M/S.Northern Coalfields Ltd vs Heavy Engineering Corp.Ltd. & Anr on 13 July, 2016

Equivalent citations: AIR 2016 SUPREME COURT 3715, 2016 (8) SCC 685, 2016 (5) ADR 753, 2016 (4) AJR 486, AIR 2017 SC (CIVIL) 311, (2016) 4 ARBILR 1, (2016) 5 ANDHLD 137, (2016) 4 RECCIVR 160, (2016) 6 SCALE 820, (2017) 1 JCR 293 (SC), (2017) 1 ALL RENTCAS 517, (2016) 5 ALL WC 4626, (2016) 4 CAL HN 217, 2016 (4) KCCR SN 565 (SC), 2017 (121) ALR SOC 60 (SC), 2017 (171) AIC (SOC) 7 (SC)

Bench: R. Banumathi, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6296 OF 2016
[Arising out of Special Leave Petition (C) No.27646 of 2008]

M/s. Northern Coalfield Ltd. …Appellant

Versus

Heavy Engineering Corp. Ltd. & Anr. …Respondents

J U D G E M E N T

T.S. THAKUR, CJI.

Leave granted.

This is yet another case that brings to fore a sad state of affairs when it comes to resolving disputes between two Government owned corporations. What adds to the enigma of apathy towards realism in official circles is the fact that the respondent-corporation has with considerable tenacity opposed the move aimed at a quick and effective resolution of the conflict and resultant quietus to the controversy by a reference of the disputes to arbitration in terms of the Arbitration and Conciliation Act, 1996.

The Facts:

> 3. Appellant – Northern Coalfield Ltd. issued a tender for construction of a Coal Handling Plant at Bina sometime in May, 1984. The construction work was meant to be carried out under two contracts: viz. (1) a Contract for works and services and (2) a

Contract for equipment and spares. Both these contracts were awarded to the respondent – Heavy Energy Corporation Ltd. which is also a Government of India company. The contracts contained a Clause that provided for adjudication of disputes between the parties by way of arbitration. Disputes having actually arisen in relation to the two contracts, the same were referred for resolution in terms of the "permanent in-house administrative machinery" set up by the Government. Claims and counter claims were made by the two corporations against each other which finally culminated in the making of two awards both dated 28.02.1997 under which respondent No.1 was held entitled to a sum of Rs.16,87,61,981.11/-, while the appellant was awarded Rs.56,05,000/-. Both the parties were, however, dissatisfied with the awards which they challenged in appeals filed before the Law Secretary, Department of Legal Affairs, Ministry of Law and Justice in terms of the in-house mechanism provided by the Government. While Appeal No.67 of 1998 filed before the Law Secretary pertained to the contract for supply of equipment, Appeal No.64 of 1999 pertained to the contract for execution of works and services.

4. During the pendency of the appeals aforementioned respondent No.2 – M/s. Rampur Engineering Company Ltd. filed Suit No.450 of 1999 before the High Court of Delhi against the two corporations in which the said respondent prayed for an injunction restraining respondent No.1 from settling the disputes with the appellant. The appellant's case is that it came to know about the role of Respondent No.2 in the execution of contracts only after the filing of the said suit in which by an interim order, the High Court restrained the parties from implementing any award made by the appellate authority. The appellant's further case is that respondent No.1 had, contrary to Clause 3 of the Terms of Contracts executed with the appellant, sublet the contracts in favour of respondent No.2 without prior consent of the former and that the said arrangement was of no legal consequence nor did it create any legal relationship between the appellant and the sub-contractor.

