

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

FRIDAY, THE THIRTIETH DAY OF JULY
TWO THOUSAND AND TWENTY ONE

PRESENT
THE HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY

I.A.NO: 01 OF 2021

IN

ARBITRATION APPLICATION NO: 41 OF 2020

Between:

Andhra Pradesh Education and Welfare Infrastructure Development Corporation
(APEWIDC), (An Enterprise of Government of Andhra Pradesh), Rep. by its Managing
Director Previous Office at 4th Floor, Rajiv Vidya Mission Building, SCERT Compound,
Hyderabad - 500001 Present Office at. NH-16, Vadeswaram - 522502.

...PETITIONER/RESPONDENT

AND

M/s.Mape Connoisseurs, (Milind Architctural, Interiors and Pankaj Engineering
Connoisseurs), Rep. by its Partner Sri. Pankaj Mehendale S/o Sri. P.G.Mehendala,
Age. 57 years Office at. 3-4-485 and 485/1, DI, I Floor, Near Reddy Women's College,
Barkatpura, Hyderabad-500027.

...RESPONDENT/CLAIMANT

Petition under Section 11 of Arbitration and Conciliation Act, 1996 R/w.
Section 151 of the CPC praying that in the circumstances stated in the affidavit filed
therewith, the High Court may be pleased to recall the order dated 11/08/2020 in
Arbitration Application No.41 of 2020.

The Petition coming on for hearing, upon perusing the petition and affidavit
filed in support thereof and upon hearing the arguments of Sri G.V.S.Kishore
Kumar, Advocate for the Applicant and Ms. Gayathri, Advocate for the Respondent.

The Court made the following: ORDER

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

IA No. 01 of 2021

in

Arbitration Application No. 41 of 2020

ORDER:

This interlocutory application has been filed under Section 151 CPC to recall the order dated 11-08-2020 passed in Arbitration Application No.41 of 2020 on the grounds of question of law as also for the reason that the petitioner could not appear to assist the Court.

02. Briefly stated facts are; the petitioner herein is a Government enterprise and respondent in the Arbitration Application, which was filed by the applicant-respondent herein under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, "the 1996 Act") seeking for appointment of an Arbitrator. The Arbitration Application was allowed having found that there exists a dispute between the parties; and there was proper invocation of the arbitration clause in the agreement dated 23-06-2012 entered into by the parties and the same not been controverted by the petitioner by filing a counter-affidavit therein.

03. Sri GVS Kishore Kumar, learned counsel for the petitioner, contends that the order is sought to be recalled solely on the basis of question of law. Learned counsel has referred to Sections 3, 4, 30, 31, 32, 33, 40 and 60 of the AP Reorganization Act, 2014, (for short, "the 2014 Act") notified on 01-03-2014, with its appointed day on 02-06-2014 to contend that even though the parties executed the agreement dated 23-06-2012 at the office of the petitioner at

Hyderabad in the erstwhile combined State of Andhra Pradesh, now that the place where the applicant undertook the work by virtue of the agreement falls within the residuary districts (Chittoor District) of the State of Andhra Pradesh, in view Section 60 of the 2014 Act, it is deemed to have been executed in the domain of residuary district (Chittoor District) the 2014 Act has an overriding effect on the Act 1996, this Court lacks jurisdiction to entertain the Arbitration Application and, therefore, the order is liable to be recalled.

