

(1993) 10 AP CK 0029

In the Andhra Pradesh High Court

Case No : C.M.A. No. 1969 of 1991 and C.R.P. No. 18 of 1992

Government of A.P. and Others

APPELLANT

Vs

N.V. Choudary and Another

RESPONDENT

Date of Decision : 08-10-1993

Acts Referred:

Arbitration Act, 1940 — Section 20, 8
Constitution of India, 1950 — Article 14, 141, 21
Contract Act, 1872 — Section 29

Citation : (1993) 3 ALT 391 : (1993) 2 APLJ 479

Hon'ble Judges : , Acting C.J.;P.L.N. Sarma, J;P. Venkatarama Reddi, J

Bench : Full Bench

Advocate : Government Pleader, for Irrigation, for the Appellant; A. Venkata Ramana, for the Respondent

Judgement

1. This batch of five Civil Miscellaneous Appeals and three Civil Revision Petitions arise out of suits filed under Sections 8 and 20 of the Arbitration Act, 1940.
2. Plaintiff is the respondent in all these matters. Defendants are the appellants in all the appeals and petitioners in the revision petitions. They are challenging the Judgments and decrees of the IInd Additional Judge, City Civil Court, Hyderabad appointing sole Arbitrator in each of the cases.
3. Though suits were decreed appointing sole Arbitrator in each of the cases by separate Judgments, as common questions arise in this batch of cases, it will be convenient to dispose of them together by a common Judgment. It is not necessary to refer to the allegations contained in the respective complaints as they are almost similar insofar as they relate to the questions to be determined in these proceedings. However, the works, for which agreements were executed and the amounts claimed differ in each of the cases.
4. Suits were instituted under Sections 8 and 20 of the Arbitration Act, 1940, hereinafter referred to as "The Act", by the plaintiff-contractor alleging that he is a Class-I Contractor and pursuant to the different works mentioned in the

respective complaints, he submitted his tenders for the respective works which were ultimately accepted and agreements were concluded between the plaintiff-contractor on the one hand and third defendant on the other. The period of contract was fixed as twelve months from the date of handing over of the site. The terms of the contract are subject to the conditions set forth in the Preliminary Specifications to the Andhra Pradesh Detailed Standard Specifications and such other conditions as are contained in the specifications forming part of the contract. Clause 73 of the Preliminary Specifications provides that in case of dispute or difference between the parties to the contract during the progress or after the completion of the work, the same shall be referred to Arbitration. Basing on the said clause, Article 3 of the Articles of Agreement was included in the terms of the agreement. According to the relevant term, the Arbitration for fulfilling the duties set forth in the Arbitration Clause of Standard Preliminary Specifications shall consist of members as laid down in G.O.Ms.No. 876, Tr. R & B, dated 31-7-1975 and Government Memo. No. 1323-CI/75007, dt.27-11-1975. According to the said clause, for claims of Rs. 1.00 lakh and above, the panel shall consist of (1) Chief Engineer (R & B); (2) Deputy Secretary, Finance; and (3) Director of Accounts, Pochampad Project. Plaintiff-contractor claiming that the defendants never co-operated with him for completing the work and did not pay him the amounts due to him for the work completed, raised several disputes and issued a notice in that regard (Ex.A-4 dt. 8-9-1985) and as there was no reply, he was constrained to file the suit. It is alleged in the plaint that the Arbitration clause prescribing the panel of Arbitrators is so vague that the plaintiff cannot make his submissions to a particular panel of arbitrators. According to the plaintiff, there are more than one designated Officers in the category of Chief Engineer (R & B), and Deputy Secretary, Finance and that there was no provision anywhere in the arbitration clause empowering a particular officer or person to draw the panel from the members mentioned in the said clause. Therefore, the plaintiff-contractor sought relief that an Arbitrator may be appointed in each of the cases to decide the disputes between the parties with respect to each of the agreements.

5. Suits were resisted by the defendants by filing written statements, wherein all the allegations made by the plaintiff-contractor with regard to the completion of more than 75% of the work and non-payment of the amounts due and payable to the plaintiff-contractor and that due to non-co-operation and non-payment of the amount by the defendants the work could not be completed and therefore, the contractor rescinded the contract, were all denied. It is stated that the payments were promptly made to the plaintiff-contractor and nothing was due to him by the time the written statements were filed and they have also given particulars with regard to certain payments made to him and alleged that the plaintiff-contractor could not complete the work within the stipulated period of 12 months and the work that is turned out within the stipulated period was negligible. So far as arbitration clause is concerned, it was specifically mentioned by the defendants that there were no disputes or claims referable to arbitration

and that the allegation that the plaintiff was in a fix about the certainty and identity of the panel of arbitrators contemplated under Sub-clause (3) of Article 3 of the Articles of Agreement is not correct and that the arbitration clause was not at all vague. It is further stated that the Chief Engineer (R & B) (Administration) is the concerned first Arbitrator. The Deputy Secretary, Finance and Planning Wing is the second Arbitrator while the Director of Accounts, Sriramsagar Project is the Third Arbitrator and that the plaintiff-contractor is well aware that the above are the Arbitrators. It is further stated that Pochampadu Project is re-named as Sriramsagar Project and there was no material change in the panel of arbitrators and that the plaintiff-contractor cannot rescind the contract unilaterally.

6. On the above pleadings, the learned trial Judge, framed the necessary issues.

(1) Whether the defendant should be directed to file agreement No. 58/79-80 into the Court?

(2) Whether there are any disputes referable for arbitration?

(3) Whether the plaintiff is entitled to the appointment of sole arbitrator?

(4) To what relief?

Addl. Issue:

(1) Whether claim of the plaintiff is barred by limitation?

7. Learned trial Judge, on a consideration of the material placed before him and after hearing the arguments on both sides, held that the plaintiff is entitled for a direction to third defendant to file the agreement into Court as there are disputes referable to arbitrator and he is also entitled to ask for appointment of sole arbitrator as the panel of arbitrators is vague. On the additional issue, the learned Judge held that the claims are not barred by limitation.

8. On the above findings, the learned Judge decreed the suits and referred the disputes enumerated by the learned Judge in his Judgment to an arbitrator for adjudication. The learned Judge relied upon certain un-reported Judgments of this Court for holding that the panel of arbitrators is vague and therefore, he is well within his jurisdiction to appoint an arbitrator from among the panel of arbitrators submitted by both the parties. The learned Judge directed the parties to file memos indicating the names of persons for appointment as arbitrator and after filing of the memos appointed a sole arbitrator in each of the cases who are either a retired Judge of this Court and a retired Chief Engineer. Defendants filed the memos giving a panel of arbitrators to be considered for appointment, under protest and without prejudice to their rights to prefer appeal. Questioning the same, present appeals as well as revision petitions are preferred as aforesaid.

9. This batch of appeals and revision petitions came up for disposal before a Division Bench of this Court consisting of M.N. Rao and D. Reddappa Reddy, JJ. During the course of hearing before the Division Bench, learned Government

Pleader relied upon an un-reported Judgment of the Supreme. Court in Civil Appeal No. 144 of 1992 dated 14-1-1992 in support of his contention that the Judgments of this Court holding that in similar circumstances, the appointment of sole arbitrator by the Court is justified, are no longer good law.