5. Appeal No.64 of 1999, arising out of the contract for works and services came to be disposed of first, wherein the appellate authority made an award on 13.11.1999 holding that a sum of Rs.15,84,50,000/- apart from Rs.3.73 crores due as interest was recoverable from the appellant. Appeal No.67 of 1998 filed by the first respondent was disposed of by the appellate authority on 01.12.1999 remanding the matter back to the Arbitrator for reconsideration. Aggrieved by the awards made by the Arbitrator and the appellate authority, the appellant-herein filed Civil Suit No.1709 of 2000 before the High Court of Delhi in which it claimed a declaration to the effect that respondent No.1 had committed a breach of Clause 3 of the terms of the Contracts executed between the two Corporations by sub-letting the contract to respondent No.2 thereby rendering the contracts between the appellants and the first respondents null and void. The appellant further prayed for a declaration to the effect that respondent No.1 was not entitled to claim any relief under those contracts nor was respondent No.2 entitled to do so. The so called Arbitral award passed by the appellate authority was according to the appellant illegal and vitiated by errors

apparent on the face of the record, hence, liable to be set aside.

6. The learned Single Judge of the High Court by an interim order dated 4.08.2000 passed in the suit restrained the implementation/execution of awards passed by the Appellate Authority. The appellant's case is that it was at that stage that the defendant-respondents herein moved an application under Order 7, Rule 11 (d) of the Code of Civil Procedure, 1908 (for short, "the CPC") praying for rejection of the plaint in the suit filed by the appellant. The defendant claimed that the suit was barred in view of the existence of a specially prescribed procedure for resolving disputes in arbitration proceedings between the two Government corporations. It was contended that in the light of the said procedure, neither party to the dispute was entitled to take recourse to proceedings in any Court without the permission of the Committee on Disputes.

7. The appellant opposed the prayer for rejection of the plaint inter alia on the ground that no permission to file a suit or other proceedings was required as the subject dispute also involved respondent No.2 who was not a party to the arbitration agreement or the proceedings. By an order dated 10.07.2007 a learned Single Judge of the High Court allowed the application filed by the defendants-respondents and rejected the plaint filed by the appellant. The learned Single Judge held that the arbitral award made pursuant to the proceedings conducted in terms of the special mechanism could not be set aside in a suit. The learned Single Judge also held that there was no privity of contract between the appellant-

corporation and respondent No.2 and that the suit between the two public sector undertakings could not be filed without clearance from the Committee on Disputes.

8. Aggrieved by the order passed by the Single Judge of High Court, the appellant filed RFA (OS) No.50 of 2007 before a Division Bench of the High Court of Delhi. The Division Bench has by an order dated 07.08.2008 dismissed the said appeal and affirmed the rejection of the plaint by the learned Single Judge primarily on the ground that since the special procedure prescribed by the Government for adjudication of disputes between Government Corporations having been effectuated and resorted to by the parties in terms of the judgments of this Court in ONGC's Cases, the appellant was not entitled to seek a declaration that the awards so made were illegal or liable to be set aside.

9. The High Court observed:

"Before us, the appellant, which is admittedly a government undertaking, is claiming that the first respondent, also a government undertaking, has violated and breached a contract between them. In particular, Clause 3 of the said contract is stated to have been breached. Respondent No.1, of course, says that no such breach has occurred. This then, is the dispute merely because the appellant feels that the breach committed by the first respondent has benefited a third party, will not change the

nature of the dispute from being one between the appellant and Respondent No.1, i.e., the two contracting parties. Since both of them are government undertakings, therefore, the permanent machinery provided for resolving disputes between public sector undertakings ought to have been followed." By the impugned order, the learned Single Judge has examined the question whether the appellant is entitled to seek a declaration that the appellant awards are illegal and liable to be set aside by way of a suit or whether the same is barred by any law. The learned Single Judge has held that the arbitral award cannot be set aside in a suit. It was further held that an arbitral award cannot be set aside in a suit. It was further held that once the parties have subjected themselves to permanent machinery for redressal of dispute between public sector undertakings, then the mechanism prescribed therein should be followed and, therefore, the suit in question could not have been filed without clearance of the Committee of Disputes. By merely noting the contention of the appellant that the root of the dispute is violation of Clause 3 of the terms of the contracts, it cannot be said that the learned Single Judge has decided disputed question of facts. It has merely taken note of the appellant's own case in stating that the key players are the two public sector undertakings which have entered into the contract in question with each other, and therefore, the special procedure prescribed for such disputes should have been followed. Consequently, the learned Single Judge rightly held that the plaint was liable to be rejected, inter alia, for that reason."