04. Ms. Gayathri, the learned counsel for the respondent, on the other hand, contends that Section 60 of the 2014 Act provides that all the existing contracts which are entered on or before the appointed day, in respect of the residuary districts under Section 4 of the 2014 Act and part of the State of Andhra Pradesh are deemed to have been entered in that State, but the said provision cannot be made applicable in cases where the place (seat of Arbitration) has been chosen by the parties, which relates to jurisdiction of the Courts and choice is reserved to the parties to the agreement under Section 20 of the Act 1996. Learned counsel has also referred to the arbitration clause in the agreement dated 23-06-2012 which reads as follows:-

*"The agreement shall be interpreted, construed and governed by the laws of India. In case of any dispute, the **Courts at Hyderabad** will have exclusive jurisdiction. In case of dispute are (sic or) difference arising between the Corporation and Contractor relating to any matter arising out of or connected*

with this agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996"

It is further stated that when the parties themselves have chosen the seat of Arbitration at Hyderabad; this Court has jurisdiction to entertain the Arbitration Application and it was rightly done so. It is also submitted that the 1996 Act which is a Code in itself has overriding effect on the provisions of the 2014 Act and, therefore, the application being devoid of any merits is liable to be dismissed. Learned counsel relied on the case laws in **INDUS MOBILE DISTRIBUTION PRIVATE LIMITED VS. DATAWIND INNOVATIONS PRIVATE LIMITED¹ & BRAHMANI RIVER PELLETS LIMITED VS. KAMACHI INDUSTRIES LIMITED.²**

05. The core points that arise for consideration in this case are:-

i) *Whether the jurisdictional clause conferring exclusive jurisdiction on the Courts at Hyderabad by the parties under the agreement is to be maintained in exclusion of jurisdiction of all other Courts, including the effect of Section 60 of the 2014 Act ?*

ii) *Whether High Court of Telangana at Hyderabad can exercise territorial Jurisdiction to the residuary territorial Districts in State of Andhra Pradesh as specified in Section 4 in the light of Section 60 of AP Reorganization Act, 2014 ?*

iii) *Whether the Arbitration and Conciliation Act, 1996, can override the provisions of Andhra Pradesh Reorganization Act 2014 ?*

::POINT (i)::

06. As distinctly understood, there is no predicament to raise a pure question of law at any stage of the proceedings (**see GREATER MOHALI AREA DEVELOPMENT AUTHORITY vs. MANJU JAIN³**).

The petitioner in this application sought to contend that the issue raised being a pure question of law, the application is maintainable.

Succinctly, the Supreme Court in **MUNICIPAL CORPORATION OF GREATER MUMBAI vs. PRATIBHA INDUSTRIES LTD.⁴** has reiterated that the power of review is an imbibed power to correct palpable errors in exercise of plenary jurisdiction by the High Courts.

Para 12 and 13 of the judgment read as:-

"13. It is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice for to correct grave and palpable errors committed it.

14. The High Court as a Court of record, as envisaged in Article 215 of the Constitution must have inherent powers to correct the records. A Court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A Court of record is undoubtedly a superior Court which is itself competent to determine the scope of its jurisdiction. The High Court, as a Court of record has a duty to itself to keep all its records correctly and in accordance with the law. Hence, if any apparent error is noticed by the High Court in respect of any orders

³ AIR 2010 SC 3817

⁴ 2019 [3] SCC 203

passed by it, the High Court has not only power, but a duty to correct it. The High Court's power in that regard is plenary. In ***Naresh Shridhar Mirajkar vs. State of Maharashtra***, AIR 1967 SC 1, a nine-Judge Bench of this Court has recognized the aforesaid superior status of the High Court as a Court of plenary jurisdiction being a Court of record."

07. In application and Interpretation of the provisions of the Arbitration and Conciliation Act, 1996, the upward swing is towards pro-arbitration and party autonomy including their convenience with respect to place of arbitration irrespective of place of cause of action is maintained. The seat of arbitration plays a significant facet in any arbitration proceeding. The seat (place) chosen by the parties in exercise of their autonomy not only determines the location of hearings but also determines which Court shall exercise jurisdiction. It is to be seen that the 1996 Act, defines the term as the 'place', but not as the 'seat' of Arbitration. Section 20, being the relevant provision, is quoted for reference:-

"20. Place of arbitration —

(1) The parties are free to agree on the place of arbitration.
(underlined)

(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members,

for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property."

