

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CMA.No.1141 of 2018 & CRP.No.6787 of 2018**C.M.A.NO.1141 OF 2018****Between:**

- 1.The Government of Andhra Pradesh, represented by Superintending Engineer, S. Chandra Sekhara Rao, s/o S. Kotaiah, aged about 55 years, Pulichintala Project Circle, Jaggaiahpet, Krishna District works with Government of Andhra Pradesh.

...Appellant**AND**

- \$1.M/s. SCLCR 18g Joint Venture and 3 others, 8-2-502/1/a, 1st floor, Jivi Towers, Road no.7, Banjara Hills, Hyderabad -500 034, represented by the Authorised Signatory and Power of Attorney Holder, D. Srinivas, s/o D.V. Naidu, aged about 47 years, Executive Director, M/s. SCLCR 18 g. Joint Venture, 8-2-502/1/a, 1st Floor, Jivi Towers, Road no.7. Banjara Hills, Hyderabad.
2. Honble Justice J Eswara Prasad, Plot no.1189, Road no.60, Jubilee Hills, Hyderabad.
3. Honble Justice Motilal B Naik, D.No.11-13-571/a. Haripuram Colony, S.R. Nagar, Hyderabad.
4. Honble Justice Vamana Rao, Plot Nos, 202 and 203, Mahasiva Apartments, Hyderabad. (Respondent Nos.2 to 4 are not necessary parties to this petition)

...RESPONDENT(S):**CIVIL REVISION PETITION NO: 6787/2018****Between:**

Government of Andhra Pradesh, rep by Superintending Engineer, Male Venkata Ramana S/o.Nagaiah, Pulichintala Project Circle, Jaggaiahpet, Krishna District works with Government of Andhra Pradesh.

...PETITIONER**AND**

\$ M/S SCLCR 18 G, Joint Venture, 8-2-502/1/A, 1st floor, Jivi Towers, road No.7, Banjara Hills, Hyderabad 500034 rep by the Authorised Signatory and power of Attorney Holder D.Srinivas S/o.D.V.Naidu aged about 50 years , Executive director, M/s.SCL-CR 18 G.Joint Venture, 8-2-502/1/A, 1st floor, Jivi Towers, Road No.7, Banjara Hills, Hyderabad

...RESPONDENT**Date of Judgment pronounced on : 06-03-2026****HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO****HON'BLE SRI JUSTICE T.C.D. SEKHAR**

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : Yes/No
3. Whether the Lordship wishes to see the fair copy
Of the Judgment? : Yes/No

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI** HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO****HON'BLE SRI JUSTICE T.C.D. SEKHAR****+ CMA.No.1141 of 2018 & CRP.No.6787 of 2018****% Dated: 06-03-2026****C.M.A.NO.1141 OF 2018****Between:**

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...RESPONDENT

! Counsel for Appellant

:The learned Advocate General and Sri Yathindra Dev. D, the learned Government Pleader, in the office of the Learned Advocate General, appearing for the appellants.

! Counsel for Respondent

: Sri B. Adinarayana Rao, the learned Senior Counsel representing on behalf of Sri Srinivasa Rao Bodduluri, the learned counsel, appearing for the respondents.

<GIST :

>HEAD NOTE:

? Cases referred:

¹ 2016 (1) ALD 185² 2015 (4) ALD 380³ (2018) 2 SCC 182 (paras 26 to 29)⁴ (2025) 9 SCC 76

⁵2015 (4) ALD 380

⁶ 2016 (1) ALD 185

⁷ (1977) 1 SCC 484:AIR 1977 SC 1701

⁸ AIR 1964 SC 669

⁹ 2015 (4) ALD 380

¹⁰ (2003) 3 SCC 472

¹¹(2003) 3 SCC 472

¹²(2003) 3 SCC 472

¹³ (2018) 2 SCC 182 (paras 26 to 29)

APHC011424862016



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3529]

FRIDAY, THE SIXTH DAY OF MARCH
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

CIVIL MISCELLANEOUS APPEAL NO: 1141/2018 & CIVIL REVISION
PETITION NO.6787 OF 2018

C.M.A.NO.1141 OF 2018

Between:

1. THE GOVERNMENT OF ANDHRA PRADESH, REPRESENTED BY SUPERINTENDING ENGINEER, S. CHANDRA SEKHARA RAO, S/O S. KOTIAH, ACED ABOUT 55 YEARS, PULICHINTALA PROJECT CIRCLE, JAGGAIHPET, KRISHNA DISTRICT WORKS WITH GOVERNMENT OF ANDHRA PRADESH

...APPELLANT

AND

1. M/S SCLCR 18G JOINT VENTURE AND 3 OTHERS, 8-2-502/1/A, 1ST FLOOR, JIVI TOWERS, ROAD NO.7, BANJARA HILLS, HYDERABAD -500 034, REPRESENTED BY THE AUTHORISED SIGNATORY AND POWER OF ATTORNEY HOLDER, D. SRINIVAS, S/O D.V. NAIDU, AGED ABOUT 47 YEARS, EXECUTIVE DIRECTOR, M/S SCL-CR 18 G. JOINT VENTURE, 8-2-502/1/A, 1ST FLOOR, JIVI TOWERS, ROAD NO.7. BANJARA HILLS, HYDERABAD.