10. The present appeal calls in question the correctness of the above judgments and orders.

11. Appearing on behalf of the appellant, Mr. P.S. Patwalia, learned senior counsel argued that the view taken by the High Court was legally unsustainable. It was submitted that the High Court has proceeded on the assumption as though the award made by the Arbitrator under the special procedure prescribed by the Government is an arbitral award within the comprehension of the Arbitration Act, 1940 or Arbitration and Conciliation Act, 1966. He urged that the High Court had overlooked the genesis of the administrative arrangement, in as much as the object behind the setting up of the special procedure for resolution of disputes between Government corporations was not meant to prescribe a mechanism recognized by the old or the new Arbitration Act nor was the special procedure meant to be a substitute for a proper adjudication under the said two enactments. It was contended that in as much as the Arbitrator under the special procedure had determined the issue referred to him to the prejudice of the appellant company, it was open to the latter to assail the adjudication in a proper civil action which action was not barred by any law nor could the same be thrown out merely because a purely administrative procedure for a possible amicable resolution of the conflict had been adopted no matter without the sanction of law. It was urged that the mechanism provided for under the decisions of this Court in ONGC matters was in any case non-est the same having been scrapped by the Constitution Bench of this Court in Electronics Corporation of India Ltd. v. Union of India, (2011) 3 SCC 404. Reliance was also placed by Mr. Patwalia upon the decision of this Court in Oil and Natural Gas Commission v. Collector of Central Excise, (2004) 6 SCC 437 to urge that no suit filed by the parties to the dispute and covered by the administrative machinery could be dismissed as untenable. All that could be done was to give to the plaintiff an opportunity to obtain permission of the Committee on Disputes to proceed with the same.

12. On behalf of the respondent, Mr. Ranjit Kumar, learned Solicitor General strenuously argued that High Court was justified in rejecting the plaint as the very purpose of providing a special mechanism for adjudication of the disputes would be defeated if any such adjudication could be questioned in any civil action as was sought to be done by the appellant-herein. It was contended by Shri Kumar that the arbitral proceedings conducted by the Arbitrator under the special mechanism may be outside the statutory framework of the two enactments, yet the efficacy of the adjudication could not be doubted. He urged that even when the adjudication by the Arbitrator under the special mechanism did not tantamount to a decree enforceable in a Court of law, the fact that both the corporations were owned by the Government was sufficient by itself to facilitate recovery of the amount payable to one by the other and thereby effectuate the execution of the award by way of administrative action.

13. We have given our anxious consideration to the submissions made at the Bar. Before we deal with the contentions urged at the Bar, we need to advert to the historical backdrop in which the special mechanism came to be prescribed by the Government.

14. Commercial disputes between public sector enterprises inter se as well as between the public sector enterprises and the Government departments were in the ordinary course settled through arbitration by Government Officers or good offices of empowered government agencies like Bureau of Public Enterprises. Department of legal affairs however submitted a note dated 8th May, 1987 on the subject which was considered by a Committee of Secretaries in its meeting held on 26th June, 1987. The Committee of Secretaries suggested that a permanent machinery for arbitration should be set up in the Department of Public Enterprises to settle all commercial disputes between PSE inter se and between PSE and Government department excluding disputes concerning income tax, customs and excise. The Committee also suggested that there should be a contractual clause binding the parties to the commercial contracts to refer all their disputes for settlement to the Permanent Machinery of Arbitrators. The Committee of Secretaries proposed that Bureau of Public Enterprises should bring a note for consideration of the Cabinet in that regard which note was prepared and upon submission to the Cabinet was approved in its meeting held on 24th February, 1989. The Cabinet decision envisaged that all Public Sector Enterprises include a contractual clause in their future and current commercial contracts regarding settlement of disputes by arbitration by resorting to Permanent Machinery of Arbitration and that administrative Ministries shall issue necessary directives to the PSEs under the relevant clause of the Articles of Association. The directives and draft outline of procedure to be followed by the Permanent Machinery of Arbitrators in the Bureau of Public Enterprises was accordingly issued in terms of DPE D.O. No. 15(9)/86-BPE(Fin) dated 29th March, 1989. The procedure for settlement of disputes so devised was however outside the framework of the Arbitration Act, 1940 which then held the field. This is evident from Para 2 of the draft outline of the procedure which reads as under:

> "2. The Arbitration Act, 1940 (10 of 1940) shall not be applicable to the arbitration under this clause. The award of the sole arbitrator shall be binding upon the parties to the dispute. Provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon

> such further reference, the dispute shall be decided by the Law Secretary or the Special Secretary/ Additional Secretary when so authorised by the Law Secretary, whose decision shall bind the parties finally and conclusively."

15. While the Permanent Machinery of Arbitration was put in place in terms of the above order and while instructions to the public sector undertakings and public sector enterprises to take resort to the said procedure also remained in force, instances of public sector undertakings resorting to legal proceedings instead of complying with those instructions came to the notice of this Court in Oil and Natural Gas Commission and Anr. v. Collector of Central Excise 1995 Supp (4) SCC 541 in which this Court taking note of such legal proceedings at considerable public expense resulting in waste of valuable Court time directed Government of India to set up a Committee consisting of representatives from the Ministry of Industry and Commerce, Bureau of Public Enterprises and the Ministry of Law to monitor disputes inter se Public Sector Undertakings and with the Government to ensure that no litigation came to the Courts and Tribunals without the matter having being first examined by the Committee for grant or refusal of clearance for litigation. This Court made it obligatory for every Court and every Tribunal where such a dispute is raised to demand a clearance from the Committee in case it has not been so pleaded, and also directed that in the absence of such a clearance the proceedings would not be carried forward. It was pursuant to the said directions that a Committee of Disputes headed by the Cabinet Secretary was constituted by the Government of India in terms of Cabinet Secretariat OM No.53/3/6/91- Cabinet dated 31st December, 1991.

16. More than a decade after the setting up of the Committee aforementioned this Court in Oil and Natural Gas Commission v. Collector of Central Excise, (2004) 6 SCC 437 clarified the previous order to say that in the absence of a clearance from the Committee, the Courts would not proceed with the case but a suit could be instituted by a Public Sector Undertaking to save limitation. This Court observed:

> "4. There are some doubts and problems that have arisen in the working out of these arrangements which require to be clarified and some crease ironed out. Some doubts persist as to the precise import and implications of the words and "recourse to litigation should be avoided". It is clear that order of this court is not to effect that -- nor can that be done-- so far as Union of India and its statutory corporations are concerned, the statutory remedies are effaced. Indeed, the purpose of the Constitution of the High Power Committee was not to take away those remedies.
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> 5. Accordingly, there, should be no bar to the lodgment of an appeal or petition either by the Union of India or the Public Sector Undertakings before any court or tribunal so as to save limitation. But, before such filing every endeavor should be made to have the clearance of the High Power Committee.

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6. Wherever appeals, petitions etc. are filed without the clearance of the High Power Committee, so as to save limitation, the appellant or the petitioner as the case may be, shall within a month from such filing, refer the matter to the High Power Committee with prior notice to the Designated Authority in Cabinet Secretariat of Government of India authorised to receive notices in that behalf. Sri. K.T.S. Tulsi, learned Additional Solicitor General, stated that in order to coordinate these references of the High Power Committee the Government proposes to nominate the Under Secretary (Coordination) in the Cabinet Secretariat as the nodal authority to coordinate these references. The reference shall be deemed to have been made and become effective only after a notice of the reference is lodged with the said nodal authority. The reference shall be deemed to be valid if made in the case of the Union of India by its Secretary, Ministry of Finance Department of Revenue, and in the case of Public Sector Undertakings by its Chairman, Managing Director or chief Executive, as the case may be. It is only after such reference to the High Power Committee is made in the manner indicated that the operation of the order or proceedings under challenge shall be suspended till the High Power Committee resolves the dispute or gives clearance to the litigation. If the High Power Committee is unable to resolve the matter for reasons to be recorded by it, it shall grant clearance for the litigation." (emphasis supplied)