08. In this case, it is pertinent to note that the parties have chosen the Courts at Hyderabad to have exclusive jurisdiction and it was also agreed that in the event of any disputes relating to or arising from the agreement, the Courts at Hyderabad will have exclusive jurisdiction. It is settled law that the contractual clause cannot override the statutory provision. But, parties to the agreement dated 23-06-2012 have chosen the "place" i.e. the Courts at Hyderabad as having exclusive jurisdiction to settle the disputes arising out of the agreement which is statutorily permissible under Section 20 of the 1996 Act and has to be construed independently. Section 20 of the 1996 Act is deemed to have precedence over the provision of Section 60 of the 2014 Act as there is no specific exclusion of the application of provisions of the 1996 Act in the 2014 Act.

:: POINT (ii)::

09. Section 3 and 4 of the 2014 Act specify the districts and the territories that fall under the newly carved out State of Telangana and the residuary State of Andhra Pradesh. The bone of the contention is this Court has no territorial jurisdiction to entertain the arbitration application as Chittoor District is the residuary district of the State of Andhra Pradesh, where the applicant undertook the work by virtue of the agreement dated 23-06-2012 with the petitioner-Corporation, executed prior to 2014 Act coming into the force and under Section 60

of the 2014 Act it is deemed to have been executed in the residuary districts under Section 4 of the 2014 Act.

10. The main contention of the learned counsel for the petitioner is after a separate High Court for the State of Andhra Pradesh is formed as provided under Section 30 of the 2014 Act and notified on 01-01-2019 by the Presidential Order, the territorial jurisdiction of the districts which are classified under Section 4 of the 2014 Act; in view of Section 60 (1) of the 2014 Act, the cause of action is deemed to have arisen at Chittoor district, which is the deemed place of execution of the agreement and as a necessary corollary, the jurisdiction lies with the High Court of Andhra Pradesh and the High Court at Hyderabad shall, as from the date referred to in sub-Section (1) of Section 30, have no jurisdiction over those residuary districts. Section 60 of the 2014 Act postulates the status of the **Contracts** entered into on or before the appointed day in the combined State of Andhra Pradesh, reads as under:-

"60. Contracts: (1) Where, before the appointed day, the existing State of Andhra Pradesh has made any contract in the exercise of its executive power for any purposes of the State, that contract shall:

(a) if the purposes of the contract are, on and from the appointed day, exclusive purposes of either of the successor States of Andhra Pradesh and Telangana, then it shall be deemed to have been made in exercise of the executive power of that State and the liability shall be discharged by that State; and

(b).....

(c)....."

11. A plain reading of the above provision it is understood that even if a contract/agreement had been entered before the appointed day it

is deemed to have been executed by the State of Andhra Pradesh and by the State of Telangana respectively, as the case may be, in exercise of its executive power of that State and the obligations and liabilities shall have to be discharged by that State.

12. The parties are free to agree on the place (seat) of arbitration under Section 20 of the Act. From the arbitration clause mentioned in the agreement, it is clear that the parties with consensus have chosen the Courts at Hyderabad as the place for resolution of any disputes and the Courts at Hyderabad will have exclusive jurisdiction. Section 60 (1) of the 2014 Act *mutatis mutandis* apply to situations where there is no "place" chosen by the parties, in this case the parties have chosen the "place" which is binding under Section 20 of the 1996 Act de-hors Section 60 (1) (a) of the 2014 Act.

13. It is to be seen that, as on the date of executing the agreement, the office of the petitioner was at Hyderabad, in the erstwhile combined State of Andhra Pradesh, and now the office of the petitioner is shifted and falls in the residuary districts under Section 4 of the Act 2014. But, as noted above, under Section 20 of the 1996 Act, the parties to the agreement dated 23-06-2012 have chosen the "place" i.e. the Courts at Hyderabad as having exclusive jurisdiction to settle the disputes arising out of the agreement which is statutorily permissible. Even otherwise, the work under the contract is said to have been executed in the residuary districts of the State of Andhra Pradesh and it is not an implausible situation that the work is to be

