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IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

WP-12871-2024

BEFORE

HON'BLE SHRI JUSTICE SANJEEV SACHDEVA,
ACTING CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

ON THE 24th OF AUGUST, 2024

WRIT PETITION No. 12871 of 2024

THE STATE OF MADHYA PRADESH AND OTHERS

Versus

*T.R.G. INDUSTRIES PRIVATE LIMITED A COMPANY REGISTERED
UNDER THE COMPANIES ACT 1956 AND OTHERS*

Appearance:

Shri Ankur Mody - Additional Advocate General for petitioners/State.

Shri Lovkesh Sawhney - Senior Advocate with Shri Tej Singh
Mahadik - Advocate for respondent No.1.

Shri Rajendra Bhargava with Ms. Priyanka Tonk - Advocate for
respondent No.2.

ORDER

Per. Sanjeev Sachdeva, Acting Chief Justice

1 . The petitioners/State of Madhya Pradesh impugns order dated 18.04.2024 whereby the Arbitral Tribunal has held that the M.P. Arbitration Tribunal has decided an application under Section 16 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act of 1996") and held that the M.P. Arbitration Tribunal has no jurisdiction.

2. The State of Madhya Pradesh impugns the said order passed by the Arbitral Tribunal contending that all works contracts to which the State of M.P is a party



are necessarily to be referred to the statutory Arbitral Tribunal constituted under the Madhya Pradesh Madhyastam Adhikaran Adhiniyam, 1983 (hereinafter referred to as "the Adhiniyam of 1983").

3. It is submitted that the contract is signed by an officer of the State Government and as such, the same is covered under the definition of works contract as defined under Section 2 (1) (i) of the Adhiniyam of 1983.

4. Per contra, learned senior counsel appearing for the respondent submits that State of M.P. is not even a party to the arbitration agreement and furthermore the arbitration clause specifically provides for reference of the disputes to an Arbitral Tribunal in accordance with the Rules of arbitration of the Society for Affordable Redressal of Disputes (SAROD).

5. The dispute emanates out of an agreement dated 18.09.2018 for Rehabilitation and up-gradation of two lanes flexible pavement to two lanes with paved shoulders on Porsa-Ater-Bhind Road on Porsa to Bhind section of newly declared NH-552 Ext. in the State of Madhya Pradesh.

6. The agreement records that the same is executed between Ministry of Road Transport and Highways, Government of India through Office of the Chief Engineer National Highways Zone, Public Works Department, Nirman Bhawan Bhopal (M.P.) and M/s TRG Industries Pvt. Ltd. (respondent herein). Recital of the contract states that Government of India had entrusted to the authority the rehabilitation work and the subject contract has been entered into by the authority i.e. Ministry of Road Transport and Highways, Government of India. Said contract contains the dispute resolution condition under Article 26 which inter-alia provides that any dispute, difference or controversy of whatsoever nature between the parties would be attempted to be resolved amicably in accordance



with the conciliation provisions prescribed therein. In the event, the dispute is not resolved through amicable conciliation, then the dispute shall be finally settled by arbitration in accordance with the rules of SAROD. The agreement further stipulates that the agreement shall be construed and interpreted in accordance with and governed by laws of India and the Courts at Delhi shall have exclusive jurisdiction over the matter arising out of or in relation with the agreement.

7. We may note that the agreement is between the Ministry of Road Transport and Highways and M/s. TRG Industries Pvt. Ltd. Petitioner herein i.e. State of M.P. is not even a party to the arbitration agreement or arbitral proceedings. The contention of learned counsel for petitioners that the dispute between the parties have to be referred to the statutory Tribunal constituted under the Adhinyam of 1983 is not sustainable for the reason that the said Adhinyam applies to the works contract inter-alia entered into by the State Government or by official of the State Government or Public Undertaking or Corporation or by an officer of the State Government for and on behalf of such Corporation or Public Undertaking.

8. In the instant case, the agreement was entered into by the Ministry of Road Transport, Union of India and neither the State Government nor any Corporation or Public Undertaking is a party to the agreement. Furthermore, the arbitration proceedings have been commenced against the Ministry of Road Transport and Highways, Government of India, which is not the petitioner before us. Further, we may note that the arbitration clause specifically refers to the rules of arbitration of SAROD.

9. The agreement is entered into on 18.09.2018 and the statutory Tribunal has been in place since 1983. In case, the intention of the parties was to refer the disputes to the Statutory Tribunal, the agreement would have specifically stated



so. The agreement specifically refers to rules of the arbitration of SAROD and is entered into by the Ministry of the Government of India. Clearly, said Adhinyam is not applicable to the facts and circumstances of the present case.

10. We may also note that petitioners have sought to impugn an order passed by the Arbitral Tribunal dated 18.04.2024 rejecting an application under Section 16 of the Act of 1996 and remedy of the aggrieved party, if any, would have been under Section 34 of the Act of 1996 and not by way of a writ petition.

11. Reference may be had to the judgment of the Supreme Court in **Bhavan Construction vs. Executive Engineer, Sardar Sarovar Narmada Nigam Limited, (2022) 1 SCC 75**, wherein Supreme Court has held that interpretation of contracts are generally not to be done in writ jurisdiction. Further, Supreme Court has held that the plea of jurisdiction has to be first raised in an application under Section 16 of the Arbitration Act and if aggrieved by the decision of Section 16 party must await for rendering of the award and then impugn the same under Section 34 of the Act of 1996.

12. As noticed hereinabove, the contract is not between the petitioner before us i.e. State of Madhya Pradesh but between the Ministry of Road Transport and Highways, Government of India and TRG Industries Private Limited. Clearly the Adhinyam of 1983 is not applicable to the contract between the parties. The Tribunal while rejecting the application under Section 16 of the Act of 1996 has rightly held that the objection raised by the Ministry of Road Transport and Highways was not sustainable.

13. In view of the aforesaid, firstly we find no merit in the contention raised by petitioner and secondly we hold that the petition at the behest of State of Madhya Pradesh is not maintainable.



14. Petition is accordingly dismissed.

(SANJEEV SACHDEVA)
ACTING CHIEF JUSTICE

(RAJENDRA KUMAR VANI)
JUDGE

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