17. In Oil and Natural Gas Corporation Ltd. v. City and Indust. Dev. Corpn., Maharashtra and Ors. (2007) 7 SCC 39 this Court ordered the constitution of another Committee to look into the disputes between Central Government and State Government entities. Then came Commissioner of Income Tax, Delhi-VI v. Oriental Insurance Co. Ltd. (2008) 9 SCC 349 in which this Court while clarifying its earlier order in Oil and Natural Gas Commission v. Collector of Central Excise, (2004) 6 SCC 437 observed that there was no rigid time frame prescribed by the Court and that merely because there was some delay in approaching the Committee did not mean that the action was illegal. The following passage is in this regard apposite:

> "10. It needs to be emphasized that there was actually no rigid time frame indicated by this Court. The emphasis on one month's time was to show urgency needed. Merely because there is some delay in approaching the Committee that does not make the action illegal. The Committee is required to deal with the matter expeditiously so that there is no unnecessary backlog of appeals which ultimately may not be pursued. In that sense, it is imperative that the concerned authorities take urgent action otherwise the intended objective would be frustrated. There is no scope for lethargy. It is to be tested by the Court as to whether there was any indifference and lethargy and in appropriate cases refuse to interfere. In these cases factual position is not that. Therefore, we set aside the order of the High Court in each case and direct consideration of the question of desirability to proceed in the matter before it on receipt of the report from the concerned Committee.
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> 12. It is to be noted that where permission has been granted by the Committee there is no impediment on the Court to examine the matter and take a decision on merits. But where there is no belated approach as noted above, the matter has to be decided.

> Court has to decide whether because of unexplained delay and lethargic action it would decline to entertain the matters. That would depend on the factual scenario in each case, and no straight jacket formula can be adopted." (emphasis supplied)

18. In Commissioner of Central Excise v. Bharat Petroleum Corp. Ltd. (2010) 13 SCC 42, this Court, held that working of the COD had failed as numerous difficulties had been experienced by the COD which were expressed in the Cabinet Secretary's letter dated 9th March, 2010. This Court observed "4. In our experience, the working of the COD has failed. Numerous difficulties are experienced by the COD which are expressed in the letter of the Cabinet Secretary, dated 9th March, 2010. Apart from the said letter, we find in numerous matters concerning public sector companies that different views are expressed by COD which results not only in delay in filing of matters but also results into further litigation. In the circumstances, we find merit in the submission advanced before us by learned Attorney General that time has come to revisit the orders passed by the three Judge Bench of this Court in the case of Oil & Natural Gas Commission v. Collector of Central Excise (supra)."

19. The matter was accordingly referred to a larger bench to reconsider the earlier decisions directing constitution of the COD. The matter was eventually heard and decided by a Five Judge Bench of this Court in Electronics Corporation of India Ltd. v. Union of India, (2011) 3 SCC 404. This Court after noticing various flaws in the working of the Committee of Disputes ordered recall of its previous orders passed by it in the following words:

> "6.....By Order dated 11.9.1991, reported in 1992 Supp (2) SCC 432 (ONGC and Anr. v. CCE), this Court noted that "Public Sector Undertakings of Central Government and the Union of India should not fight their litigations in Court". Consequently, the Cabinet Secretary, Government of India was "called upon to handle the matter personally".
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> 7. This was followed by the order dated 11.10.1991 in ONGC-II case (supra) where this Court directed the Government of India "to set up a Committee consisting of representatives from the Ministry of Industry, Bureau of Public Enterprises and Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation".
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> 8. Thereafter, in ONGC-III case (supra), this Court directed that in the absence of clearance from the "Committee of Secretaries" (CoS), any legal proceeding will not be proceeded with. This was subject to the rider that appeals and petitions filed without such clearance could be filed to save limitation. It was, however, directed that the needful should be done within one month from such filing, failing which the matter would not be proceeded with. By another order dated 20.7.2007 (ONGC-IVth case) this Court extended the concept of Dispute Resolution by High-Powered Committee to amicably resolve the disputes involving the State Governments and their

Instrumentalities.