2. HONBLE JUSTICE J ESWARA PRASAD, PLOT NO.1189, ROAD NO.60, JUBILEE HILLS, HYDERABAD.

3. HONBLE JUSTICE MOTILAL B NAIK, D.NO.11-13-571/A. HARIPURAM COLONY, S.R. NAGAR, HYDERABAD.

4.HONBLE JUSTICE VAMANA RAO, PLOT NOS, 202 AND 203, MAHASIVA APARTMENTS, HYDERABAD. (RESPONDENT NOS.2 TO 4 ARE NOT NECESSARY PARTIES TO THIS PETITION)

...RESPONDENT(S):

Appeal Under Section_____against ordersTo set aside the order dated 02-06-2016 passed in AOP.No.23/2015 on the file of the Hon'ble Principal District Judge,Krishna,Machilipatnam as well as the Award dated 3-10-2013 of the Arbitral Tribunal and to pass

IA NO: 1 OF 2018

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 condone the delay of 766 days in representing the CMA filed against the judgment and decree dated 02-06-2016 in AOP.No.23 of 2015, on the file of the Hon'ble Principal District Judge, Krishna at Machilipatnam and pass

IA NO: 2 OF 2018

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 grant stay of all further proceedings in E.P.No. 420 of 2017 in A.O.P.No. 23 of 2015, on the file of the Hon'ble X Additional District and Special Session Judge. Krishna at Machilipatnam, including the process of auction/sale of items 1 and 2 of the E.P. Schedule property- Pending disposal of the Civil Miscellaneous Appeal Petition, and pass

IA NO: 1 OF 2019

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

IA NO: 2 OF 2019

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 grant six months time from the date of expiry of the order dated 23.11.2018 passed in IA No.2 of 2018 CMA No.1141 of 2018

IA NO: 3 OF 2019

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 stay granted on 23-11-2018 made in IA.No.2 of 2018 in CMA No.1141 of 2018 and pass

Counsel for the Appellant:

1.THE ADVOCATE GENERAL (AP)

Counsel for the Respondent(S):

1.SRINIVASA RAO BODDULURI

CIVIL REVISION PETITION NO: 6787/2018

Between:

1.GOVERNMENT OF ANDHRA PRADESH, REP BY SUPERINTENDING ENGINEER, MALE VENKATA RAMANA S/O.NAGAI AH, PULICHINTALA PROJECT CIRCLE, JAGGAIHPET, KRISHNA DISTRICT WORKS WITH GOVERNMENT OF ANDHRA PRADESH

...PETITIONER

AND

1.M/S SCLCR 18 G, Joint Venture, 8-2-502/1/A, 1st floor, Jivi Towers, road No.7, Banjara Hills, Hyderabad 500034 rep by the Authorised Signatory and power of Attorney Holder D.Srinivas S/o.D.V.Naidu aged about 50 years , Executive director, M/s.SCL-CR 18 G.Joint Venture, 8-2-502/1/A, 1st floor, Jivi Towers, Road No.7, Banjara Hills, Hyderabad

...RESPONDENT

Petition under Article 227 of the Constitution of India,praying that in the circumstances stated in the grounds filed herein,the High Court may be pleased toto set aside the order dated 24.09.2018 passed in EP No.420 of 2017 in AOP No.23 of 2015 on the file of the Hon'ble X Additional District and Special Sessions Judge, Krishna at Machilipatnam in the interest of justice and pass

IA NO: 1 OF 2018

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 grant stay of all further proceedings pursuant to the order dated 24.09.2018 in EP No.420 of 2017 in AOP No.23 of 2015 on the file of the Hon'ble X Additional District and Sessions Judge, Krishna at Machilipatnam including the process of auction sale of items 1 and 2 of the EP Schedule property pending disposal of the CRP and pass

Counsel for the Petitioner:

1.THE ADVOCATE GENERAL (AP)

Counsel for the Respondent:

1.K SIVA KUMAR REDDY

Date of Reserved : **29.12.2025**
Date of Pronouncement : **06.03.2026**
Date of Upload : **06.03.2026**

The Court made the following Order:

(per Hon'ble Sri Justice R. Raghunandan Rao)

Heard the learned Advocate General and Sri Yathindra Dev. D, the learned Government Pleader, in the office of the Learned Advocate General, appearing for the appellant and Sri B. Adinarayana Rao, the learned Senior Counsel representing on behalf of Sri Srinivasa Rao Bodduluri, the learned counsel, appearing for the respondents.

2. The Government of Andhra Pradesh had taken a decision to construct the Pulichintala Project, for stabilizing the Ayacut in the command area, under the Nagarjuna Sagar and for various other reasons. One of the components of this project was the construction of a Dam and ancillary infrastructure. For this purpose, a tender was issued for execution of the following work:

"Pulichintala Project balancing reservoir Head works by construction of Dam from 0 to 1289 M N.O.F., Left and Right side, Spillway with radial gates arrangements including Civil works for providing 4 Ferrules with trash rack arrangements for Power House, river sluices across Krishna river near Pulichinta (V) Bellamkonda (M) of Guntur and Vazinepalli (V) Mellacheruvu (M) of Nalgonda Districts on engineering, procurement and construction E.P.C. turnkey contract basis as per the scope of work set forth in the bid documents and Operation and

Maintenance of the project for 2(two) years after successful testing and commissioning of the project."

3. The 1st respondent was the successful bidder, in the tender process, and the contract was awarded to the 1st respondent. Thereafter, an agreement was executed, on 30.09.2004, for execution of the said project.