10. The case decided by the Supreme Court arose in the following circumstances:-

When disputes arose between the Contractor and the official-defendants therein, they were referred to the panel of arbitrators consisting of three officials holding the posts of Chief Engineer, Srisaïlam Project, Deputy Secretary to -Government, Finance Department and the Director of Accounts, Srisaïlam Project. Alleging that the said Arbitrators have not settled the matter expeditiously, the Contractor therein approached the civil Court under the provisions of Arbitration Act for removal of Arbitrators and for appointment of sole arbitrator to adjudicate the disputes between the parties. The civil Courts, " accepting the plea of the contractor therein, removed the panel of arbitrators and appointed sole arbitrator to adjudicate the disputes. The said decision was the subject-matter of C.R.P.No. 1223 of 1989 in this Court. A learned Single Judge of this Court by his Judgment dated 6-12-1989 upheld the trial Court's action in appointing sole arbitrator. Official-respondents therein carried the " matter in appeal to Supreme Court. It was contended before the learned Judges of the Supreme Court on behalf of the department that the civil Court ought not to have appointed a sole arbitrator and should have appointed a panel of three arbitrators in view of the express provision contained in the agreement that the disputes should be referred to a panel of three arbitrators. The learned Judges of the Supreme Court held in the said case that it was a fit case that the arbitration matter should be entrusted to the officials who were holding three posts mentioned in the agreement. Strongly relying upon this Judgment, it was contended before the Division Bench of this Court, as aforesaid, that the Judgments of this Court appointing a sole non-technical arbitrator in similar circumstances, are no longer good law. The learned Judges of the Division Bench were of the view that in view of the latest Judgment of the Supreme Court in Civil Appeal No. 144 of 1992, question of law raised in these matters needs to be decided authoritatively by a Full Bench and, therefore, the learned Judges directed the Registry to place the papers before the Hon"ble the Chief Justice for constitution of a full Bench. Accordingly, these matters have come up .before us.

11. The point of law that is referred to by the learned Judges of the Division Bench requiring determination by the full Bench is as follows:

"Where a panel of Arbitrators comprises of three designated officials and if there is more than one incumbent in any of the three designated officers, whether treating such panel as vitiated on the ground of vagueness and appointing a non-official as the sole Arbitrator by the civil Court in a suit filed u/s 20 of the Arbitration Act is legal?"

12. In our view, this question has two facets which require to be determined.

(1) Where a panel of Arbitrators comprises of three designated officials and if there is more than one incumbent conforming to that designation, whether it becomes uncertain or vague?.

(2) Assuming that the panel comprising three designated officials becomes vague, whether the civil Court has jurisdiction to appoint a sole non-official Arbitrator in exercise of its jurisdiction?.

13. In appreciating the question referred to us, it would be necessary to bear in mind the rules governing the construction of a commercial contract. In this regard, we cannot do better than to refer to the decision of the Supreme Court in *The Union of India (UOI) Vs. D.N. Revri and Co. and Others*, wherein the rules of construction have been referred to and approved. They are as under:

"It must be remembered that a contract is a commercial document between the parties and it must be interpreted in such a manner as to give efficacy to the contract rather than to invalidate it. It would not be right while interpreting a contract, entered into between two lay parties, to apply strict rules of construction which are ordinarily applicable to a conveyance and other formal documents. The meaning of such a contract must be gathered by adopting a commonsense approach and it must not be allowed to be thwarted by a narrow pedantic and legalistic interpretation."

Learned Judges were considering a case where the arbitration clause in the contract stated that all questions, disputes or differences which may arise at any time between the parties to the agreement touching the agreement or its subject matter etc., shall be referred to a single arbitrator who shall be nominated by the Secretary to the Government of India in the Ministry of Food and Agriculture. At the time when the contract was entered into, Ministry for Food and Agriculture was in existence, but the same was bifurcated with effect from 19-10-1956 into two viz., Ministry of Food and that of Agriculture. Against on 23-4-1957, the Ministry of Food and Agriculture were integrated into one single Ministry of Food and Agriculture. However, the new Ministry had two departments - one of Food and the other of Agriculture and there were two Secretaries one incharge of each. The Secretary incharge of the department of Food in the Ministry of Food and Agriculture nominated, as per the arbitration clause, an advocate to act as sole Arbitrator to adjudicate upon the disputes. The parties participated in the arbitration proceedings without any objection or protest and the arbitrator made an award. The Government filed an application before the concerned Subordinate Judge's Court to pass a decree in terms of the award, while the Firm filed an application for setting aside of the award. The main question that was debated before the Court was whether the appointment - of an arbitrator by the Secretary in-charge of the department of Food in the Ministry of Food and Agriculture is valid or not when the clause contemplates the Secretary in the Ministry of Food and Agriculture alone to nominate the arbitrator?. The trial Court

made the award a rule of the Court and on appeal, the High Court set aside the award upholding the contention that the Secretary in the department of Food in the Ministry of Food and Agriculture is not competent to appoint an arbitrator. Dealing with the said question, after referring to the rules of construction or interpretation of the agreement in question containing the arbitration clause, the learned Judges of the Supreme Court stated as follows:

"Let us consider, for a moment, why in Clause (17) the power to nominate an arbitrator was conferred on the Secretary in the Ministry of Food and Agriculture and not on a Secretary in any other Ministry. The reason obviously was that at the date of the contract the Secretary in the Ministry of Food and Agriculture was the Officer dealing with the subject-matter of the contract. If this object and reason of the provision of Clause (17) is kept in mind it will become immediately clearly that the "Secretary in the Ministry of Food and Agriculture" authorised to nominate an arbitrator was the Secretary in-charge of the Department of Food who was concerned with the subject-matter of the contract. The Secretary in-charge of the Department of Food filled the description "Secretary in the Ministry of Food and Agriculture" given in Clause (17)."

14. In the present case also we have to consider the agreement entered into between the parties in a commonsense, reasonable, pragmatic point of view instead of adopting a pendent approach, to gather the intention of the parties. The parties entered into a contract intending it to bind them. They are not questioning the arbitration clause as such, viz., that the disputes will have to be referred to arbitration. There is also ad idem between the parties in regard to the question that the disputes will have to be referred to a panel of arbitrators and that the panel of arbitrators to which the disputes have to be referred to are designated official persons. There is an agreement that one should be Chief Engineer, Roads & Buildings, the other should be a Deputy Secretary, Finance and third one Director of Accounts, Pochampadu Project - now re-named as Sriramsagar Project. The commonsense point of view is that the panel of arbitrators should consist of a Chief Engineer, Roads & Buildings; Deputy Secretary, Finance; and Director of Accounts, Pochampadu Project (now renamed as Sriramsagar Project). Assuming that there are more than one Chief Engineer in the department of Roads & Buildings, each one of them fills the description of "Chief Engineer, Roads & Buildings". Likewise, each one of the Deputy Secretaries, Finance, fills in the said description. The arbitrators are named by their official designations and it is not possible to contend, having regard to the observations of the Supreme Court in the decision referred to (1 supra), that the contract cannot be made certain. We are of the opinion that the clause in the contracts indicating the arbitrators in question can be made certain.

15. In this context, it is necessary to refer to Section 29 of the Indian Contract Act, 1872 which is as follows:

"Section 29.

Agreements, the meaning of which is not certain, or capable of being made certain, are void."

It is reasonably clear from the section that a contract which omits to mention some term explicitly does not become void or uncertain for that reason, if the uncertainty can be made otherwise certain. Therefore, if there is consensus ad idem for referring the disputes to arbitration and if it is agreed that the reference should be to a panel of arbitrators and that too a panel of arbitrators referred to by official designation, even if there are more than one incumbent satisfying the official description, by referring the disputes to any one of them, the Court will be making the contract certain and a little more explicit. Therefore, the arbitration clause, in the present case, can be made certain by interpreting or construing it as a Chief Engineer, Roads & Buildings, a Deputy Secretary, Finance etc. As we gather, that is the intention of the parties when they entered into agreement. It is not the case of the contractor that at the time when the contract was entered into or at the time when the disputes arose, there was only one Chief Engineer, Roads & Buildings and one Deputy Secretary, Finance or that they had in view any particular Chief Engineer or Deputy Secretary of the said Departments.