9. The idea behind setting up of this Committee, initially, called a "High-

Powered Committee" (HPC), later on called as "Committee of Secretaries"

(CoS) and finally termed as "Committee on Disputes" (CoD) was to ensure that resources of the State are not frittered away in inter se litigations between entities of the State, which could be best resolved, by an empowered CoD. The machinery contemplated was only to ensure that no litigation comes to Court without the parties having had an opportunity of conciliation before an in-house committee. [see: para 3 of the order dated 7.1.1994 (supra)] Whilst the principle and the object behind the aforestated Orders is unexceptionable and laudatory, experience has shown that despite best efforts of the CoD, the mechanism has not achieved the results for which it was constituted and has in fact led to delays in litigation. We have already given two examples hereinabove. They indicate that on same set of facts, clearance is given in one case and refused in the other. This has led a PSU to institute a SLP in this Court on the ground of discrimination. We need not multiply such illustrations. The mechanism was set up with a laudatory object. However, the mechanism has led to delay in filing of civil appeals causing loss of revenue. For example, in many cases of exemptions, the Industry Department gives exemption, while the same is denied by the Revenue Department. Similarly, with the enactment of regulatory laws in several cases there could be overlapping of jurisdictions between, let us say, SEBI and insurance regulators. Civil appeals lie to this Court. Stakes in such cases are huge.

One cannot possibly expect timely clearance by CoD. In such cases, grant of clearance to one and not to the other may result in generation of more and more litigation. The mechanism has outlived its utility. In the changed scenario indicated above, we are of the view that time has come under the above circumstances to recall the directions of this Court in its various Orders reported as 1995 Supp (4) SCC 541 dated 11.10.1991, (ii) (2004) 6 SCC 437 dated 7.1.1994 and (iii) (2007) 7 SCC 39 dated 20.7.2007.

10. In the circumstances, we hereby recall the following Orders reported in:

(i) 1995 Supp (4) SCC 541 dated 11.10.1991

(ii) (2004) 6 SCC 437 dated 7.1.1994

(iii) (2007) 7 SCC 39 dated 20.7.2007” (emphasis supplied)

20. The Government of India had, in the intervening period, consolidated into a single set of guidelines the Permanent Machinery of Arbitration for settlement of commercial disputes and the directives issued by this Court regarding constitution of Committee on Disputes in terms of a circular issued by the Department of Public

Enterprises vide order No. DPE O.M. No.DPE/4(10)/2001-PMA-GL-I dated 22nd January, 2004 which inter alia provided for creation of Permanent Machinery of Arbitrators (PMA), stated the need for creation of such a machinery, indicated the entitlement of departments/ PSEs, CPSC, banks etc. to take resort to the said machinery, fixed monetary limits, stipulated fees payable towards arbitration, provided for an appeal against the award and also provided for clearance from the Committee on Disputes. The instructions issued to PSES, CPSEs, banks etc. stipulated the incorporation of a clause in current and future contracts/ agreements which specifically excluded the application of Arbitration and Conciliation Act, 1996 to arbitrations conducted under the Permanent Machinery of Arbitration. The arbitration clause recommended for inclusion in the current and future contracts/ agreement was to be in the following words:

"In the event of any dispute or difference relating to the interpretation and application of the provisions of the contracts, such dispute or difference shall be referred by either party for Arbitration to the sole Arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in-charge of the Department of Public Enterprises. The Arbitration and Conciliation Act, 1996 shall not be applicable to arbitration under this clause. The award of the Arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary/Additional Secretary, when so authorized by the Law Secretary, whose decision shall bind the Parties finally and conclusively. The Parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator".

(emphasis supplied)

21. Reference may also be made to Office Memorandum dated 12th June, 2013 issued by the Government of India, Ministry of Industries and Public Enterprises, Department of Public Enterprises revising the guidelines further and deleting from the earlier guidelines Para 13 that required clearance from the Committee of Disputes.