4. The dispute resolution mechanism, under this contract was as follows:

19.4 Obtaining Dispute Adjudication Board's Decision

If a dispute (of any kind whatsoever) arises between the Parties in connection with or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Employer then after a DAB has been appointed pursuant to Sub-Clauses 20.2 [Appointment of the DAB] and 20.3 [Failure for Agrees DAED, either Party may refer the dispute in writing to the DAB for its decision, with a copy to the other Party Such reference shall state that it is given under this Sub-Clause.

For a DAB of three persons, the DAB shall be deemed to have received such reference on the date when the chairman of the DAB receives it. Both Parties shall promptly make available to the DAB all information, access to the Site, and appropriate facilities, as the DAB may require for the purposes of making a decision on such dispute. The DAB shall be deemed to be not acting as arbitrator(s).

Within 84 days after receiving such reference, or the advance payment referred to in Clause 6 of the Appendix General Conditions of the Dispute Adjudication Agreement, whichever date is later, or within such other period as may be proposed by the DAB and approved by both Parties, the DAB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. However, if neither of the Parties has paid in full the invoices submitted by each Member pursuant to Clause 6 of the Appendix, the DAB shall not be obliged to give its decision until such invoices have been paid in full. The decision shall be binding on both Parties, who shall promptly give effect to unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.

If either Party is dissatisfied with the DAB's decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction. If the DAB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference or such payment, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction.

In either event, this notice of dissatisfaction shall state that it is given under this Sub Clause, and shall set out the manner in dispute and the reason(s) for dissatisfaction. Except as stated in Sub-Clause 20.7 [Failure to Comply with Dispute Adjudication Board's Decision) and Sub-Clause 20.8 [Expiry of Dispute Adjudication Board's Appointment), neither Party shall be entitled to attempt any discussion for amicable settlement of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.

If the DAB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the DAB's decision, then the decision shall become final and binding upon both Parties.

19.6 Arbitration

Unless settled amicably, any dispute in respect of which the DAB's decision (if any) has not become final and binding shall be finally settled as per Indian Arbitration Act, 1996.

The arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 (Law and Language).

The arbitrator(s) shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of (or on

behalf of) the Employer, and any decision of the DAB, relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the DAB to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the DAB shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties and the DAB shall not be altered by reason of any arbitration being conducted during the progress of the Works.

5. The 1st respondent had raised certain claims, which were then referred to a D.A.B (which is referred to in all the proceedings, as the first Dispute Adjudication Board). The first D.A.B published its decision, on 31.01.2002, accepting some of the claims of the 1st respondent. This decision was accepted by the appellant and, on the basis of such decision, payments were made. Thereafter, the 1st respondent again raised disputes on two counts. Firstly, that the decision of the First Dispute Adjudication Board (1st D.A.B) was not implemented properly and secondly, on the ground that additional claims had arisen. These disputes were referred to a Second Dispute Adjudication Board, (2nd D.A.B). The members of the first D.A.B. were again constituted as the 2nd D.A.B. The 1st respondent raised 27 claims before

the 2nd D.A.B. After hearing both sides and considering their respective submissions as well as the documents placed before it, the 2nd D.A.B gave its decision, on 09.01.2012. In this decision, some of the claims were rejected and some claims were accepted. The appellant, being dissatisfied, gave notice of its dissatisfaction, dated 03.12.2012. On account of this notice of dissatisfaction, an Arbitral Tribunal was constituted with two former judges of the erstwhile High Court of Andhra Pradesh as arbitrators and a former Chief Justice of the Hon'ble High Court at Madras as well as the Hon'ble high Court of Kerala, as the presiding arbitrator. However, the presiding arbitrator, on being appointed as the Lok Ayuktha, could not continue and a former judge of the erstwhile high court was nominated, by both the learned arbitrators, as the presiding Arbitrator.

6. The 1st respondent filed a claim statement raising 28 claims, which are enumerated below:

- 1) Compensation for delayed payment of the amounts awarded by the first DAB;
- 2) Compensation for the delay in payments consequent to initial incorrect implementation of decisions of First DAB, affecting the cash flow;
- 3) Amount due for delayed payment of escalation charges;

- 4) Amount due towards delay in payment of escalation charges for labour, other material and oils for the gate works resulting in financial crunch;
- 5) Claim towards escalation of cost of steel utilized on work by way of overlaps and wastage resulting in locking up of finances;
- 6) Compensation due to delay in payment of bills;
- 7) Compensation for damages sustained due to fundamental breach of contract by the department during the entire contract period:
- 8) Extra expenditure incurred in the extended period of contract due to prolongation of work;
- 9) Amount payable towards idle charges of machinery for reduced progress of work for reasons beyond the control of the contractor;
- 10) Claim as regards site expenses, overheads and loss of profit;
- 11) Payment due towards banking charges, consequent to borrowings from banks to meet the adverse financial position forced on the claimant;
- 12) Amount due to extra steel provided in the design of gates and other Hydro-Mechanical works over and above National Standards;
- 13) Amount due to extra enforcement steel insisted over that actually required as per National Standards;
- 14) Amount due to installation of additional instruments in Dam than those specified in the agreement;

- 15) Amount due to changes insisted in drawings over and above The National Standards involving extra quantity of concreting;
- 16) Payment of extra cost due to change of Penstock dia 5880 M to 6500 MM;
- 17) Amount due towards non-payment in time for steel placed in the concrete;
- 18) Amount towards extra quantity of concrete due to insistence by the Department to excavate and do concrete beyond the approved levels in stilling basin Blocks 29 to 33;
- 19) Unauthorized recovery of Geo-technical services obtained by the Department;
- 20) Amount to be compensated for the damages under the category "Force Majeure";
- 21) Issue of providing upstream training wall;
- 22) Compensation for inadequate payment for structural steel contrary to the agreement provision;
- 23) Amount due towards payment of steel according to bill of quantities based on the approved drawing as per IS 9401;
- 24.) Reimbursement of bank charges incurred for extension of performance guarantee beyond the original date of completion of work;
- 25) Additional expenditure forced due to insistence of Bank Guarantee for advance payment of steel;
- 26) Irregular recovery of labour cess at 1% from bills;

27) Reimbursement of interest on unauthorized amount recovered by way of interest on mobilization advance beyond extended period of contract;

28) Expenditure incurred by claimant for second DAB's meetings as per Annexures-28 and 28.1.