16. In *Rajkishor Mohanty and Another Vs. Banabehari Patnaik and Others*, it was held that if the parties agreed that there should be a binding engagement between them for reference to a panel of arbitrators described by designation which is an essential term of the contract, the secondary position or term of the contract, the secondary position or term as to the officials to whom the reference has to be made can be made explicit by the Court thereby making the contract certain.

17. It has been held in *Sambamurthi v. Kanniah*, (1937) MWN 760 that an agreement to pay debts advanced to the brother of the party agreeing is not uncertain within the meaning of Section 29, Contract Act. The fact that no time limit is stated nor the amount is fixed will not render the agreement uncertain and vague and, therefore, unenforceable. This is on the basis that the essential term of the agreement is that the parties concerned have consensus ad idem with respect to the payment of the debts of the brother, secondary term viz., the time within which the debts to be paid can be made certain by the Court by fixing a reasonable time. Therefore, in dealing with the cases falling u/s 29 of the Contract Act, the Court will try to uphold the contract as far as possible and try to make it certain having regard to the intention of the parties rather than defeating the contract.

18. In a case reported in *Secretary of State for India Vs. Volkart Brothers*, a Division Bench of the Madras High Court held that a contract to grant renewal of lease on such conditions as shall be reasonable and proper at the time of such renewal is a contract which is capable of being made certain and that such a contract is not void for uncertainty. The ratio of the Judgment is that when once the parties for the agreement agreed for the renewal of lease on such conditions as are reasonable and proper at the time of granting renewal, it should not be

defeated only on the ground that it is vague and uncertain and it is the duty of the Court to make it certain as contemplated u/s 29 of the Contract Act itself.

19. In a decision reported in *Radha Kishan and Another Vs. Sapattar Singh*, a reference made to the arbitrators stated that there was some dispute in regard to the brick kiln and the arbitrators were to decide the same, in any manner, they thought proper. The contention raised before the learned Judges in the said case was that the dispute which is referred to is itself vague and, therefore, illegal.

20. The learned Judges, referring to the said contention, stated that a reading of the agreement does not support the contention that it is uncertain. Even if there is a slight uncertainty, the same is capable of being made certain and in fact made certain at the time when the arbitrators heard and decided the matter. Learned Judges stated that the actual points of dispute are seldom contained in the arbitration agreement. Generally, references are made to the arbitrators and the parties thereafter to formulate their disputes to the arbitrators and seek their reference on those points of differences.

21. Application of Section 29 of the Contract Act was also the subject matter of consideration by the learned Judges of the Supreme Court in *Dhanrajamal Gobindram Vs. Shamji Kalidas and Co.*, .

22. Under Clause 6 of an agreement, which was the subject matter of consideration by the Supreme Court, the buyers were to obtain the import licence and to communicate the number thereof to the sellers not later than February 20, 1958. In the event of their failure to do so for any reason, the sellers were entitled "at their discretion" either to carry over the goods or to ask the buyers to pay for the contracted goods and take delivery in British East Africa. By a subsequent letter, the sellers confirmed that "if necessary" they would carry over the contracted goods for two months, namely, March and April, subject to payment of charges. It was contended that the words "if necessary" were entirely vague and did not show, "necessary" for whom, when and why.

23. Learned Judges repelled the said argument and held that Clause (6) mentioned that the contract was not extended to March and April, but that the sellers would extend it to that period, if occasion demanded, Since both the parties agreed to this letter and the buyers confirmed it, it cannot be held that there was no consensus ad idem or that the whole agreement was void for uncertainty.

24. The underlying principle of Section 29 of the Contract Act is to uphold the contract wherever possible lest it may destroy the very purposes for which the contract was entered into. It is the duty of the Court to ascertain the intention of the parties in a just and reasonable manner and when once the intention of the parties is ascertained, it should as far as possible, be given effect to, even if the contract is silent in matters of some detail, by providing the details.

25. It is also to be borne in mind that for invoking Section 29 of the Contract Act, it is not enough for the person invoking the applicability of the section to show that it is uncertain and vague and, therefore, void but also should establish that it is incapable of being made certain. Vide decision reported in Bai Mangu Vs. Bai Viji and Others, . Even if the contract is couched in terms which might introduce an element of uncertainty, but if on the facts and circumstances of the case, the terms are capable of being made certain, the contract will not be held to be void on account of being uncertain or vague.

26. Sri A. Venkata Ramana, learned Counsel appearing for the respondent-contractor placed strong reliance on some of the Judgments of this Court for the proposition that the panel of arbitrators is vague and, therefore, the Court has jurisdiction to appoint a sole arbitrator in a suit instituted under Sections 8 and 20 of the Arbitration Act when the parties failed to nominate arbitrator/arbitrators.

27. The first case relied upon by the learned Counsel for the respondent-contractor is A.A.O.Nos. 1129 to 1133 and 1178 to 1191 of 1986 dated 27-10-1986. These appeals were disposed of by a Division Bench of this Court consisting of B.P. Jeevan Reddy and P. Rama Rao, JJ. The appeals arose out of suits filed by the contractors under Sections 8 and 20 of the Indian Arbitration Act, 1940. Clause 25 of the agreement which was the subject-matter of appeals required the disputes to be referred to a panel of arbitrators which is similar to the one under consideration in these matters. In the said case, for claims of Rs. 1,00,000/- and above, the panel consisted of Chief Engineer, Srisailem Project; Deputy Secretary to Finance Department, Andhra Pradesh Government; and Director of Accounts, Pochampadu Project. Similar contention was raised in those cases also viz., that there are as many as three Chief Engineers in Srisailem Project and that there are as many as 12 Deputy Secretaries in Finance and Planning Department and that there was no Finance Department at all and, therefore, the panel of arbitrators is vague.

28. Dealing with the said contention, the learned Judges stated that the objection with regard to the Deputy Secretary in Finance Department, has no substance for the reason that the Finance Department became Finance and Planning Department and that merely because Planning Department was also merged with the Finance Department, it does not mean that the panel of arbitrators becomes vague. However, on the second question that there are as many as twelve Deputy Secretaries in the Finance and Planning Department and that Clause 25 does not contain any indication as to which of the five or twelve of the five or twelve Deputy Secretaries should be the member of the panel, the learned Judges felt that the panel is vague. Ultimately, the learned Judges held that the composition of panel of arbitrators is vague with respect to the second member of the panel viz., Deputy Secretary, Finance Department of Andhra Pradesh. The other aspect dealt with by the learned Judges viz., that when once the panel of arbitrators is held to be vague and the Court gets jurisdiction to

appoint an arbitrator, what the Court should do in exercise of its discretion in appointing arbitrators will be referred to in this Judgment at a later stage when we deal with the second aspect.

29. The above Judgment was followed by another Division Bench of this Court consisting of K. Amareswari and Y. Bhaskar Rao JJ. in A.A.O.No. 1136 of 1985 and batch dated 2-2-1988. In those appeals also, identical panel of arbitrators was the subject matter of consideration. Learned Judges followed the Judgment of a Division Bench of this Court in A.A.O. No. 1129 of 1986 dated 27-10-1986 referred to supra.

30. In C.M.A.No. 1331 of 1989 dated 13-9-1990 a Division Bench of this Court consisting of M. Jagannadha Rao and P. Venkatarama Reddi JJ, had to consider a similar panel of arbitrators consisting of (1) Chief Engineer, Medium Irrigation and Designs; (2) Deputy Secretary to Finance; and (3) Deputy Accounts Officer, Pochampadu. Learned Judges followed the Judgments of the Division Benches of this Court in A.A.No. 1129 of 1986 and batch dated 27-10-1986 and A.A.O. No. 1136 of 1985 and batch dated 2-2-1988 referred to above.

