbitration and Conciliation Act 1996 (hereinafter referred as “Act, 1996”) by the applicant for appointment of Arbitrator seeking following relief:

(i) to appoint Arbitral Tribunal by appointing a Sole Arbitrator for adjudicating of the dispute which has arisen in relation to Contract Agreement dated 10.08.2009, executed between Bhopal Municipal Corporation and Meinhardt Singapore Pte. Ltd. under the Arbitration and Conciliation Act, 1996;

(ii) to pass such order or any further order as this Hon'ble Court may think deemed fit and proper in the interest of justice.

2. The applicant *Meinhardt Singapore Pte. Ltd.* is a multinational company incorporated under the laws of Singapore and established place of business in India in compliance with the provision of Section 592 of the Company Act, 1956. It is providing services in the nature of Integrated Engineering, Planning and Management in the area of Civil, Structural, Infrastructure Engineering, Hydrolics and other related disciplines.

3. Non-applicant Bhopal Municipal Corporation is an Local/Urban body constituted under the Madhya Pradesh Municipal Corporation Act, 1946.

4. Non-applicant/Municipal Corporation invited expression of

Interest-cum-Request for proposal in the month of January, 2009 from the consultants to provide “Consultancy Services” for low cost housing and channelization of Nallahs in Bhopal under scheme of Jawahar Lal Nehru National Urban and Rural Mission (JNNURM) sponsored by the Government of India. Applicant stood successful in the bid.

5. Municipal Corporation sent a letter of acceptance dated 30.07.2009 while accepting the proposal of applicant for the said project. Consequent to it, contract agreement was executed on 10.08.2009 between Bhopal Municipal Corporation and the applicant for providing project, management, consultancy services as referred above. Clause-14 of the aforesaid contract agreement provided Dispute Resolution through Arbitration.

6. It appears that since October, 2011 friction started. Different letters filed with the application indicate that both the parties were not at the same page regarding certain issues. Ultimately, on 16.09.2019 applicant sent a legal notice to invoke arbitration. It is the grievance of the applicant that Bhopal Municipal Corporation did not redress the grievance and failed to appoint the arbitrator suggested by the applicant. Therefore, this application has been preferred.

7. Learned counsel appearing for the applicant referred the contents of agreement dated 10.08.2009 and especially Clause-14 to bring home the fact that in case of any dispute and in the event of failure of discussions, it is to be settled as per the mechanism provided in Clause-14. Since no heed has been paid to the prayer of applicant to appoint arbitrator, therefore, this application has been preferred. Learned

counsel for the applicant placed reliance over **M/S Duro Felguera S.A vs M/S. Gangavaram Port Limited, (2017) 9 SCC 729** and **Vidya Drolia and Others Vs. Durga Trading Corporation** reported in **(2021) 2 SCC 1** in support of his submissions.

8. It is the submission of learned counsel for the applicant that after the amendment in the year 2015, in Arbitration and Conciliation Act, 1996, only thing is to be seen is agreement and therefore, as per agreement matter deserves to be referred to the arbitration and arbitrator be appointed for dispute resolution.

9. Learned counsel for the respondent Bhopal Municipal Corporation vehemently opposed the prayer and submits that a contract for providing project management consultancy services (P.M.C.S.) for the development of low cost housing at different sites was given to the applicant. As per agreement, infrastructure development of scattered slum for urban poor at 11 different sites and channelization of Nalaha in Bhopal City under JNNURM was awarded to the applicant. Applicant approached the authority for payment of outstanding amount but the same has not been settled. Therefore, a legal notice dated 16.09.2019 to invoke the clause of arbitration was sent to the applicant. Since the request was not accepted by the respondent/non-applicant therefore, the present application has been filed.

10. According to the learned counsel, said application is not maintainable because it is a Works Contract as defined under Section 2 (i) of Madhya Pradesh Madhyastam Adhikaran Adhiniyam, 1983 (hereinafter referred as “Adhiniyam, 1983”). Contract was awarded by

the Municipal Corporation, Bhopal which is a Public Undertaking as defined under Section 2 (g) of the Adhiniyam, 1983. Since the contract in question is a Works Contract, any dispute relating to the said contract can only be agitated in accordance with the provisions contained in the Adhiniyam, 1983. Learned counsel for the State relied upon the judgment of Hon'ble Apex Court in the case of **MP Rural Road Development Authority Vs. L.G. Chaudhari and another, (2018) 10 SCC 826** wherein it has been held that provision of Arbitration and Conciliation Act, 1996 stands excluded by the Adhiniyam, 1983.

