



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 8528-8529 OF 2024

M/s. Modern Builders

... Appellant

versus

State of Madhya Pradesh & Anr.

... Respondents

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. The appellant was appointed as a contractor to construct a minor bridge. The contract was granted by the first respondent—State of Madhya Pradesh. The second respondent, Executive Engineer, National Highway Division Sagar, Madhya Pradesh, rescinded the contract by the letter dated 9th November 2001. Clause 29 in the work order incorporated an arbitration clause. The appellant requested for constitution of an Arbitral Board. The said request was rejected. Even the subsequent representation was rejected. Therefore, the appellant applied for a reference to the Madhya Pradesh Arbitration Tribunal, Bhopal (for short, ‘the Arbitration Tribunal’) in accordance with Section 7 of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (for short, ‘the

1983 Act'). By the order dated 19th April 2010, the Arbitration Tribunal concluded that as there was an arbitration clause in the contract, the provisions of the Arbitration and Conciliation Act, 1996 (for short, 'the Arbitration Act') would apply. The Tribunal held that only when there is no arbitration clause, the provisions of the 1983 Act would apply. In view of this order, the appellant filed a petition under Section 11(6) of the Arbitration Act before the High Court of Madhya Pradesh at Jabalpur. The petition was allowed, and a retired District Judge was appointed as the Arbitrator. An award was made on 25th April 2014 by the learned Arbitrator.

2. The respondents, aggrieved by the said award, preferred a petition under Section 34 of the Arbitration Act before the District Judge, Jabalpur. The learned District Judge dismissed the said petition. The respondents filed an appeal under Section 37 of the Arbitration Act before the High Court for challenging the order of the District Court. By the impugned judgment, the High Court proceeded to set aside the award only on the ground that as held by this Court in the case of ***Madhya Pradesh Rural Road Development Authority & Anr. v. L. G. Chaudhary Engineers and Contractors***¹, the provisions of the 1983 Act were applicable.

SUBMISSIONS

3. The learned counsel appearing for the appellant invited our attention to the fact that the decision in the case of

¹ (2018) 10 SCC 826

Madhya Pradesh Rural Road Development Authority¹ was rendered nearly four years after the date of the award. However, in paragraph 17 of the said decision, this Court observed that if an award is already made by the Arbitrator and if the objection to the jurisdiction of the Arbitrator was not raised at an appropriate stage, the award may not be annulled only on that ground. The learned counsel submitted that the respondents did not challenge the order passed by the High Court under Section 11(6) of the Arbitration Act. The objection regarding the jurisdiction of the arbitration was raised only in the written submissions. He would, therefore, submit that the award could not have been set aside based on the decision of this Court.

4. The learned counsel appearing for the respondents submitted that, as seen from the award, a contention was raised in the written statement filed before the Arbitrator that the appellant should have taken recourse to Section 7 of the 1983 Act. Therefore, the dispute was raised at the appropriate stage, and hence, paragraph 17 of the decision in the case of ***Madhya Pradesh Rural Road Development Authority***¹ will have no application.

CONSIDERATION OF SUBMISSIONS

5. A few factual aspects will have to be noted. After the contract granted to the appellant was rescinded, the appellant invoked Section 7 of the 1983 Act by approaching the Arbitration Tribunal. By the order dated 19th April 2010, the Arbitration Tribunal held that in view of the arbitration clause

in the contract, the 1983 Act will have no application and the appellant will have to take recourse to the Arbitration Act. In view of this order, the appellant invoked the jurisdiction of the High Court under Section 11(6) of the Arbitration Act by filing a petition for the appointment of an Arbitrator. The order dated 22nd July 2011 passed by the High Court on the said petition shows that the respondents' opposition was only on the merits of the claim. The objection based on the applicability of the 1983 Act was not raised. The respondents did not challenge the order of appointment of the Arbitrator passed by the High Court under Section 11(6) of the Arbitration Act. Even before the learned Arbitrator, Section 16(1) of the Arbitration Act was not invoked to raise the jurisdiction issue. However, in the written statement filed before the Arbitrator, the contention regarding the applicability of the 1983 Act was raised.

6. Now, coming to the decision of this Court in the case of ***Madhya Pradesh Rural Road Development Authority***¹, after considering the provisions of the 1983 Act and the Arbitration Act, in the light of Section 2(4) of the Arbitration Act, this Court held that although there was an arbitration clause, the 1983 Act would apply. In paragraph 17, this Court held thus:

“17. We do not express any opinion on the applicability of the State Act where award has already been made. In such cases if no objection to the jurisdiction of the arbitration was taken at relevant stage, the award may not be annulled only on that ground.”

7. As noted earlier, in the facts of the case, before taking recourse to the Arbitration Act, the appellant had taken recourse to Section 7 of the 1983 Act. The order of the Arbitration Tribunal, holding that the Arbitration Act will apply, led the appellant to file a petition under Section 11(6) of the Arbitration Act, which was not objected to on the grounds of the applicability of the 1983 Act. The objection of the State government was confined to the merits of the claim. The award is only in the sum of Rs. 6,52,235/- with interest. The award was made on 25th April 2014. Therefore, in the facts of the case, it will be unjust to set aside the award only on the ground of the failure of the appellant to take recourse to the 1983 Act. In fact, the appellant had taken recourse to the 1983 Act before seeking the appointment of an Arbitrator. In this case, as can be seen from the impugned judgment, the award has been set aside only on the ground that the appellant ought to have invoked the provisions of the 1983 Act. Even assuming that the observations in paragraph 17 of the decision in the case of ***Madhya Pradesh Rural Road Development Authority***¹, are not applicable, this is a fit case to exercise jurisdiction under Article 142 of the Constitution of India to ensure that complete justice is done. Therefore, by setting aside the impugned judgment, the appeal under Section 37 of the Arbitration Act will have to be restored with a request to the High Court to decide the same on merits.

8. Accordingly, the impugned judgment dated 12th May 2022 passed in the Review Petition no.584 of 2021, and the

order dated 5th July 2021 passed in the Arbitration Appeal no.45 of 2019 are set aside. The Arbitration Appeal no.45 of 2019 is restored to the file of the High Court of Madhya Pradesh, Principal Seat at Jabalpur. The restored appeal shall be listed before the roster bench on Monday, the 30th September 2024. The parties to the appeal shall appear before the High Court on that day, and no further notice of the date fixed in the appeal shall be given to the parties. On 30th September 2024, the High Court will fix a date for hearing the restored appeal, which shall be heard and decided in accordance with law and in light of the observations made in this judgment. All the issues on the merits of the restored appeal under Section 37 of the Arbitration Act are kept open. However, the award should not be set aside on the grounds of the applicability of the 1983 Act.

9. If the appellant has withdrawn the amount paid as per the award, the same shall be deposited by the appellant with the High Court within two months from today. The amount shall be invested by the High Court in a fixed deposit with any nationalised bank till the disposal of the restored appeal. The High Court, while deciding the appeal, shall pass appropriate directions regarding the withdrawal of the amount with interest accrued thereon.

10. Subject to the observations made above, the appeals are allowed.

11. The Registry shall forward a copy of this judgment to the Registrar (Judicial) of the High Court of Madhya Pradesh at Jabalpur.

.....J.
(Abhay S Oka)

.....J.
(Augustine George Masih)

**New Delhi;
August 30, 2024.**