31. To a similar effect is the Judgment of V. Neeladri Rao J, in C.R.P.No. 1271 of 1989 dated 15-6-1989. The learned Judge held that in view of the fact that there are more than one Deputy Secretary in Finance Department, there is vagueness in regard to one of the arbitrators in the panel and therefore, the Court will have jurisdiction to appoint an arbitrator or arbitrators in its discretion, following the Judgment of the Division Bench of this Court in A.A.O. 1136 of 1985 and batch dated 2-2-1988.

32. The other two un-reported Judgments referred to by the learned Counsel i.e., C.R.P.Nos. 1457 and 1458 of 1984 dated 1-8-1986 rendered by K. Ramaswamy, J and in CR.P.No. 2626 of 1984 dated 29-10-1984 rendered by K. Muktar, J., are cases where the arbitrators were removed for neglecting their duty u/s 11 and appointing a sole arbitrator exercising the power u/s 12 of the Act. In our opinion, they are not relevant for determining the question at issue before us. It is true that the other Division Bench decisions referred to above support the case of the respondent-contractor.

33. Having regard to the conclusion arrived at by us in the foregoing paragraphs that the panel can be made certain having regard to the fact that it consists of designated officials, we are of the opinion that these decisions are not correctly decided.

34. In our case, the panel consists of:

- (1) Chief Engineer, Roads & Buildings;
- (2) Deputy Secretary, Finance; and
- (3) Director of Accounts, Pochampadu Project.

35. So far as the first designated official is concerned, in the amended written

statement filed on behalf of defendants 3 and 4, it was categorically stated in para (6) that the post of Chief Engineer, Roads and Buildings was redesignated as the Chief Engineer, Roads and Buildings (Administration) who is arbitrator No. 1. With reference to the second arbitrator, it was mentioned that Deputy Secretary (Finance and Planning unit) is the concerned arbitrator, while the Director of Accounts, Pochampadu, now re-named as Sriramsagar Project is the third arbitrator and that there is no ambiguity or vagueness or uncertainty in the panel of arbitrators. It is not brought to our notice that any rejoinder is filed in the case. Therefore, so far as first arbitrator is concerned, it is not possible to say that there is any ambiguity or uncertainty or vagueness. Similarly, insofar as Deputy Secretary, Finance is concerned, the objection that there is no department of Finance is rejected even in the Judgment in A.A.O.No. 1129 of 1986 and batch dated 27-10-1986 by a Division Bench of this Court on the ground that the Finance Department has become Finance and Planning Department. On the ground that there are nine Deputy Secretaries in the Department of Finance and Planning, it was held in the judgment in A.A.O.No. 1129 of 1986 and batch dated 27-10-1986 by a Division Bench of this Court referred to above, that the appointment of second arbitrator is vague. However, it is clear from the list submitted on behalf of the appellants that there are three Deputy Secretaries to Government, Finance and Planning (Finance Department). When we are referring to the second arbitrator as Deputy Secretary, Finance, it means, Deputy Secretary to the Government in the Ministry of Finance as held by the Supreme Court in *Union of India v. D.N. Revri & Co.*, (1 supra). It is true that there are three Deputy Secretaries in the Finance Department. Any one of them will fill in the description contained in the panel. Therefore, the arbitration can be referred to any one of them. We are dealing with a case where the arbitrator is referred to by official designation. In such a case, we are of the opinion that nominating any one of them will be in order and satisfies the requirement of the panel and it can be made certain. In this regard, we have already given our elaborate reasons in the aforementioned paragraphs and we are of the opinion that there is no uncertainty or vagueness insofar as second arbitrator is concerned.

36. So far as third arbitrator is concerned, it was consistently held in the Judgments referred to above that there is no vagueness, having regard to the fact that the Director of Accounts, Pochampadu Project is re-named as Director of Accounts, Sriramsagar Project.

37. Learned Government Pleader strongly relies on the Judgment of the Supreme Court in Civil Appeal No. 144 of 1992 dated 14-1-1992 for his contention that there is no vagueness at all in the panel and it can be made certain. The case arose out of proceedings initiated under the provisions of the Arbitration Act in similar circumstances consisting of a similar panel. The panel therein consisted of (1) Chief Engineer, Srisailem Project; (2) Deputy Secretary to Government, Finance Department; and (3) Director of Accounts, Srisailem Project. When disputes arose between the parties, the same were referred to the panel of

arbitrators mentioned above for settlement. Alleging that the arbitrators have neglected to discharge their duty in time, the contractor moved the civil Court under the provisions of the Arbitration Act for removal of the arbitrators and for appointment of sole arbitrator to adjudicate the disputes. The civil Court removed the panel of arbitrators upholding the plea of the contractor and appointed a sole arbitrator to adjudicate the disputes between the parties. The said Judgment was the subject matter of C.R.P.No. 1223 of 1989. A learned Single Judge of this Court by his order dated 6-12-1989 confirmed the order of the trial Court. The Judgment of the learned Single Judge was carried in appeal to the Supreme Court.

38. Three contentions were raised before the learned Judges of the Supreme Court, which are as under;

(1) that the arbitrators have delayed in disposing of the proceedings and therefore, the order of the Civil Court removing the panel of arbitrators and appointing a sole arbitrator is justified;

(2) that the civil Court, in any event, ought to have appointed a panel of three arbitrators instead of sole arbitrator having regard to the express provision in the agreement;

(3) that the civil Court should have chosen three incumbents holding the aforesaid posts.

39. A three Judge Bench consisting of L.M. Sharma, J., V. Ramaswami, J., and B.P. Jeevan Reddy, J., held as follows:

"We have considered the entire matter closely and have gone through some of the documents with the assistance of the learned Counsel for the parties and in our opinion, it is a fit case in which the arbitration matter should be entrusted to the incumbents of the three posts mentioned in the agreement, and in that view it is not necessary to decide the question debated by the parties as to whether - the arbitrators had neglected to conclude the arbitration proceeding justifying the appointment of an arbitrator or arbitrators by the Court."

40. Learned Government Pleader strongly relied upon this Judgment and contended that the Supreme Court must be taken to have held that when the designated officials are in the panel of arbitrators, the incumbents of the posts can be appointed as arbitrators. In this case whether such a panel is vague or not was put in issue in the trial Court as well as in the High Court and must be taken to have been put in issue before the learned Judges of the Supreme Court as well. Since the learned judges have clearly stated that they have considered entire matter and gone through some of the documents, it is not possible to say that the question of vagueness or uncertainty of panel was not before the learned Judges of the Supreme Court. It is true, as contended by the learned Counsel for the contractor, that this question was not specifically dealt with by the learned Judges of the Supreme Court. But, in our opinion, that such an

argument cannot be sustained for the reason that when once a decision is given by the Supreme Court in a case wherein all these points were debated in the Courts below, the learned Judges must be deemed to have considered the said question also. This Judgment of the Supreme Court gave rise for the present reference and we are of the opinion that this Judgment is an authority for the proposition that a panel like the present one can be made certain by referring the disputes to the incumbents of the three posts.

41. Having regard to the latest Judgment of the Supreme Court, to which B.P. Jeevan Reddy J., is a party, who himself rendered the Judgment of the Division Bench in A.A.O.No. 1129 of 1986 and batch dated 27-10-1986, we are of the opinion that the panel of arbitrators cannot be said to be vague or uncertain and, therefore void jurisdiction to the Court to appoint arbitrator/ arbitrators.

42. It is then contended by the learned counsel for the contractor that against the decision of the Division Bench of this Court in A.A.O.No. 1136 of 1985 and batch dated 2-2-1988, Special Leave Petitions Nos. 6857 to 6859 of 1988 were preferred and they were dismissed by the Supreme Court on 19-7-1988 and therefore, it should be deemed that the decision of the Division Bench was confirmed on merits and if so, it is binding on us. We are afraid that this argument is not sustainable. Rejection of SLP against the decision of the High Court at the admission stage does not mean that the correctness of the Judgment is upheld by the Supreme Court. It was so held in a decision reported in *Rup Diamonds and Others Vs. Union of India and Others*, .