executed in the district which falls under Section 3 of the 2014 Act of the newly carved out State of Telangana and the office of the petitioner is shifted to residuary districts of the State of Andhra Pradesh. Section 60 (1) (a) of the 2014 Act is carved out only for the purpose of discharging the liability by the respective States but does not have the impact of taking away the power conferred in other statutes elsewhere, hence this Court has jurisdiction; as in contractual matters where the parties take recourse to the provisions of the 1996 Act and where the parties to the contract specify to submit themselves to the jurisdiction of the Court at a particular place, only such Court will have the jurisdiction to deal with the matter as parties intended to exclude the jurisdiction of all other Courts.

::POINT (iii)::

14. The other substantial issue for the consideration is whether the provisions of the Act 1996 override the provisions of the 2014 Act. The Act 1996 is a self-contained Code when compared to the 2014 Act. Now, the question is where two provisions of the two statutes cross-fire on a particular issue, which of the two Acts would prevail. In common parlance it is by and large established that when two special statutes contain non-obstante clauses, the latter statute would prevail. The rationale behind this is that the Legislature at the time of the enactment of the latter statute was aware of the earlier legislation containing a non-obstante clause and if it wanted that latter enactment should not prevail, it would provide that provisions of the earlier

enactment would continue to apply. But there are situations which are sometimes, unforeseen and certain provisions of both the Acts seem to operate then obscurity prevails, in such a situations, as far as possible and as much as necessary harmonious interpretation is the only course open to resolve the finer points of law.

15. The Supreme Court in many cases have ruled on the validity of the exclusive jurisdiction clause. In **HAKAM SINGH vs. GAMMON (INDIA) LTD.**⁵, it was held that whenever it has been specified in the contract that a particular Court shall have jurisdiction, then, the other Courts otherwise having a valid jurisdiction will not entertain such dispute proceedings and only the particular Court as agreed by the parties shall try the proceedings. Therefore, the validity of the exclusive jurisdiction clause is not disputable. In **SWASTIK GASES PVT. LTD. vs. INDIAN OIL CORPORATION LTD.**⁶ In similar fact situation held that though the cause of action arose entirely within Rajasthan, as Courts at Kolkata had been conferred exclusive jurisdiction, by the contract between the parties, the jurisdiction to deal with all the matters pertaining to the arbitration agreement would vest with the Courts at Kolkata and the jurisdiction of Courts in Rajasthan would be completely excluded."

16. Courts in India have taken a pro-arbitration stance including in the latest decision in **DECCAN PAPER MILLS CO. LTD. Vs REGENCY**

⁵ (1971) 1 SCC 286 at page 287

⁶ (2013) 9 SCC 32

MAHAVIR PROPERTIES⁷, the Courts have accorded primary importance to party autonomy. The exclusive jurisdiction clause is based on a similar principle. The same is reiterated in **INDUS MOBILE DISTRIBUTION (P) LIMITED vs. DATAWIND INNOVATIONS PRIVATE LIMITED⁸**. In this case, the clause dealing with arbitration clause stated that arbitration shall be conducted at Mumbai but another clause stated that all disputes and differences of any kind whatever arising out of or in connection with the agreement shall be subject to the exclusive jurisdiction of Courts of Mumbai only. The Supreme Court referred to Section 2(1)(e) and Section 20 of the Act and held that both above clauses make it clear that jurisdiction exclusively vests in Mumbai Courts, and that the seat of arbitration is Mumbai. It was observed that an agreement as to seat of an arbitration is analogous to an exclusive jurisdiction clause, and once the seat of arbitration has been fixed, it would be in the nature of an exclusive jurisdiction clause as to the Courts which exercise supervisory powers over the arbitration. The Supreme Court also held that the neutral seat chosen by the parties may not have jurisdiction under any of the provisions of Section 16 to 21 of Code of Civil Procedure but still that court would have jurisdiction by virtue of seat of Arbitration chosen by parties. Para 20 of the said decision is in the following terms:-

⁷ [2020 SCC OnLine SC 655]

⁸ [2017] 7 SCC 678

20. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction – that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Section 16 to 21 of the CPC be attracted. In arbitration law however, as has been held above, the moment "seat" is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties."