7. These claims were opposed by the S.E. Pulichintala Project, who filed a statement of defense, along with documents relevant to the defense. After completion of pleadings, both parties had stated that they would not adduce any oral evidence and the claims could be adjudicated on the basis of the documents filed before the Arbitral Tribunal and on the basis of the submissions made on these documents. Basing on the above claims, and contentions raised, on both sides, the Arbitral Tribunal framed the following issues for consideration.

- 1) Whether any reference to FIDIC model contract can be made for the purpose of deciding the present dispute?
- 2) Whether claims not made before the respondent can be made before the DAB or the Arbitral Tribunal?
- 3) Whether claims not made before the DAB can be put forth before the Arbitral Tribunal?
- 4) Whether the claims are barred in terms of the contract?
- 5) Whether the claims are barred by limitation?

- 6) Whether claims which are disallowed by the DAB can be made before the Arbitral Tribunal and in regard to which of those claims?
- 7) Whether the decision of the 02nd DAB is liable to be set-aside?
- 8) Whether any reference to the decision of the 02nd DAB can be made before the Arbitral Tribunal?
- 9) Whether the time specified in the contract by which the decision of The DAB becomes final and binding can be extended with mutual consent?
- 10) Whether claimant is entitled for any of the claims?
- 11) To what relief?

8. The Arbitral Tribunal, after marking Ex.C.1 to C.293 (Ex.C.90 was marked subject to proof of relevancy) on behalf of the 1st respondent and Exs.R1 to R.100 on behalf of Appellant, heard arguments. It appears that additional documents were filed during the course of these submissions. The Arbitral Tribunal, in its award, recorded that even these documents were taken into consideration, though they were not specifically marked, as no objection was raised, to these documents, by either side. The Arbitral Tribunal after hearing both sides, passed its award on 03.09.2013. The presiding arbitrator and one of the learned arbitrators, had passed the majority award. The other learned arbitrator had passed a separate award, dissenting from the award of the majority of the Tribunal.

9. The majority award rejected claims 1, 3, 4, 6, 7, 14, 17, 22 and 27 while granting relief in all the other claims. As a result of this award, a sum of Rs.199.96 crores, approximately, came to be awarded to the 1st respondent. The minority award rejected claims 2 to 11, 14, 17, 18, 20, 22, 24, 25 and 27. Relief was granted in the other claims. However, this relief was restricted to the limits permissible under clause 59 and 69 of APDSS resulting in an award of Rs.10.95 crores.

10. The appellant being aggrieved by this award, filed A.O.P.No.23 of 2015, before the Principal District Judge, Krishna District at Machilipatnam. This petition came to be dismissed by the learned Principal District Judge, Krishna District, on 02.06.2016. Aggrieved by the said order of dismissal, the appellant has approached this Court, by way of the present appeal.

11. The learned Advocate General, as well as Sri D. Yathindra Dev, appearing for the appellant raised the following broad grounds:

A. The arbitral proceedings as well the proceedings before the trial court and this court are vitiated by non-joinder of a necessary party, namely the State of Andhra Pradesh. Even otherwise, the Government of Andhra Pradesh, which is the “employer” was not made a party.

B. Preliminary Specifications 59 and 69 of the A.P.D.S.S., which are part of the contract, restrict the quantum of the compensation that can be claimed, on account of delay in execution of the contract, or on account of delay in payment of contract price. However, the majority award, holding that

these clauses do not apply, had awarded compensation beyond the limits prescribed under these clauses.

C. The award of compensation, in relation to various claims was also assailed.

GROUND A:

12. The contentions of the learned Advocate General are as follows:

(i) The contract is between the employer and the Contractor. Consequently, any dispute would have to be decided between the employer and the contractor. The term 'Employer' has been defined, in clause 1.1.2.2 of the contract documents, to be the Government of Andhra Pradesh. Clause 1.1.2.4 stipulates, that the Superintending Engineer is only a representative of the employer. However, the claims, before the Arbitral Tribunal, were raised against the Superintending Engineer, without making the Government of Andhra Pradesh a party before the Arbitral Tribunal. The award passed by the Arbitral Tribunal would be a nullity and not binding on the Government of Andhra Pradesh.