43. It is also contended by the learned Counsel for the contractor that the Judgments of this Court referred to earlier i.e., A.A.O.No. 1129 of 1986 and batch dated 27-10-1986; A.A.O.No. 1136 of 1985 and batch dated 2-2-1988; C.R.P.No. 1271 of 1989 dated 15-6-1989; and A.A.O.No. 1331 of 1989, which held, in similar circumstances, that the panel of arbitrators was vague, and therefore, the Courts get jurisdiction to appoint an arbitrator, have stood the test of time and never have been doubted and, therefore, on the principle of stare decisis, the said position should not be unsettled. In support of this principle, learned Counsel relied upon the Judgment in *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, . The un-reported Judgments on which reliance has been placed by the learned Counsel and which according to him, stood the test of time are all of the years from 1984 to 1990. It cannot be said that they stood the test of time. Further, all the other Judgments were only rendered following the Judgment of the Division Bench of this Court in A.A.O.No. 1129 to 1133 and 1178 to 1191 of 1986 dt.27-10-1986.

44. In view of the above, we are unable to agree with the contention of the learned Counsel for the respondents.

45. Point No. 2: Next aspect which has to be dealt with is that even assuming for argument's sake that the panel comprising three designated officials is vague, whether the civil Court, which gets undoubted jurisdiction, can appoint a panel of

official arbitrators or sole non-official arbitrator.

46. In this connection, we have to necessarily refer to the following: Clause 73 of Andhra Pradesh Detailed Standard Specifications, originally provided that in case disputes or differences between the parties to the contract arise, the disputes are to be referred to arbitration by Superintending Engineer of the circle to be nominated. The same was substituted by G.O.Ms.No. 876, Transport, Roads and Buildings Department dated 31-7-1975 read with G.O.Memo No. 1323/L1/75 107 dated 27-11-1975 to the following effect:

(a) Claims upto Rs. 20,000/- Superintending Engineer (R&B) in value Headquarters Circle, Hyderabad. (b) Above Rs. 20,000/-and 1. Chief Engineer (R&B), below Rs. 1,00,000/- Hyderabad. 2. Superintending Engineer, Warangal Circle. 3. Director of Accounts, Andhra Pradesh. (c) Above Rs. 1,00,000/- 1. Chief Engineer (R&B), Hyderabad. 2. Deputy Secretary, Finance Department. 3. Director of Accounts, Pochampadu.

47. The substituted clause as extracted above forms part of the agreements in question.

48. In this connection, learned Government Pleader contended that the preliminary specifications which are made part of the agreement provided for a panel of arbitrators. Therefore, the parties intended to have the disputes referred to a panel of arbitrators and that too, a panel consisting of officials having technical and accounts experience. Therefore, when once the Court gets jurisdiction to exercise its discretion for appointing arbitrators, it is desirable that the feasibility of appointment of panel of arbitrators according to the terms of the contract as well as the intention of the parties should be examined. If so examined, it is clear that only a panel consisting of more than one technical person should be appointed and not a sole arbitrator and that too a non-official and non-technical sole arbitrator. In this connection, learned Counsel relied upon the Judgment of the Supreme Court in *Union of India v. Prafulla Kumar*, (1983) 1 LLJ 304 wherein it was stated as follows:

"In the instant case, an arbitrator has not been appointed by the parties and as the parties are not agreed upon an arbitrator the Court may proceed to appoint an arbitrator, but in so doing it is desirable that the Court should consider the feasibility of appointing an arbitrator according to the terms of the contract."

49. In the above case, Clause 29 of the agreement provided for reference of the disputes to arbitration to the person appointed by the President of India. In the said case, no arbitrator was appointed by the President of India. Respondent-contractor filed a suit and prayed that the arbitration agreement be filed into Court and an order of reference be made to the arbitrator under the terms of the agreement. Since the parties did not agree upon any arbitrator and the President of India did not appoint any arbitrator, learned Single Judge of the High Court of Calcutta appointed one Mr. Tapash Banerjee, a member of the bar, as the arbitrator. Questioning the said appointment, Union of India preferred Letters

Patent Appeal. That was confirmed by a Division Bench. When the matter came up before the Supreme Court by way of an appeal, learned Judges of the Supreme Court, while observing as extracted above, requested the president of India to appoint an arbitrator as contemplated in Clause 29 of the agreement within two months from the date of the judgment, thereby giving effect to the agreement of the parties that the arbitrator should be nominated by the President of India.

50. Learned Counsel for the contractor relied upon the last portion of para 3 of the Judgment at page 1458 which is to the effect that if the parties agree, the Court has to appoint an arbitrator. If there is no such agreement, the Court will have to appoint an arbitrator of its choice, and contended that it is not necessary for the Court to examine the desirability and feasibility of appointing an arbitrator according to the terms of the agreement. The contention is wholly unsustainable. Last sentences in para 3 of the Judgment contained at page 1458 will have to be read along with the passage contained in para 5 which is extracted above. While effecting appointment, the Court will have to see whether it is desirable or feasible to appoint an arbitrator in accordance with or as nearly as possible to the intention of the parties. If it is not possible, it is open to the Court to appoint an arbitrator of its own choice.

51. Learned Government Pleader then relied upon the Judgment of the Supreme Court in Civil appeal No. 144 of 1992 dated 14-1-1992 in support of his contention. This Judgment has already been referred to in the foregoing paragraphs and we have dealt with the facts and contentions earlier. Learned Judges, while referring to the contention that in any event, the civil Court ought to have appointed a panel of arbitrators instead of single arbitrator in view of the express provision in the agreement and in exercise of its discretion it should have chosen to appoint the incumbents of the three posts stated as follows:

"In our opinion it is a fit case in which the arbitration matters should be entrusted to the incumbents of the three posts mentioned in the agreement, and in that view, it is not necessary to decide the question debated by the parties as to whether the Arbitrators had neglected to conclude the arbitration proceedings justifying the appointment of an arbitrator or arbitrators by the Court."

Learned Judges set aside the order of the High Court as well as the trial Court which appointed the sole arbitrator in similar circumstances, after referring to the arbitration clause contained in preliminary specifications. Learned Judges clearly stated further as follows:

"We, therefore, set aside the orders passed by the Courts below and direct the trial Court to refer the dispute for decision of the present Chief Engineer, Srisailem Project, Deputy Secretary to Government, Finance Department and Director of Accounts, Sriramsagar Project with a direction to them as well as to the parties, to co-operate in concluding the proceedings expeditiously."

This Judgment, in our opinion, fully supports the stand taken by the appellants.

The facts, circumstances, contracts and the clauses in the agreement etc., are all almost similar to the case on hand and it was specifically contended before the learned Judges of the Supreme Court that the trial Court ought to have appointed a panel of three arbitrators instead of a single arbitrator in view of the express provision in the agreement that the dispute should be referred to a panel of arbitrators and that too to the three incumbents holding the aforesaid posts. Even in the said case, there were three Deputy Secretaries to Government, Finance Department. Still, the learned judges directed the trial Court to refer the disputes to the panel of arbitrators which included Deputy Secretary, Finance Department.

52. This Judgment squarely covers this point in favour of the department. Therefore, we have to necessarily hold, in view of the above judgment of the Supreme Court, that when the Court gets jurisdiction to refer the disputes to arbitration, it must refer to a panel of three arbitrators and that too to the persons who are holding the designated posts.