11. It is further submitted that as per Clause-14 of the contract, applicant has not approached the authority to amicably settle the dispute and directly approached this Court for dispute resolution. As submitted, applicant failed to explain the delay in approaching the Court at such belated stage because according to the respondent, applicant is raising a stale claim whereby the contract awarded to the applicant relates back to the year 2009. He prayed for dismissal of application.

12. Heard the learned counsel for the parties at length and peruse the documents appended thereto.

13. This is a case where applicant entered into an agreement with non-applicant on 10.08.2009 to perform the services specified in terms of reference which was an integral part of agreement. Therefore, applicant's role was of service provider in the contract and he had to render the service as specified in the agreement. Clause-14 deals in

respect of dispute resolution and same is reiterated for ready reference:-

14. Dispute Resolution and Arbitration

Any dispute, controversy or claim arising out of or relating to this agreement or breach or termination thereof shall be amicably resolved through discussions between the client and the consultant, failing which the dispute may be settled under the rule of Indian Arbitration Act, 1996 by three arbitrators appointed, one each by the client and the consultant and the third by mutual agreement of these two arbitrators under such rules. The said arbitrators shall have full power to open up review and revise any decision, opinion, instruction determination certificate or evaluation of the Consultants and the client related to the dispute.

In the event of failure of these discussions and judicial resolution becoming necessary, then and only in that event, the matter shall be referred to the courts of Bhopal, Madhya Pradesh.

14. In 2011, friction caused in the working of parties and therefore, as per own submissions of applicant, on 13.10.2011 applicant sent a letter requesting non-applicant to release the salary of the staff members deployed at the site. Thereafter, matter lingered on and ultimately on 16.09.2019 notice was given to invoke arbitration. Since, non-applicant/Bhopal Municipal Corporation raised the point regarding jurisdiction, therefore, it is apposite to deal with the said objection at

the first instance.

15. Section 2 (i) defines “**Works Contract**” which reads as under:-

2 [(i) “works-contract” means an agreement in writing for the execution of any work relating to construction, repair or maintenance of any building or superstructure, dam, weir, canal, reservoir, tank, lake, road, well, bridge, culvert, factory, work-shop, powerhouse, transformers or such other works of the State Government or Public Undertakings as the State Government may by notification, specify in this behalf at any of its stages, entered into by the State Government or by an official of the State Government or by Public Undertakings or its official for and on behalf of such Public Undertakings and includes an agreement for the supply of goods or material and all other matters relating to the execution of any of the said works.

(2) Words and expressions used but not defined in this Act, but defined in the Arbitration Act shall have the meanings assigned to them in the Arbitration Act.

16. It appears that in the year 2017 w.e.f. 17.01.2017 said definition of Works Contract was substituted by Madhya Pradesh Act No.7 of 2017 and now the definition is as under:-

[(i) “works-contract” means an agreement in writing or a letter of intent or work order issued for

the execution of any work relating to construction, repair or maintenance of any building or superstructure, dam, weir, canal, reservoir, tank, lake, road, well, bridge, culvert, factory, work-shop, powerhouse, transformer or such other works of the State Government or Public Undertakings or of the Corporations of the State as the State Government may, by notification, specify in this behalf at any of its stages, entered into by the State Government or by an official of the State Government or by Public Undertakings or Corporation or by any official of the State Government for and on behalf of such Corporation or Public Undertakings and includes an agreement for supply of goods or material and all other matters relating to the execution of any of the said works and also includes the services so hired for carrying out the aforesaid works and shall also include all concession agreement, so entered into by the State Government or public undertakings or Corporation, wherein a State support is involved or not.”

2[The agreements in writing for the execution of the work relating to construction, repair or maintenance of electric lines, water supply and sewerage/drainage system shall also be “works contract”]

17. Since substitution of this definition incorporates services so hired for carrying out the works including all concession agreements so entered by the State Government or Public Undertaking, therefore, agreement like present one whereby applicant is extending services as consultant also includes under Works Contract. Said aspect has been discussed by the Full Bench of this Court in the case of **Viva Highways Ltd. vs Madhya Pradesh Road Development Corporation Ltd., 2017 (2) MPLJ 681 (FB), (2017) SCC Online MP 1448** and held that amendment in definition of Works Contract is clarificatory in nature and is retrospective in operation. Since earlier definition of Works Contract is “Substituted” and not “Superseded” hence, it will be presumed that amended definition is in force from the date un-amended definition came into being.