22. The net effect of the above can be summarized as under:

The Permanent Machinery of Arbitration was put in place as early as in March, 1989, even before ONGC II was decided on 11th October, 1991. The Permanent Machinery of Arbitration was outside the statutory provision then regulating arbitrations in this country namely Arbitration Act, 1940 (10 of 1940).

The award made in terms of the Permanent Machinery of Arbitration being outside the provisions of the Arbitration Act, 1940 would not constitute an award under the said legislation and would therefore neither be amenable to be set aside under the said statute nor be made a rule of the court to be enforceable as a decree lawfully passed against the judgment debtor. The Committee on disputes set up under the orders of this Court in the series of orders passed in ONGC cases did not prevent filing of a suit or proceedings by one PSE/PSU against another or by one Government department against another. The only restriction was that even when such suit or proceedings was instituted the same shall not be proceeded with till such time the Committee on Disputes granted permission to the party approaching the Court.

The time limit fixed for obtaining such permission was also only directory and did not render the suit and/ or proceedings illegal if permission was not produced within the stipulated period.

The Committee on Disputes was required to grant permission for instituting or pursing the proceedings. If the High Power Committee (COD) was unable to resolve the dispute for reasons to be recorded by it, it was required to grant clearance for litigation.

The Committee on Disputes experience was found to be unsatisfactory and the directives issued by the Court regarding its constitution and matters incidental thereto were recalled by the Constitution Bench of this Court thereby removing the impediment which was placed upon the Court's/Tribunal's powers to proceed with the suit/ legal proceedings. The Department of Public Enterprises has subsequent to the recall of the orders in the ONGC line of cases modified its guidelines deleting the requirements for a COD clearance for resorting to the Permanent Machinery of Arbitration and;

The Permanent Machinery of Arbitration was and continues to be outside the purview of Arbitration Act, 1940 now replaced by Arbitration and Conciliation Act, 1996.

23. Let us now see the case at hand in the light of the above propositions. It is true that the disputes between the appellant and respondents were referred for settlement in terms of the Permanent Machinery for Arbitration as early as in the year 1993/1994. It is also not in dispute that as on the date of the said reference the Committee on Disputes was already set up but no permission for a reference was taken.

That the Arbitrator made an award under the Permanent Machinery of Arbitration which was questioned in appeals before the Law Secretary who made some alterations in the same is also admitted. That the award so made has not been accepted by the appellants is also common ground in as much as the appellant has filed a suit challenging an arbitral award in Civil Suit No.1709 of

2000 in which the appellant claimed a declaration that the contracts were rendered null and void on account on the breach of Clause 3 thereof. The appellant also sought a declaration that the respondent company was not entitled to claim any relief under the said contract nor was respondent No.2 entitled to do so and that the so called arbitral award was vitiated on the face of record hence liable to be set aside. That such a suit could be filed but could not be proceeded with till such time the COD granted permission is also beyond dispute as on the date of the institution of the suit the direction of this Court in ONGC group of cases still held the field. Such permission could be obtained within 30 days which was not sacrosanct but the institution of the suit itself could not be faulted as a litigant was in terms of the direction of this Court entitled to institute the proceedings to save limitation. The High Court has, all the same, rejected the plaint on the ground that permission from COD was not obtained. In doing so the High Court obviously understood the direction of this Court to mean as though absence of such permission was a fatal defect which it was not. The orders of this Court to which we have made a reference earlier unequivocally make it clear that filing of the suit in itself was not barred. What was restrained was further progress in the suit till such time permission from the COD was obtained. In as much as the High Court considered the absence of permission from COD to be a mandatory legal requirement for the institution of the suit it committed a mistake. No such legal requirement could be read into the judgment of this Court nor has any such requirement been pointed out by Mr. Ranjit Kumar, learned Solicitor General appearing before us.

24. The question then is whether the requirement of the clearance of COD could be insisted upon even at this stage. Our answer is in the negative. We say so because COD stands abrogated/dissolved and the orders directing constitution of such a Committee reversed. Since there is no COD at present there is no question of either obtaining or insisting upon any clearance from the same. The upshot of the above discussion is that the orders passed by the High Court rejecting the plaint on the ground that the same was not preceded or accompanied by permission from COD is unsustainable, are hence, liable to be set aside.