53. In fact, B.P. Jeevan Reddy J., who spoke for the Division Bench of this Court in A.A.O.No. 1129 to 1133 of 1986 and batch dated 27-10-1986, stated as follows:

"The question then arises: in such cases where the Court gets the jurisdiction to appoint an arbitrator, what factors should it keep in mind in selecting the arbitrator? Normally such disputes are technical in nature. It is, therefore, desirable that a technically qualified person, i.e., a person in the know of such contracts and who has dealt with such matters, should be designated. Secondly, in a case like the present one where the panel is practically nominated by the Government, not with reference to persons as such but ex-officio, where out of three members of the panel there is an ambiguity about one, the Court would do well to appoint the two others, or one of the remaining two members as arbitrators, or as the sole arbitrator, as the case may be. The underlying idea is that once the parties have chosen particular persons, or a particular forum to adjudicate upon the disputes between them, the Court must go by their wishes to the extent possible. While no hard and fast rule can be enunciated in this behalf, the Courts will do well to keep the above consideration in mind in designating an arbitrator, or panel of arbitrators. We would have followed the said principle in this case but for the fact that, in this case, a retired Judge of this Court, Sri Justice K. Punnayya, has been appointed by the Court below as the sole arbitrator and he has already commenced the arbitration proceedings."

54. Learned Judge held that the Court while exercising the discretion vested in it must go by the wishes of the parties to the extent possible and the Courts should do well to keep the said considerations in mind in designating the arbitrator or a panel of arbitrators. Learned Judges clearly expressed that they would have followed the said principle by appointing technically qualified persons, but for the fact that a retired Judge of the High Court was appointed as sole arbitrator and he has already commenced the arbitration proceedings.

55. K. Ramaswamy J., in C.R.P.No. 1389 of 1984 dated 4-12-1984, after referring to the judgment of the Supreme Court in Prafulla Kumar's case (10 supra), observed that the intention of the parties should be given effect to and the endeavour of the Court would be to see that the terms of the contract are made efficacious and implemented in its true spirit.

56. For all the reasons mentioned above, we are of the opinion that even assuming that the panel of arbitrators is vague, it would be proper for the Court to refer the dispute /disputes to a panel but not to a sole arbitrator. The panel may consist of the incumbents satisfying the designations mentioned in the agreement. If for any reason, it is not feasible to do so, it is open to the Court to refer the disputes to a panel consisting of serving senior officials having technical and accounts experience. such a reference will be in conformity with the intention of the parties as reflected in the arbitration clause.

57. Learned Counsel appearing for the respondents next contended that the procedure provided in Clause 73 of the Preliminary Specifications to the Andhra Pradesh Detailed Standard Specifications to refer the disputes to a panel of official arbitrators is an unfair procedure offending Article 21 of the Constitution of India and, therefore, the designated officials cannot be appointed as arbitrators. In support of the said contention, he relied upon the Judgment in Raghunadharao v. State of A.P. 1988 (1) ALT 461 rendered by K. Ramaswamy, J. (as he then was). Learned Counsel also drew our attention that a Writ Appeal filed against the Judgment of the learned single Judge was dismissed by a Division Bench of this Court in The State of Andhra Pradesh and Others Vs. V. Raghunadha Rao, . The writ appeal was dismissed by the Division Bench on the ground that the said Judgment of the learned Single Judge must be deemed to have been approved by the Supreme Court in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, .

58. Out of five learned Judges who constituted the Bench which decided the case of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, four learned Judges rendered separate but concurring judgments. One of the concurring Judgments was rendered by K. Ramaswamy J. In his Judgment, learned Judge referred to his own Judgment in Raghunatha Rao's case 1988 (1) ALT 461 rendered as a Judge of this Court. The Division Bench of this Court in The State of Andhra Pradesh and Others Vs. V. Raghunadha Rao, dismissed the appeal on the ground that since the judgment in Raghunadha Rao's case 1988 (1) ALT 461 was referred to by K. Ramaswamy, J., in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, even if it is considered as obiter dicta or even innominate dicta, it should be binding on the Division Bench. Having regard to the Judgment of the Division Bench in The State of Andhra Pradesh and Others Vs. V. Raghunadha Rao, it was contended before us by the learned counsel for the contractor that the Judgment in Raghunadharao's case 1988 (1) ALT 461 must be deemed to have been approved by the Supreme Court in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, and, therefore,

we are bound by the same.

59. Having regard to the above contention, we have to necessarily consider the above Judgments in detail regarding the effect of the Judgment in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, on Raghunadharao's case 1988 (1) ALT 461.

60. In Raghunadharao's case 1988 (1) ALT 461 petitioner was a contractor. His tender was accepted after negotiations and agreement was entered into between the department and the contractor. Certain disputes arose between the parties with respect to the execution of the said contract and the disputes were referred to arbitration and he laid his claim before the panel of official arbitrators as provided for in Clause 73 of the Preliminary Specifications. At that stage, the contractor filed W.P.No. 9797 of 1983 assailing the constitutional validity of some of the clauses in the preliminary specifications including Clause 73 as being arbitrary, unjust and unconstitutional. Several contentions were raised viz., that in entering into the agreement, he was at a disadvantageous position being a weaker party and there is no equal bargaining power and that he had to sign on dotted lines and the official arbitrators being employees of the State cannot be Judges under Clause 73 and they will be biased in favour of the State and that the appointment of independent arbitrators is sine qua non for a fair procedure and the appointment of departmental officials as arbitrators is obnoxious to fair play in action, of fending Article 21 of the Constitution of India.

61. The learned Judge held that the panel should not contain official arbitrators as official arbitrators cannot be said to be unbiased. The learned Judge further held that the procedure provided in Clause 73 of the Preliminary Specifications is unfair and unreasonable and is therefore, violative of Article 21 of the Constitution of India. However, the learned Judge did not hold that the provision for referring the disputes to a panel of arbitrators for resolution as invalid.

62. The basis of the Judgment in Raghunadharao's case (11 supra) in holding that the procedure provided in Clause 73 of the Preliminary Specifications is unfair and therefore, falls within the mischief of Article 21 of the Constitution of India, is that the designated official arbitrators being Government servants will be looking to their promotional chances or for their career prospects of promotion etc., and therefore, they will be biased in favour of the Government and as a result, fair play becomes a casualty.

63. Having regard to the fact that the official bias is made the basis for the decision by the learned Judge in Raghunadharao's case (11 supra), it is necessary to refer to some of the cases which dealt with this aspect.

64. In The Registrar, Co-operative Societies Vs. Dharam Chand and Others, the question of official bias was considered by the Constitution Bench of the Supreme Court. The facts of the said case are as follows: There was a bank known as "Commercial Co-operative Bank Limited" at Azmir. It was registered under the Co-operative Societies Act. Members of the Managing Committee passed a

resolution suspending the business of the bank subject to the approval of the Registrar in view of the defalcation of a sum of Rs. 6,34,000/-. The then Manager of the Bank disappeared. The then Registrar not only approved the resolution and appointed an Inspector of Co-operative Societies to hold an enquiry, but also appointed a firm of Chartered Accounts as investigating auditors. On investigation by the auditors, it was found that an amount of Rs. 6,34,000/- was embezzled. Thereupon, the successor Registrar gave a registered notice to the Managing Committee asking them as to why the Committee should not be suspended. A reply notice was given by the respondents and others, who were members of the Managing Committee denying the allegations of mismanagement. The Registrar, however, appointed an administrator of the Bank after removing the Managing Committee. While so, an application was made under Rule 18 of the Rules by seven share-holder of the Bank to the Registrar. Rule 18 authorises the Registrar to decide any dispute brought before him under that rule either himself or by appointing one or more arbitrators. The Registrar appointed one Shri Hem Chand Sogani as an arbitrator. But the said appointment was challenged unsuccessfully by the President of the Managing Committee before the Deputy Commissioner by way of revision. Subsequently, the arbitrator expressed his inability to act due to his illness. Therefore, his appointment was set aside by the Registrar who informed the parties that he himself would decide the dispute. The said order was challenged in revision before the Commissioner unsuccessfully. Thereafter, a petition was filed before the judicial Commissioner raising several grounds challenging the order. One such ground being the official bias of the Registrar. It is based on two circumstances - (1) that notice was issued by the then Registrar asking the members of the Managing Committee to show cause why they should not be suspended; and (2) that the Registrar is the head of the Co-operative Department and as such has certain administrative control and power's over all Co-operative Societies, and therefore, he will not be an impartial person to decide the dispute.

