

A M/S GANGOTRI ENTERPRISES LTD.
v.
MADHYA PRADESH ROAD DEVELOPMENT CORPORATION
AND ANR.

B (Civil Appeal No. 4017 of 2018)
APRIL 18, 2018

[ADARSH KUMAR GOEL AND R. F. NARIMAN, JJ.]

Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983:

C *s. 2(d) – Expression “ascertained money” occurring in s. 2(d) will include not only the amount already ascertained, but also the amount which may be ascertained during the proceedings.*

s. 4(3)(iii) – Qualification of Member of Arbitration Tribunal – Held: An employee of a party to the dispute cannot be an arbitrator – Therefore, State of Madhya Pradesh not to appoint its employee of the concerned department, as member of the Arbitration Tribunal.

Indian Oil Corporation Ltd. and Ors. vs. Raja Transport Private Ltd. (2009) 8 SCC 520 : [2009] 13 SCR 510 – relied on.

E **Case Law Reference**

[2009] 13 SCR 510 relied on Para 4

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4017 of 2018.

F From the Judgment and Order dated 15.12.2017 of the High Court of Madhya Pradesh, Principal Seat, Jabalpur in A. C. No. 71 of 2016.

G Saurabh Mishra, AAG, Jugal Kishore Gilda, Purushendra Kumar, Advs. Gen., Naman Nagrath, Neeraj Kishan Kaul, Parag Triathi, Ms. Kiran Suri, Sr. Advs., Harsh Parashar, Jubin Prasad, Aman Pandey, Arjun Garg, Mishra Saurabh, Sridhar Potaraju, Sudhir Mishra, Prabhat

Kumar, Ms. Petal Chandok, Ms. Ankita Sharma, Rishabh, M. R. Shamshad, Aditya Samaddar, B. S. Banthia, Ms. Swarupama Chaturvedi, Saurabh S. Sinha, Aditya Dev Triguna, Sunil Singh Parihar, M/S. AP & J Chambers, Prafulla Kumar Behera, Manish K. Bhardwaj, S. S. Nehra, Ms. Anuradha Mishra, Ms. Vanshaja Shukla, Varun Mohan, Swastik Singh, Manish Yadav, Ms. Swarupama Chaturvedi, B.N. Dubey, Ms. Devika Gulati, Hitendra Nath Rath, Mayank Kshirsagar, Pavesh Joshi, Chavu Ambwani (For M/s. AP & J Chambers), B. K. Satija, Sumit Attri, K. Krishna Kumar, Hitendra Nath Rath, Nilava Bandyopadhyay, Rahul Pandey, Advs. for the appearing parties.

The following Order of the Court was passed:

ORDER

1. Leave granted. Heard learned counsel for the parties.

2. Our attention has been drawn to the definition of “dispute” under Section 2(d) of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (“1983 Act”) which is as follows:

“dispute’ means claim of ascertained money valued at Rupees 50,000 or more relating to any difference arising out of the execution or non-execution of a works contract or part thereof.”

3. We consider it appropriate to clarify that the expression “ascertained money” as used in Section 2(d) of the 1983 Act will include not only the amount already ascertained but the amount which may be ascertained during the proceedings on the basis of claims/ counter claims of the parties.

4. Our attention has also been drawn to Section 4(3)(iii) of the 1983 Act to submit that consistent with the policy of law and the judgment of this Court in Indian Oil Corporation Ltd. and Ors. vs. Raja Transport Private Ltd., (2009) 8 SCC 520, an employee of a party to the dispute cannot be an arbitrator. Section 4(3)(iii) of the 1983 Act is in the following terms:

“4. Chairman and members of Tribunal and their qualifications.-

(3) No person shall be qualified for appointment as a member of the Tribunal, unless-

(iii) he is or has been :-

- A (a) Chief Engineer in the service of the State Government in Public Works, Irrigation or Public Health Engineering Department; or
(b) a Chief Engineer in the service of the Madhya Pradesh Electricity Board; or
- B (c) a Senior Deputy Accountant General of the Office of the Accountant General, Madhya Pradesh,
for a period of not less than five years:
Provided that in the case of clause (iii), in exceptional circumstances, the State Government may relax the prescribed minimum period of five years to three years.”
- C 5. We clarify that the State of Madhya Pradesh will not appoint as member of the Tribunal, its employee of the concerned department to which the dispute relates.
- D 6. The appeal stands disposed of as above.
S.L.P.(C)...D. No. 10817/2018 and S.L.P.(C).....D. No. 12928/2018:
Delay condoned.
- E The special leave petitions shall also stand disposed of in terms of the order passed today in S.L.P. (C) No. 6513 of 2018.
Pending applications, if any, also stand disposed of.