(ii) Article 300, of the Constitution of India, requires that, in any Suits or proceedings, the Government of Andhra Pradesh shall be sued by the name of the State of Andhra Pradesh. Any deviation, from this requirement, would be fatal to the maintainability of the legal proceedings. Further, these defects cannot be rectified at the appellate stage and such defects can be rectified only during the pendency of the original proceedings. Reliance is placed, on the following judgments. **General Manager, Central Organization for**

Railway Electrification, Allahabad and Others., vs. Y. Parthasarathy and Another¹., and Shyamala Reddy, Pavitranagar, Musherabad, Hyderabad and Others., vs. M/s. Hindustan Petroleum Corporation Ltd., Secunderabad and Others.²

13. Sri B. Adinarayana Rao, the learned Senior Counsel appearing for the 1st respondent would dispute these contentions with the following submissions:

(i) The question of necessary party was never raised before the Arbitral Tribunal or the Trial Court. This contention was also not raised in the grounds of appeal. This contention is being raised, across the bar, in the course of the oral submissions. Such a plea cannot be raised at this stage, in view of the judgment of the Hon'ble Supreme Court in the case of **Union of India vs. Susaka Private Limited and Ors³**.

(ii) The judgments, cited by the learned Advocate General, would not be applicable to the present case in view of the peculiar facts of the present case. The contract agreement itself refers to the Superintending Engineer as the employer. It was the Government of Andhra Pradesh, which had submitted its letter of dissatisfaction to the decision of the 2nd D.A.B which resulted in the arbitral proceedings. As such, the Government of Andhra Pradesh was very much a party to the arbitral proceedings. It is on account of such participation, that the Government of Andhra Pradesh moved the Arbitration O.P before the

¹ 2016 (1) ALD 185

² 2015 (4) ALD 380

³ (2018) 2 SCC 182 (paras 26 to 29)

trial Court, under Section 34 of the Arbitration Act. Apart from this, the present appeal itself came to be filed by the Government of Andhra Pradesh and as such, this contention does not arise. The judgment of the Hon'ble Supreme Court in **ASF Build Tech Private Limited., vs. Shapoorji Pallonji and Company Private Limited.,**⁴ makes it clear that even parties which are not directly involved in the arbitral proceedings would be bound by such proceedings.

Consideration of the Court:

14. Before considering the applicability of the above judgments, to the present case, it is necessary to look at the facts of this case. The tender, inviting bids, was issued by the "Irrigation and CAD (PW) Department, Government of Andhra Pradesh, India, hereinafter called "the employer". However, the contract agreement, executed on 30.09.2004, is between the "Project Administrator and Superintending Engineer, Pulichintala Project Circle, Jaggaiahpetta of Irrigation & CAD Department (hereinafter called "the Employer") of the one part, And M/s Srinivasa Construction Limited-CR18G-Joint Venture, 6-2-913/9/4, 5th floor, Progressive Towers, Khairathabad, Hyderabad-500 004 (hereinafter called "the Contractor") of the other part". The definition of "Employer" contained in the general conditions of contract, at clause 1.1.2.2, reads as follows:

⁴ (2025) 9 SCC 76

Clause 1.1.2.2 “Employer”/“EMPLOYER” means the Irrigation and Command Area Development Department, Government of Andhra Pradesh.

The representative of the employer was defined, in clause 1.1.2.4 as follows:

Clause 1.1.2.4 “Employer’s Representative” is the Superintending Engineer, Pulichintala Project Circle as designated by the Government of Andhra Pradesh for the purpose of the Contract.

15. The definitions in the general conditions of contract defined the employer to be the “Irrigation and CAD (PW) Department, Government of Andhra Pradesh. The contract agreement, executed on 30.09.2004 defines the employer to be the Project Administrator and Superintending Engineer, Pulichinthala Project Circle, Jaggaiahpetta of the Irrigation and CAD (PW) Department. Thus, there is a contradiction between the general conditions of contract and the contract agreement. In the event of such difference, clause 1.5 of the general conditions of contract stipulates that the priority of documents shall be in the following manner:

1.5 Priority of Documents

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the document shall be in accordance with following sequence:

- a) the Contract Agreement;
- b) Letter of Award, notice to proceed

Contractor's Bid

- d) Special Conditions of Contract
- e) General Conditions of Contract
- f) Letter of Tender
- g) any other documents forming part of the Contract.

In view of clause 1.5, the Contract Agreement would have priority, and the employer, under this contract would be the Project Administrator and Superintending Engineer, Pulichinthala Project Circle.

16. The 1st respondent, by letter dated 21.12.2010, had requested the Superintending Engineer to constitute a Dispute Adjudication Board for resolution of disputes, some of which were enclosed to that letter. The Superintending Engineer, by proceedings, dated 13.05.2011, had constituted the 2nd D.A.B. Thereafter, the claims of the 1st respondent were considered by the 2nd D.A.B. which gave it's decision on 09.01.2012. The parties here, were 1st respondent, as claimant, and the "Irrigation and Command Area Department, Government of Andhra Pradesh, represented by Superintending Engineer, Pulichintala Project, Jaggaiahpetta, as respondent. The notice of dissatisfaction, with this decision, was issued on 03.02.2012. The notice, signed by the Superintending Engineer, was issued by the "Irrigation and CAD Department, Government of Andhra Pradesh".

17. The claim statement filed before the Arbitral Tribunal describes the respondent as the Superintending Engineer, Pulichinthala Project Circle.

After the award was passed, the appellant had filed A.O.P.No.23 of 2015 before the Principal District Judge, Krishna District. In this application, the applicant was described as 'The Government of Andhra Pradesh' represented by the Superintending Engineer. The same description continues in the present appeal also. In view of the above facts, the employer, in the present case, applying clause 1.5 of the general conditions of contract, would be the Superintending Engineer. The proceedings before the Second Dispute Adjudication Board as well as the Arbitral Tribunal were against the Superintending Engineer, who is described as the 'Employer' in the contract. Thereafter, the Government of Andhra Pradesh challenged the award, under Section 34 of the Act. In view of the objections, raised by the learned Advocate General, to the maintainability of the appeal, it would have to be seen whether the application moved under Section 34 of the Act, before the Principal District Judge, Krishna District and the subsequent appeal, before this Court, under Section 37 of the Act are maintainable.