65. Learned Judges of the Supreme Court rejected the contention based on official bias in the following terms:

"We are of opinion that there is no force in either of the contentions. Turning to the notice of February 26, 1955, we are of opinion that there can be no inference of bias against the Registrar as such because he gave that notice and afterwards ordered the removal of the Managing Committee."

66. This point directly arose in a case reported in Secretary to Government, Transport Deptt., Madras Vs. Munuswamy Mudaliar and Another, . First respondent in the appeal before the Supreme Court entered into a contract with the department on his becoming a successful tenderer for the work relating to the construction of a bridge. The contractor filed a suit in the City Civil Court, Madras claiming damages alleged to have been caused due to the illegal determination of the said contract and for other reliefs. Government-appellant before the Supreme Court filed a petition for referring the dispute to an arbitrator

in view of the arbitration clause contained in the agreement. City Civil Court, Madras allowed the application and directed both the parties to refer the dispute to arbitrator and stayed the suit. Pursuant to the order of the City Civil Court, Madras, the contractor filed a claim petition before the Superintending Engineer (Highways and Rural works), Rural Roads Circle, Tiruchirapalli, who was the arbitrator mentioned in the arbitration clause of the agreement. He was the second respondent before the Supreme Court. While the claim was pending before the arbitrator, respondent-contractor filed an application seeking change of the arbitrator on the ground that the arbitrator being employee of the State Government, an Engineer from any sector other than the Sector of Tamil Nadu or a retired Engineer of the State Government might be appointed as arbitrator. Standard Preliminary Specifications contained an arbitration clause which clearly stated that the Superintending Engineer (H) Rural Roads, Tiruchirapalli Circle should be the arbitrator. The trial Court allowed the application holding that "it is not unreasonable to say that the successive Superintending Engineer of this particular department who will be subordinate to the Chief Engineer will necessarily have a leaning to accept the attitude expressed by the Chief Engineer". The appeal preferred to the High Court was also dismissed and the matter was carried to the Supreme Court.

67. Learned Judges of the Supreme Court, while dealing with the official bias, stated as follows:

"11. This is a case of removal of a named arbitrator u/s 5 of the Act which gives jurisdiction to the Court to revoke the authority of the arbitrator. When the parties entered into the contract, the parties knew the terms of the contract including arbitration clause. The parties knew the scheme and the fact that the Chief Engineer is superior and the Superintending Engineer is subordinate to the Chief Engineer of the particular circle. In spite of that the parties agreed and entered into arbitration and indeed submitted to the jurisdiction of the Superintending Engineer at that time to begin with, who, however, could not complete the arbitration because he was transferred and succeeded by a successor. In those circumstances on the facts stated no bias can reasonably be apprehended and made a ground for removal of a named arbitrator. In our opinion this cannot be at all, a good or valid legal ground. Unless there is allegation against the named arbitrator either against his honesty or capacity or mala fide or interest in the subject matter or reasonable apprehension of the bias, a named and agreed arbitrator cannot and should not be removed in exercise of a discretion vested in the Court u/s 5 of the Act".

Learned Judges further made the following pertinent observations in para 13 of the report:

"In this country in numerous contracts with the Government, Clauses requiring the Superintending Engineer or some official of the Govt. to be the arbitrator are there. It cannot be said that the Superintending Engineer, as such, cannot be entrusted with the work of arbitration and that an apprehension, simpliciter in

the mind of the contractor without any tangible ground, would be a justification for removal. No other ground for the alleged apprehension was indicated in the pleadings before the learned Judge or the decision of the learned Judge or the decision of the learned Judge. There was, in our opinion, no ground for removal of the arbitrator. Mere imagination of a ground cannot be an excuse for apprehending bias in the mind of the chosen arbitrator".

68. This Judgment, in our opinion, applies on all fours in respect of official bias attributed to the designated official arbitrators.

69. The Judgment in Raghunadha Rao's case (11 supra) was followed by the very same learned Judge in State of A.P. v. Ramalingareddy 1989 (3) ALT 452. In this case also, the contractor invoked arbitration clause contained in Clause 73 of the Preliminary Specifications on the disputes having arisen between the parties. The panel of three arbitrators consisted of Chief Engineer, Sriramsagar Project, Deputy Secretary, Finance, Government of A.P., and the Director of Accounts, Pochampadu Project. Learned Judge found that the post of Deputy Secretary, Finance is not being held by any person as the person who was holding was already promoted as Joint Secretary and as a consequence there was vacancy in the panel of arbitrators. Therefore, the panel became vague and uncertain and therefore, invoked their jurisdiction of the Civil Court under Sections 8, 11 and 12 of the Arbitration Act, 1940 to refer the disputes to any of the four named retired Chief Engineers. The trial Court appointed a retired Chief Engineer as sole arbitrator. Questioning the legality of the order of the trial Court, C.R.P. No. 1085 of 1989 was preferred to this Court. Learned Judge while disposing of the revision, dealt with the question of official bias. One of the contentions advanced before the learned Judge was that the Judgment in Raghunadharao's case (11 supra) is no longer good law in view of the Judgment of the Supreme Court in Munuswamy's case (15 supra). Learned Judge held that the law laid down in Raghunadharao's case (11 supra) holding that "the Officer being part of the department is inherently suspect of being biased ; the apprehension that fair and impartial justice cannot be had from their hands is a reasonable apprehension in the mind of the contracting party with the State for arbitration; the equity, fairness and justness require that an independent arbitrator or panel of arbitrators known for their integrity and impartiality would assuage the feeling in the mind of the contractor that a fair and impartial adjudication would be meted out to him", is not inconsistent with the Judgment of the Supreme Court in Munuswamy's case (15 supra). We are unable to agree with this conclusion of the learned Judge. The learned Judges of the Supreme Court in Munuswamy's case (15 supra) specifically dealt with this question arising out of a case and with reference to a similar clause in Preliminary Specifications of Madras Detailed Standard Specifications (which are substantially similar to Clause 73 of the Preliminary Specifications of A.P. Detailed Standard Specifications). Learned Judges clearly held that it cannot be said that the Superintending Engineer, as such, cannot be entrusted with the work of arbitration and that an apprehension simpliciter in the mind of the contractor without tangible ground, would not be a

justification for his removal. In fact as in Munuswamy's case (15 supra), there is no foundation for the alleged apprehension in the pleadings in the present cases. We are of the opinion that as a matter of law it cannot be said that every official arbitrator in service will be biased. We are of the opinion that the conclusion of the learned Judge in Ch. Ramalinga Reddy's Case (16 supra) that the law laid down in Raghunadharao's case (11 supra) holds the field inspite of the Judgment of the Supreme Court in Munuswamy's case (15 supra) is not correct. Therefore, we are of the view that the Judgment in Ramalinga Reddy's case (16 supra) also does not lay down correct law.

70. While on this point, we may again refer to the Judgment of the Supreme Court in civil Appeal No. 144 of 1992 dated 14-1-1992 wherein it was held that the arbitration should be entrusted to the present incumbents of the three posts mentioned in the arbitration clause of the agreement. It is true that the question of official bias was not raised before the learned Judges. But that cannot be a consideration for this Court for holding that the aforesaid case of the Supreme Court will not govern us. Therefore, having regard to the two Judgments of the Supreme Court referred to above, and in particular, the case of Munuswamy (15 supra), we hold that the contention raised that the official arbitrators will be biased cannot be accepted. Therefore, we are of the opinion that as a matter of law or presumption, it cannot be said that the official arbitrators, who are employees of the State, will be biased in favour of the State, which is one of the parties to the agreement.