18. As per Section 2 (g) of the Act, definition of Public Undertaking is given it reads as under:-

(g) “Public Undertaking” means a Government Company within the meaning of clause (45) of Section 2 of the Companies Act, 2013 (No.18 of 2013) and includes a corporation or other statutory body by whatever name called in each case, wholly or substantially owned or controlled by the State Government;

19. Since Bhopal Municipal Corporation is a Public Undertaking and services rendered by the applicant falls under the Works Contract as defined in the Adhinyam, 1983, therefore, remedy lies with the applicant to make reference under Section 7 of the Madhyasthan

Tribunal. Section 7(1) gives liberty either to the parties to refer the dispute to the Tribunal where agreement contains an arbitration clause or not. Said aspect has been dealt with by the three Judge Bench of the Hon'ble Apex Court in the case of **M.P. Rural Road Development Authority (supra)**. While dealing with the subject, Apex Court considered the scope of Section 2 (4) of the Act, 1996.

10. Proceedings under the M.P. Madhyasthan Adhikaran Adhiniyam, 1983 (the State Act) were pending before the M.P. Arbitration Tribunal at Bhopal. The respondent raised an objection that in view of Va Tech Escher Wyass Flovel Ltd. V. MPSE B. the Arbitration and Conciliation Act, 1966 Act will apply and the State Act will not apply. This objection was rejected. The respondent preferred a writ petition. The High Court has upheld the objection and quashed the proceedings under the State Act.

11. The learned counsel for the State has drawn our attention to Section 2(4) of the Central Act which is as follows:-

“2. (4) This part except sub-section (1) of Section 40, Sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration

agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder.”

12. It was pointed out that the above provision was in pari materia with [Section 46](#) of the Arbitration Act, 1940 which was interpreted by this Court in [Dhanrajamal Gobindram v. Shamji Kalidas & Co.](#) This Court held:-(AIR p.1293, para 24)

“24. ...[Section 46](#) makes the provisions of any other enactment or any rules made thereunder to prevail over the [Arbitration Act](#), if inconsistent with the latter. In view of these several provisions, it is clear that the [Arbitration Act](#) applies to all Arbitrations and Chapter II makes it applicable also to arbitrations, in which the arbitration agreement is asked to be filed in Court under [Section 20](#) subject, however, to this that the provisions of any other enactment or rules made thereunder, if inconsistent with the [Arbitration Act](#), are to prevail.”

13. The same view was taken in [Punjab State Electricity Board, Mahilpur v. Guru Nanak Cold Storage & ICE Factory, Mahilpur and Another](#) in para 12 which is as follows: (SCC pp. 416-17)

“12. “Sections 6(1), 7, 12, 36 and 37 have expressly excluded from the operation of statutory arbitration. The rest of the provisions per force would get attracted. But the provisions of the appropriate statute or rules should necessarily be consistent with the provisions of the *Arbitration Act*. In that event, despite absence of an arbitration agreement, rest of the provisions of *Arbitration Act* would apply (as if there was an arbitration agreement between the parties) and the dispute becomes arbitrable under the *Arbitration Act*, as if there was an arbitration agreement between the parties. If there is any inconsistency, then the provisions of the *Arbitration Act* do not get attracted. Section 33 expressly gives power to the civil court to decide the existence or validity of the arbitration agreement or the award as such. If this question was to arise, necessarily the civil court would be devoid of jurisdiction to decide the dispute on merits but only in the forum of arbitration. The existence and validity of the arbitration agreement should be decided by the civil court. The arbitrator cannot clothe himself with jurisdiction to conclusively decide it by himself as a

jurisdictional issue. It is for the court to decide it. The dispute on merits should be resolved by the arbitrator and the legality of the award would be subject to decision by the court under Section 33”.

14. In view of above, we are of the view that the State law will prevail in terms of Section 2(4) of the Central Act. The reference under the State law was valid and could be decided in accordance with the State. Accordingly, we set aside the impugned order and restore the proceedings before the Tribunal. The appeal is, accordingly, allowed in above terms.

20. Since question of forum goes to the root of the matter and therefore, appropriate remedy available to the applicant is to make reference to the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 and not the appointment of Arbitrator as per Section 11 of Act, 1996. This Court cannot appoint an Arbitrator when the alternative and overriding remedy is available under the Adhinyam, 1983.

21. Application stands dismissed with liberty to avail alternative remedy.

**(ANAND PATHAK)
JUDGE**

Ashish*