18. In **Shyamala Reddy, Pavitranagar, Musherabad, Hyderabad and Others., vs. M/s. Hindustan Petroleum Corporation Ltd., Secunderabad and Others.**⁵ A writ petition was filed against the Government of Andhra Pradesh, among others, before the erstwhile High Court of Andhra Pradesh. This writ petition was disposed of by a learned single judge. An appeal was filed against this order. At that stage, the Division Bench hearing the appeal held that, by virtue of Article 300 and Rule 24 of the Writ

⁵ 2015 (4) ALD 380

proceeding rules, read with Section 79 of the Civil Procedure Code, 1908, the order had been passed against a non-existent party and would be a nullity. However, the Division bench held that, the defect was curable, at the primary forum and not at the appellate stage and remanded the matter, back to the learned single judge, for rectification of the defect. The relevant extract is:

7. Moreover, Section 79 of the C.P.C., also mandated before the Constitution came into force, the same way. The Court cannot change it. But, we are in agreement with His Lordship that it is a curable defect. But the stage of curing in our view is time bound viz., before final disposal. Had this matter been pending before His Lordship, then we would have permitted the writ petitioner to apply for amendment. After the matter is disposed of finally with defect, it cannot be cured at all. Here, final order has been passed. This order, in our view, has been passed on an incompetent proceeding. Therefore, the order is a nullity because the same has been passed as against a non-existent party. Hence, we set aside this judgment and on that ground alone, we restore the writ petition for fresh hearing enabling to remove the defect. In the event, the 1st respondent-writ petitioner takes suitable steps for amendment of the cause title in accordance with the provision of Article 300 of the Constitution read with Section 79 of the C.P.C., and the Writ Rules of this Court within seven days from the date of receipt of a copy of this order, the Honble trial Judge shall decide the matter afresh in accordance with law, uninfluenced and without being swayed by earlier decision and observations. The Honble trial Judge shall decide the matter in accordance with law within a period of three months from the date of production of this order.

19. In **General Manager, Central Organization for Railway Electrification, Allahabad and Others., vs. Y. Parthasarathy and Another⁶**, the respondents, in the Appeal before the erstwhile High Court of Andhra Pradesh, had initiated arbitral proceedings against the appellants, by way of an application, under section 11 of the Arbitration and Conciliation Act,1996. This application was allowed and a learned arbitrator was

⁶ 2016 (1) ALD 185

appointed. An appeal filed against this order of appointment was dismissed by the Hon'ble Supreme Court. Thereafter, the learned arbitrator, appointed by the Hon'ble High Court had passed an award, in favor of the respondents. Two separate petitions, under section 34 of the Act, were filed by the appellants. These were disposed of with a modification of the Award. In the appeals, the appellants contended that the appointment of the learned arbitrator itself was invalid as the Union of India was not impleaded as a party, in the application filed under section 11 of the Act. The Division Bench held that, in suits/proceedings against the Central Government, where it relates to Railways, the Union of India must be named as a party. The Division Bench noticed that only the General Manager, railway electrification and the Chief Project Manager, railway electrification were party to the application, under section 11 and held that the order appointing the learned arbitrator was not binding on the Union of India and consequently all the arbitral proceedings would have to be treated as invalid. The contention that the said issue cannot be gone into as the Hon'ble Supreme court had already confirmed the order of the Hon'ble High Court, appointing the learned arbitrator, was brushed aside.

20. The Division Bench, in **General Manager, Central Organization for Railway Electrification, Allahabad and Others., vs. Y. Parthasarathy and Another** had also referred to the Judgments of the Hon'ble Supreme Court in **Ranjit Mal vs Northern Railway.,⁷** and **The State of Punjab vs**

⁷ (1977) 1 SCC 484: AIR 1977 SC 1701

Okara Grain Buyers Syndicate Limited⁸. A reading of these two judgments raise certain significant issues. In **Ranjit Mal's case**, an appeal filed against the removal of an employee of northern railway was rejected by the General Manager. This rejection was challenged before the Hon'ble High Court of Rajasthan. The Writ Petition was rejected on the ground that the Union of India was not impleaded and the same was affirmed by the Division Bench.

21. The Hon'ble Supreme Court, in the appeal filed against the judgment of the Division Bench had held that the appellant was a servant of the Union and any order of the Court would have to be enforced against the Union. The Hon'ble Supreme Court further held that any order of setting aside the removal of an employee of the Union would fasten the liability on the Union and not any other employee of the union including the General Manager or any other authority in the railway administration. On those grounds, the Hon'ble Supreme Court had held that the view of the High Court that the Union of India was a necessary party was correct.

