

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8918 OF 2015

(@ Special Leave Petition (Civil) No.15187 of 2010)

M/s. Chebrolu Enterprises

Rep. by its Proprietor Smt. Ch. Lakshmi Sesha Kumari

....Appellant

VERSUS

Andhra Pradesh Backward Class Cooperative

Finance Corporation Ltd.

.....Respondent

WITH

C.A.No.8919/2015 @ SLP© No.15408/2010

C.A.No.8920/2015 @ SLP© No.15719/2010

C.A.No.8921/2015 @ SLP© No.15734/2010

AND

C.A.No.8922/2015 @ SLP© No.18290/2010

J U D G M E N T**ANIL R. DAVE, J.**

1. Leave granted.
2. In all these appeals validity of a common judgment delivered in Civil Misc. Appeal Nos. 973-995 of 2005 and

539, 674 and 675 of 2006 dated 14th December, 2009 has been challenged.

3. The aforesaid Civil Miscellaneous Appeals had been filed in the High Court of Judicature, Andhra Pradesh at Hyderabad under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') against a common order dated 14.03.2005 passed in different original petitions, by the XIV Additional Chief Judge, City Civil Court (FTC), Hyderabad, dismissing the original petitions. The High Court vide its common judgment dated 14.12.2009 dismissed the aforesaid appeals.

4. Being aggrieved by the said common judgment, the appellants have approached this Court by way of these appeals.

5. The circumstances which gave rise to the present litigation in a nut-shell are as under:-

The Government of Andhra Pradesh had launched a scheme named '**ADARANA**' under which certain tools of trade necessary for Blacksmiths, Carpenters, Dhobis etc.

were to be supplied to the rural artisans. The Government was to purchase the tools through A.P. Backward Classes Cooperative Financial Corporation Limited, a corporation set up for welfare of the persons belonging to downtrodden classes, controlled by the Government and the 'State' within the meaning of Article 12 of the Constitution of India. The Respondent-Corporation had invited quotations for supplying iron boxes, iron ring used for placing the iron; boxes, buckets and bannas required in the process of washing clothes etc. The present appellants had agreed to supply the "Razaka tools" at a particular rate. We do not go into the details as to how the rates were finalized after several meetings held among the suppliers of the tools and the officers of the Respondent-Corporation. Suffice is to state at this stage that the suppliers, after several meetings and bargaining on both the sides had agreed to supply the tools at the rate of Rs.165 per kg in six coastal districts of Andhra Pradesh namely, Srikakulam, Vizianagaram, Visakhapatnam, East Godavari, West Godavari and Krishna, whereas for the other remaining districts, the rate

had been fixed at Rs.189.75 per kg and the above rates were exclusive of sales tax.

6. It is pertinent to note that when the agreement had been entered into with regard to supply of the tools by the appellants to the Respondent-Corporation, it was also agreed among the parties that the rate at which the tools were offered was the lowest rate at which the suppliers were selling the tools of the same specification in the State of Andhra Pradesh.

7. Each appellant (who has been referred to hereinafter as ‘the supplier’) had also filed an undertaking stating that the prices quoted for supply of the tools were the lowest possible prices and that nowhere in Andhra Pradesh, the supplier was selling those products at prices lower than the price quoted. They had also undertaken to refund the difference of amount arising on account of any price difference in the price quoted by them and lower price offered by them in the open market in Andhra Pradesh in respect of the tools. One such undertaking dated 22.04.1999 given by one of the suppliers is reproduced herein below:

“UNDERTAKING

“.....I, Smt. CHEBROLU LAKSHMI SETHA KUMARI Proprietor of M/s. CHEBROLU ENTERPRISES, hereby declare that the prices quoted for the supply of our Products under ADARANA Project being implemented by Andhra Pradesh Backward Classes Cooperative Finance Corporation are the lowest possible prices and nowhere in Andhra Pradesh, we are selling our products with the same specifications at prices lower than the prices we have quoted under the said project.

I also undertake to refund/authorizes Andhra Pradesh Backward Classes Cooperative Finance Corporation to deduct excess amount paid to us on account of any price differential between higher prices quoted by us under ADARANA Project and lower prices offered in open markets in Andhra Pradesh.....”

8. Ultimately, the tools had been supplied by the suppliers to the respondent-Corporation but it was found that the rates which had been charged by the suppliers were neither reasonable nor were the lowest at which the suppliers had sold their products similar to the one which

they had supplied to the Respondent-Corporation and therefore, a dispute had arisen among the parties and the dispute had been referred to an Arbitral Tribunal, as agreed upon by the parties in the agreement dated 22.04.1999. The aforesaid facts are not in dispute.

9. The learned Arbitral Tribunal ultimately came to the conclusion that the amount charged by the suppliers was excessive and therefore, made an Award dated 11.03.2002 in favour of the Respondent-Corporation to the effect that the suppliers were entitled to only Rs.115 per kg towards price of the tools supplied by them and the claim exceeding the said amount had been rejected. It was also provided in the Award that the amount be paid with interest @ 6% per annum with effect from the date of claim petition i.e. 26th April, 2001 till the date of the payment.

10. The suppliers, being aggrieved by the Award, challenged the validity of the Award by filing original petitions before the Court of XIV Additional Chief Judge, City Civil Court (Fast Track Court), Hyderabad under the provisions of Section 34 of the Act. After hearing the concerned parties, the said original petitions were dismissed

and therefore, the suppliers approached the High Court with the above referred Civil Miscellaneous Appeals. The said appeals have also been dismissed and therefore, the present appeals have been filed by the suppliers before this Court.