17. The principle was once again upheld in **BRAHMANI RIVER PELLETS LTD. vs. KAMACHI INDUSTRIES LTD⁹**, to the effect that once the parties agree that a particular Court will have jurisdiction, other Courts with otherwise legitimate jurisdiction will be unable to entertain the proceedings of such dispute, and only the Court agreed to by the parties will be allowed to try the proceedings. Choosing of the seat (place) of arbitration not only vests jurisdiction to the Courts of the chosen seat (place) but also implies exclusion of other Courts as well. It is based on the principle of **expressio unius est exclusio alterius** (expression of one is an exclusion of the other). Para 32 of the judgment reads thus:-

⁹ (2019) SCC OnLine SC 929

32. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the Courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like "alone", "only", "exclusive" or "exclusive jurisdiction" have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties—by having Clause 18 in the agreement—is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like Clause 18 in the agreement, the maxim *expressio unius est exclusio alterius* comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner.

In the case on hand, there are no circumstances so as to take into play of the few exceptions to the exclusive jurisdiction clause. The petitioner has not disputed the validity of the exclusive jurisdiction clause and in fact pursuant to the claim petition filed by the applicant-respondent herein before the learned Arbitrator, the petitioner is stated to have filed written statement and has been participating in the arbitration proceedings by filing written statement. It is also borne out from the record that notice was issued in the arbitration application and on being served, since no defence could be put up nor

any counter affidavit was filed, on subjective satisfaction of the case facts, the arbitration application was allowed on 11-08-2020. This application to recall the order is filed on 16-02-2021. The petitioner seems to have entered appearance on 18-11-2020 before the Arbitral Tribunal and after a lapse of more than six months, an objection is raised as to the jurisdiction by way of this re-call application.


18. When the exclusive jurisdiction clause overrides the provisions of Section 16 to 21 of Code of Civil Procedure, similarly Section 60 (1) (a) of the 2014 Act cannot override the provisions of the 1996 Act and Section 60 (1) (a) is inapplicable where an agreement contains an exclusive jurisdiction clause; as under 1996 Act, under Section 20 (1), autonomy is given to the parties to choose the "place" of Arbitration including submitting to the jurisdiction of the Courts in which such "place" is situate. On a constructive and harmonious interpretation of the two provisions of the 1996 Act and the 2014 Act, there is no conflict or overlapping between the operation of the said provisions as already noticed Section 60 (1) (a) of the 2014 Act only fastened the liability on the respective States arising under the Contracts entered into on or before the appointed day i.e. 02-06-2014. Applying this

analogy, there is no reason why this Court lacks jurisdiction to entertain the arbitration application, the point is answered accordingly.

19. In the circumstances, there is no error apparent on the face of record muchless any question of law is pointed out to take a different view, than the view taken earlier in the case. The interlocutory application being IA No.1 of 2021 is accordingly dismissed.

//TRUE COPY//

Sd/-K.SRINIVASA RAO
JOINT REGISTRAR


SECTION OFFICER

One Fair Copy to the Honourable Sri Justice A.Rajasheker Reddy
(For his Lordships kind perusal)

To

1. One CC to Sri Kowluru Pavan Kumar, Advocate (OPUC)
2. One CC to Ms. Gayathri, Advocate (OPUC)
3. One CC to Sri G.V.S.Kishore Kumar, Advocate (OPUC)
4. 11 L.R.Copies.
5. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
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Kj,



HIGH COURT

DATED:30/07/2021



ORDER

I.A.NO.01 OF 2021

IN

ARBITRATION APPLICATION No.41 of 2020

DISMISSING THE APPLICATION.

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KMA
D-27/8/2021