22. **The State of Punjab vs Okara Grain Buyers Syndicate Limited.**, came up before a Constitution Bench of the Hon'ble Supreme Court. The issue before the Hon'ble Supreme Court was whether certain claims could be enforced against the State of Punjab under the provisions of Section 13 of the Displaced Persons (Debts Adjustment Act), 1951. A contention was raised that Section 13, which permitted recovery of debts from any person,

⁸ AIR 1964 SC 669

would not apply to the State of Punjab as the State of Punjab cannot be described as a person and the claims, raised against the government, would not amount to a debt. The second contention may not be relevant for the present case. The Constitution Bench after referring to Article 300 of the Constitution had held as follows:

21. The learned Advocate-General submitted to us an elaborate and erudite argument as to whether the State was a corporation in any sense, the conclusion which he desired us to draw being that though the State was a body politic, it had not the characteristics of a corporation. In this connection he referred us to various writers on Public International Law and on Political Science and to certain decisions of the American courts. We do not, however, feel called upon to examine these submissions and pronounce upon their correctness in view of the conclusion we have reached on a construction of the provisions of the Act. We would, however, make two observations : (1) that the mere fact that certain artificial entities like corporations are brought within the scope of the Act, would not by itself rebut the presumptive rule of construction that the State is not bound by a statute unless it is brought within its scope expressly or by necessary implication, (2) it would not be correct to say that the State is not a constitutional or even juristic entity for the reason that it does not partake the characteristics of or satisfy in whole, the definition of a corporation. The State is an organised political institution which has several of the attributes of a corporation. Under Article 300 of the Constitution, the Government of the Union and the Government of a State are enabled to sue and be sued in the name of Union of India and of the Government of the State, as the case may be. It would not, therefore be improper to speak of the Union and the State as constitutional entities which have attributes defined by the Constitution.

23. In view of the above observations of the Hon'ble Supreme Court, the view of the erstwhile High court of Andhra Pradesh, in **Shyamala Reddy, Pavitranagar, Musherabad, Hyderabad and Others., vs. M/s. Hindustan Petroleum Corporation Ltd., Secunderabad and Others,**⁹ that the Government of Andhra Pradesh is a non existent entity is not correct and the same would have to treated as a judgment, which is per incuriam, to that

⁹ 2015 (4) ALD 380

extent, as the above judgment of the Hon'ble Supreme Court was not placed before the Hon'ble high Court.

24. In **Chief Conservator of Forests, Government of Andhra Pradesh vs. Collector and Others**¹⁰, the Hon'ble Supreme Court had an occasion, to go into the issue of whether the writ petitions, as well as the subsequent proceedings before the High Court as well as the Hon'ble Supreme Court, were maintainable if such a Writ Petition was filed by the Chief Conservator of Forest and not the State of Andhra Pradesh. The Hon'ble Supreme Court after considering Article 300 of the Constitution as well as Section 79 of C.P.C, had held as follows:

8. From a perusal of the provision, extracted above, it is evident that the Government of India as also the Government of a State may sue or be sued by the name of the Union of India or by the name of the State respectively, subject, of course, to any provisions which may be made by an Act of parliament or of the legislature of such State by virtue of powers conferred by the Constitution.

12. It needs to be noted here that a legal entity – a natural person or an artificial person - can sue or be sued in his/its own name in a court of law or a tribunal. It is not merely a procedural formality but is essentially a matter of substance and considerable significance. That is why there are special provisions in the Constitution and the Code of Civil Procedure as to how the Central Government or the Government of a State may sue or be sued. So also there are special provisions in regard to other juristic persons specifying as to how they can sue or be sued. In giving description of a party it will be useful to remember the distinction between misdescription

¹⁰ (2003) 3 SCC 472

or misnomer of a party and misjoinder or non-joinder of a party suing or being sued. In the case of misdescription of a party, the court may at any stage of the suit/proceedings permit correction of the cause-title so that the party before the court is correctly described; however, a misdescription of a party will not be fatal to the maintainability of the suit/proceedings. Though Rule 9 of Order 1 CPC mandates that no suit shall be defeated by reason of the misjoinder or non-joinder of parties, it is important to notice that the proviso thereto clarifies that nothing in that Rule shall apply to non-joinder of a necessary party. Therefore, care must be taken to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise, the suit or the proceedings will have to fail. Rule 10 of Order 1 CPC provides remedy when a suit is filed in the name of the wrong plaintiff and empowers the court to strike out any party improperly joined or to implead a necessary party at any stage of the proceedings.

13. The question that needs to be addressed is, whether the Chief Conservator of Forests as the appellant-petitioner in the writ petition/appeal is a mere misdescription for the State of Andhra Pradesh or whether it is a case of non-joinder of the State of Andhra Pradesh – a necessary party. In a lis dealing with the property of a State, there can be no dispute that the State is the necessary party and should be impleaded as provided in Article 300 of the Constitution and Section 79 CPC viz., in the name of the State/Union of India, as the case may be, lest the suit will be bad for non-joinder of the necessary party. Every post in the hierarchy of the posts in the government set-up, from the lowest to the highest, is not recognized as a juristic person nor can be State be treated as represented when a suit/proceeding is in the name of such offices/posts or the officers holding such posts, therefore, in the absence of the State in the array of parties, the cause will be defeated for non-joinder of a necessary party to the lis, in any court or tribunal. We make it clear that this principle does not apply to a case where an official of the Government acts as a statutory

authority and sues or pursues further proceeding in its name because in that event, it will not be a suit or proceeding for or on behalf of a State/Union of India but by the statutory authority as such.