11. The issues that fall for determination in these appeals are whether the suppliers had committed any fraud or fraudulent misrepresentation upon the Respondent-Corporation and whether any breach of contract had been committed either by the suppliers or by the respondent-Corporation and further, whether the price fixed by the Arbitral Tribunal was reasonable or whether it was open to the Arbitral Tribunal to determine the price of the tools which had been supplied by the suppliers to the respondent-Corporation.

12. We have heard the learned counsel appearing for the parties at length. Upon hearing the learned counsel, looking at the facts of the case and upon perusal of the relevant documents, including the agreement entered into between the suppliers and the respondent-Corporation and the undertakings given by the suppliers in relation to supply

of tools at the lowest price in the State, we are of the view that the impugned judgment delivered by the High Court is just and proper.

13. The price at which the tools had to be supplied had been fixed after negotiations and efforts were made to bargain on the subject of price by both the sides. Ultimately, a particular price had been determined as a result of the negotiations and the agreements with different parties had been entered into by the respondent-Corporation for purchase of the tools.

14. The most important factor to be considered is the undertaking executed by each supplier to the effect that the tools which the said supplier had agreed to supply to the respondent-Corporation was to be charged at the lowest rate at which the said supplier had sold his tools in the State of Andhra Pradesh. In other words, the supplier had not sold tools to anybody at a price lower than the price offered by the supplier to the respondent-Corporation.

15. A copy of the undertaking executed by each supplier has been reproduced hereinabove. By virtue of the said

undertaking, the suppliers had assured the respondent-Corporation that the prices quoted for supply of the tools under ADARANA project were the lowest prices and that nowhere in Andhra Pradesh, they had sold their tools with the same specifications at prices lower than the prices which had been quoted by them for supply of the tools to the respondent-Corporation for ADARANA project.

16. The effect of the undertaking was that if the rate which had been quoted by the suppliers in their agreement was more than the rate at which the said tools were sold by them in the State of Andhra Pradesh, the suppliers would refund the excess of price charged by them to the respondent-Corporation.

17. The contract entered into by the suppliers on one hand and the respondent-Corporation on the other was subject to the aforesaid undertaking given by the suppliers. So, if the price quoted in the agreement is 'X' per kg. for the tools supplied by the suppliers but if the tools of the same specifications were being sold by the suppliers in the State of Andhra Pradesh for a price lower than 'X', say at price 'Y',

the respondent-Corporation was supposed to pay rate 'Y' and not 'X', which had been agreed upon in the contract.

18. As there was a dispute with regard to the price and as the respondent-Corporation had found out that rate quoted in the contract was higher than the rate at which the tools of the same specifications had been supplied by the suppliers in the State of Andhra Pradesh, the respondent-Corporation had withheld the payment and in the circumstances the dispute had been raised and the suppliers had made their claim before the Arbitral Tribunal for payment of the remaining amount of price.

19. The learned Arbitral Tribunal considered all factors and the evidence which was adduced before it and came to the conclusion that the price which had been quoted by the suppliers and which had been agreed upon in the contract was higher than the price at which tools of the same specifications were sold by the suppliers in the State of Andhra Pradesh. In the circumstances, the learned Arbitral Tribunal came to the conclusion that the suppliers were entitled to the price of tools lesser than the one which had been agreed upon in the contract because the same quality

of tools, which had been manufactured by the suppliers, were sold by them in the State of Andhra Pradesh at a lower price.

20. Determination of price in the aforesaid manner is a question of fact. This Court or even the Appellate Court would not look into the finding of facts unless they are perverse. In the instant case, neither the City Civil Court in the proceedings filed before it under Section 34 of the Act nor the High Court in the proceedings under Section 37 of the Act could find anything wrong with the finding of facts arrived at by the Arbitral Tribunal. This Court under Article 136 of the Constitution of India would not like to interfere with the concurrent finding of facts, save in exceptional circumstances or unless the finding is perverse.

21. For the aforesaid reasons, in our opinion, the determination of price by the Arbitral Tribunal cannot be faulted with.

22. The submission that the Arbitral Tribunal was not competent to determine the price is also not well founded. It is a finding of fact by the learned Arbitral Tribunal that

the price quoted was more than the price at which the same products/tools were supplied by the same supplier in Andhra Pradesh and therefore, after considering the relevant evidence, the Arbitral Tribunal determined a particular price i.e. Rs. 115 per kg. It cannot be said that determination of said price by the Tribunal in the aforestated circumstances was improper. The suppliers were bound as per the undertakings executed by them and as they had not acted as per their undertaking, it was open to the learned Tribunal to find out the correct lower price at which the tools of the same specifications, which were manufactured by the suppliers were available in the State of Andhra Pradesh and if in the aforestated circumstances, the Arbitral Tribunal determines the price, in our opinion, it cannot be said that the Arbitral Tribunal had exceeded its jurisdiction.

23. In our considered opinion, no fraud had been committed as alleged. If higher price had been charged by the suppliers in the contract than the price at which their products were sold in the State of Andhra Pradesh, it cannot be said that the suppliers had committed any fraud

while entering into the contract. The parties may determine the price in the manner agreed upon by them. In the instant case, there was an undertaking in the nature of a proviso that if the price fixed in the contract is more than the price at which tools of same specifications manufactured by the same supplier were available in the State, the supplier would be entitled to the lesser rate.

24. In our opinion, the manner of price determination by the Arbitral Tribunal, in the light of the undertakings executed by the suppliers, cannot be said to be irrelevant, incorrect or beyond jurisdiction.

25. For the aforesaid reasons, we do not find any substance in these appeals and the same are dismissed with no order as to costs.

.....J.
(ANIL R. DAVE)

.....J.
(VIKRAMAJIT SEN)

NEW DELHI;
OCTOBER 28, 2015.