25. That brings us to the question whether we ought to remand the matter back to the Civil Court for adjudication and if that were not a desirable course of action whether adjudication of the matters in dispute by way of arbitration would be a better option. It was argued by Mr. Ranjit Kumar, learned Solicitor General that the respondent has an award in its favour made in terms of the Permanent Machinery of Arbitration and that so long as that award stands there is no need for any fresh or further arbitration on the claims already adjudicated upon under the said mechanism. The argument appears to be attractive at first blush but does not survive a closer scrutiny. That is so because an arbitral award under the Permanent Machinery of Arbitration may give quietus to the controversy if the same is accepted by the parties to the dispute. In cases, however, a party does not accept the award, as is the position in the case at hand, the arbitral award may not put an end to the controversy. Such an award being outside the framework of the law governing arbitration will not be legally enforceable in a court of law. In fairness to Mr. Ranjit Kumar, learned Additional Solicitor General, we must mention that he did not dispute that the award made by the arbitrator under the Permanent Machinery of Arbitration was outside the statute regulating arbitration in this country and was not, therefore, executable in law. What he argued was that since both sides to the disputes were government corporations the Government could adopt administrative mechanism for

recovering the amount held payable to the respondent. That does not, in our opinion, answer the question. Remedies which are available to the Government on the administrative side cannot substitute remedies that are available to a losing party according to the law of the land. The appellant has lost before the arbitrators in terms of the Permanent Machinery of Arbitration and is stoutly disputing its liability on several grounds. The dispute regarding liability of the appellant under the contract, therefore, continues to loom large so long as it is not resolved finally and effectually in accordance with law. No such effective adjudication recognized by law has so far taken place. That being so, the right of the appellant to demand such an adjudication cannot be denied simply because it happens to be a Government owned company for even when the appellant is a government company, it has its legal character as an entity separate from the Government. Just because it had resorted to the permanent procedure or taken part in the proceedings there can be no estoppel against its seeking redress in accordance with law. That is precisely what it did when it filed a suit for declaration that the award was bad for a variety of reasons and also that the contract stood annulled on account of the breach committed by the respondents.

26. Having said that, Mr. Patwalia made a candid statement after instructions that the appellant would have no difficulty in having all the claims and counter-claims of the appellants and the respondent-corporation referred to adjudication in accordance with law to a sole arbitrator to be nominated by this Court. To facilitate such a reference Mr. Patwalia has on instructions sought deletion of respondent No.2 from the array of respondents which prayer we see no reason to decline especially because the dispute is between the two corporations which alone ought to be referred to adjudication in accordance with law. Respondent No.2 shall accordingly stand deleted from the array of parties.

27. Mr. Ranjit Kumar was, however, somewhat diffident in making a concession that the claim could be referred for a fresh round of arbitration in accordance with provisions of Arbitration and Conciliation Act, 1996. That diffidence does not prevent us from making a suitable order of reference to a sole arbitrator for adjudication of all outstanding disputes between the two corporations especially because the alternative to such arbitration is a long drawn expensive and cumbersome trial of the suit filed by the appellant before a civil court and the difficulties that beset the execution of an award made under a non-statutory administrative mechanism. Both these courses are unattractive with no prospects of an early fruition even after the parties have fought each other for nearly twenty years.

28. In the result we allow this appeal and set aside the judgment and order passed by the High Court. We further direct that all disputes relating to and arising out of the contracts executed between the appellant company and the respondent corporation shall stand referred for adjudication to Hon'ble Mr. Justice K.G. Balakrishnan, Former Chief Justice of this Court, who is hereby appointed as Sole Arbitrator to adjudicate upon all claims and counter claims which the parties may choose to file before him. Civil Suit (OS) No.1709/2000 shall also stand disposed of in terms of this order. The parties shall appear before the Arbitrator on 22nd of August, 2016 for further directions. The Arbitrator shall be free to determine his own fee. No costs.

.....CJI.

(T.S. THAKUR) .....J. (R. BANUMATHI) New Delhi July 13, 2016