16. Now, reverting to the facts of the case on hand, we are of the view that after the said statutory order of the Commissioner of Survey, Settlement and Land Records, the matter should have rested there. We have, therefore, no hesitation in coming to the conclusion that it was not only inappropriate but also illegal for the Chief Conservator of Forests, though he might have done so in all good faith, to have questioned the order of the Commissioner of Survey, Settlement and Land Records before the High Court of Andhra Pradesh in Writ Petition (C) NO.3414 of 1982. The Chief Conservator of Forests as the petitioner can neither be treated as the State of Andhra Pradesh nor can it be a case of misdescription of the State of Andhra Pradesh. The fact is that the State of Andhra Pradesh was not the petitioner. Therefore, the writ petition was not maintainable in law. The High Court, had it deemed fit so to do, would have added the State of Andhra Pradesh as a party; however, it proceeded, in our view erroneously, as if the State of Andhra Pradesh was the petitioner which, as a matter of fact, was not the case and could not have been treated as such. As the writ petition itself was not maintainable, it follows as a corollary that the appeal by the Chief Conservator of Forests is also not maintainable. We are unable to accept the contention of Ms Amareswari that merely because the officer concerned had obtained the permission of the Government to file an appeal, which is not placed before us, the writ petition and the appeal should be treated as an appeal by the Government of Andhra Pradesh. The permission granted to the authority concerned might be a permission to file an appeal which cannot reasonably be construed as authorization to file the appeal in his own name, contrary to law. It would only be a permission to file the appeal in

the name of the State of Andhra Pradesh in accordance with the provisions of the Constitution and CPC. We may also record that in spite of the pattedars taking objection to that effect at the earliest, no steps were taken to substitute or implead the State of Andhra Pradesh in the writ petition in the High Court or in the appeal in this Court.

25. It would now be appropriate to consider Article 300, of the Constitution, on the basis of the aforesaid judgments and the observations therein. Article 300 of the Constitution of India reads as follows:

300. Suits and proceedings.—

(1) The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

(2) If at the commencement of this Constitution—

(a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and

(b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings.

26. This Article, in the light of the above judgments, would have to be understood to mean that “the Government of Andhra Pradesh” while being sued or suing, should be described as the “State of Andhra Pradesh”. Put another way, the party to the litigation is actually the Government of Andhra Pradesh but the said Government of State is to be described as the State of Andhra Pradesh. Any technical defect, of not naming the appropriate party, in a case where an employee of the State is arrayed as a party instead of the State, can be corrected at the primary level and for such matters can be remanded to the primary level. Further, it is only a case of mis-description when the party is described as the Government of Andhra Pradesh instead of “the State of Andhra Pradesh”. The same can be corrected within the same proceeding. Where a Statutory authority is a party to the proceedings, there would be no need, in view of the judgment of the Hon’ble Supreme Court, in **Chief Conservator of Forests, Government of Andhra Pradesh vs. Collector and Others**¹¹, to implead the State.

27. In the present case, this Court after completing the hearing in the matter, had reopened the case for further hearing and pointed out these aspects to both sides. Sri Yathindra Dev. D, the learned Government Pleader, in the office of the Learned Advocate General, merely reiterated his contentions that the proceedings itself would have to lapse. It would be necessary for the Government of Andhra Pradesh to amend it’s description to

¹¹ (2003) 3 SCC 472

“The State of Andhra Pradesh”. No such steps have been taken. The written submissions, filed from the office of the learned Advocate General, also did not indicate any intention to amend the cause title or to implead the State.

28. The Hon'ble Supreme Court, in paragraph No.16, in **Chief Conservator of Forests, Government of Andhra Pradesh vs. Collector and Others**¹², had held that the refusal of the government/appellant to implead the State of Andhra Pradesh, despite such an issue being raised, would be fatal to the appeal. Since no steps were taken to correct the mis-description of parties, it would have to be held that neither the petition before the trial Court, under Section 34 of the Act, nor the present appeal, before this Court, under Section 37 of the Act, are maintainable and this appeal has to be dismissed, on this short ground.

29. Sri B. Adinarayana Rao had contended that, in view of the judgment of the Hon'ble Supreme court, in **Union of India vs. Susaka Private Limited and Ors**¹³, this issue cannot be raised at this stage. This Court is not going into that question. Even if such an issue can not be raised, regarding the maintainability of the Arbitral proceedings, the issue regarding the maintainability of the application before the trial court and this appeal would remain.

30. The learned Advocate General, had contended that the primary defect in the proceedings before the Arbitral Tribunal requires the award to be

¹² (2003) 3 SCC 472

¹³ (2018) 2 SCC 182 (paras 26 to 29)

set aside. This contention can be considered by this Court only when there is a properly constituted appeal before this Court. As there is no properly constituted appeal before this Court, this contention cannot be considered.

31. Accordingly, this Civil Miscellaneous Appeal is dismissed. In view of the aforesaid order of dismissal, this Court is not going into any of the other issues raised in the appeal inasmuch as the appeal is being dismissed on the ground of maintainability.

32. C.R.P. No. 6787 of 2018 had been filed against the steps being taken by the 1st respondent, in E.P. No. 420 of 2017, for recovery of the amounts due to the 1st respondent, under the Award of the Arbitral Tribunal.

33. The primary ground raised in this Civil Revision Petition is that the judgment debtor is described as the Government of Andhra Pradesh and not the State of Andhra Pradesh. In view of the above observations of this Court, the said irregularity can be corrected, before the executing court itself. The further contentions relating to the procedure adopted by the executing court does not require any interference by this Court. Accordingly, the Civil Revision Petition is dismissed.

As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

R. RAGHUNANDAN RAO, J

T.C.D. SEKHAR, J

RJS

THE HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO
&
THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

CMA.No.1141 of 2018 & CRP.No.6787 of 2018

(per Hon'ble Sri Justice R.Raghunandan Rao)

06.03.2026

RJS