71. The only other decision that remains to be considered on this aspect is the Judgment in State of A.P. v. B. Subba Reddi 1990 (1) ALT 398. Radhakrishna Rao, J., referred to the case of the Supreme Court in Secretary to Government Transport Department, Madras v. Munuswamy (15 supra) and followed the same. Learned Judge stated that "sometimes in some matters technical knowledge is required for passing an award. In such cases, officials having technical knowledge in that particular branch can be appointed as arbitrators". Learned Judge also held that appointment of official arbitrators cannot be said to offend Article 21 of the Constitution of India.

72. Having regard to the above, we are of the opinion that as a rule or as a matter of presumption, bias cannot be attributed to the designated Government officials who are appointed as arbitrators only on the ground that they are Government Servants.

73. In this connection, we may also refer to the Judgment of the Division Bench of this Court in A.A.O.No. 1129 of 1986 and batch dated 27-10-1986 (Jeevan Reddy & Rama Rao JJ.,) which has already been referred to while dealing with the first point. Learned Judges held that the Courts while appointing an arbitrator, should keep in mind that the disputes being technical in nature, it is desirable that technically qualified persons viz., persons in the know of contracts and who has dealt with such contracts, should be designated as arbitrators.

74. The second aspect on which the Judgment of Raghunadharao's case (11 supra) rested was that the contractors have to sign on the dotted lines and they have no volition of their own and as a result there is no mutuality and, therefore, they are void. In this connection, we have to bear in mind that the contract entered into between the department and the contractor is the result of an agreement between the parties. The contractors who are registered with the Department will normally have wide experience and they belong to affluent section of the society. It will not be difficult for them to have the assistance of professional experts -legal or otherwise. It will not be possible to contend that the contractor having no other go signed the agreement. In the cases on hand, the contractor is common and therefore, he must have had any amount of experience in executing the contracts and he knows the terms thereof including the arbitration clause. There is no allegation in the pleading that he was either ignorant of the terms of the agreement or forced to enter into the agreement and sign on dotted lines. On the pleadings and the material placed on record and in the circumstances, we are not satisfied that the contractor was forced to enter into the contract, or that he was ignorant of the terms thereof.

75. The agreements containing the arbitration clause which are the subject-matter of the present cases are all commercial contracts in the realm of private law and they are entirely different from the service contracts. Learned single Judge of this Court in Raghunadha Rao's case (11 supra) relied upon certain principles laid down by the Courts while dealing with service contracts. In fact, the learned Judge heavily relied upon the Judgment of the Supreme Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . The said case relates to a service contract wherein persons seeking employment for their livelihood had no othergo except to sign on dotted lines i.e., on sterio-typed forms prepared by the management. In the service contract, a rule was incorporated which empowered the Government corporation to terminate the service of even its permanent employees by giving three months' notice or pay in lieu thereof. The said clause was the subject-matter of consideration before the Supreme Court in that case. The learned Judges, in that connection, stated that Article 14 will come into play "where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted lines in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair.....". While saying so, the learned Judges themselves stated that "the Court must judge each case on its own facts and circumstances." Finally, the learned Judges also stated that "this principle may not apply where both parties are businessmen and the contract is commercial transaction".

76. These observations were referred to and followed recently by a Full Bench of this Court in W.P.No. 8437 of 1987 and batch dated 25-6-1993. In the said case, the contract entered into between contractor and the Singareni Collieries was the subject-matter of consideration. Clause 7 of the contract stated that "it is the contractor's responsibility to get the necessary permits direct from the

Government and procure the materials of good quality as approved by the Department. The contractors have to produce documentary evidence for having paid the royalty charges to the Government, as otherwise, the royalty charges will be recovered from the bills and paid to the Government, as per the royalty rates prescribed by the Government, from time to time."

77. While dealing with the contract read with Rule 26 (3) (ii) of the Andhra Pradesh Minor Mineral Concession Rules, 1966, the Full Bench held as follows:

"When can parties be said to be not equal in bargaining power? This question has been discussed at length in Central Inland Water Transport Corporation Limited v. Brojo Nath and held that it is difficult to give an exhaustive list of all bargains where the bargaining power of the parties is unequal. The learned Judges have given some illustrations but at the same time it has been clearly enunciated that the principle of inequality in bargaining capacity cannot be applied where both parties are businessmen and the contract is a commercial transaction. The learned Judges also cautioned that each case must be judged on its own facts and circumstances. In the instant case, the respondent company is carrying on business in the mining of coal and its sale. In the course of carrying on its business, the company undertakes various civil works. Instead of itself carrying on all the civil works, it entrusts some of the works to the contractors. Persons who carry on business as contractors and who want to undertake execution of civil works, offer to execute the work and enter into a bargain with the company in that regard. As a result of it, a bargain is struck and the work is entrusted by the company to a contractor subject to the terms and conditions agreed to, between the parties. Thus, the agreements entered into are purely commercial contracts between two businessmen. In the case of such a commercial transaction, the question of unequal bargaining power between the parties will not be attracted. When two businessmen strike a bargain in a commercial transaction and enter into a contract, question of one party dominating the will of another and making him sign on a dotted line in a printed proforma agreement will not arise. Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, "

78. In this connection, it is necessary to notice the following observations of the Supreme Court which are apposite in the case reported in Life Insurance Corporation of India Vs. Escorts Ltd. and Others, .

"101. It was however, urged by the learned Counsel for the company that the Life Insurance Corporation was an instrumentality of the State and was, therefore, debarred by Article 14 from acting arbitrarily. It was, therefore, under an obligation to state to the Court its reasons for the resolution once a rule nisi was issued to it. If it failed to disclose its reasons to the Court, the Court would presume that it had no valid reasons to give and its action was, therefore, arbitrary. The learned Counsel relied on the decision of this Court in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of

Clause II. Officers, Shyam Lal, Industrial Finance Corporation, , Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, . The learned Attorney General on the other hand, contended that actions of the State or an instrumentality of the State which do not properly belong to the field of public law but belong to the field of private law are not liable to be subjected to judicial review. He relied on O'Reilly v. Mackman (1982) 3 All.E.R 1124, Davy v. Spelthorne (1983) 3 All.E.R 278, I Congressdel Partido (1981) 2 All.E.R. 1964, R.V. East Berkshire Health Authority (1984) 3 All E.R 425 and Radhakrishna Agarwal and Others Vs. State of Bihar and Others, . While we do find considerable force in the contention of the learned Attorney General it may not be necessary for us to enter into any lengthy discussion of the topic, as we shall presently see."

xxxxx xxxxx xxxxx 102. For example, if the action of the State is political or sovereign in character, the Court will keep away from it. The Court will not debate academic matters or concern itself with the intricacies of trade and commerce. If the action of the State is related to contractual obligation or obligations arising out of the Court, the Court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the Court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field".

Again the learned Judges stated that

"The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the action and a host of other relevant circumstances. When the State or an instrumentality of the State ventures into the corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder, and dons the robes of a shareholder, with all the rights available to such a shareholder. There is no reason why the State as a shareholder should be expected to state its reasons when it seeks to change the management, by a resolution of the Company, like any other shareholder."

In the said case though the institution viz., Life Insurance Corporation of India is a Government owned corporation and "State" within the meaning of Article 12, since it has entered into the corporate world and purchased the shares of a company, the learned Judges held that it assumes to itself the ordinary role of a shareholder, and dons the robes of a shareholder, with all the rights available to such a shareholder and that it is in private law domain.

79. Similarly, in our case, when the State entered into contracts for execution of works, it takes the role of businessmen entering into contract. Therefore, the principles laid down for holding service contracts as being violative of Articles 14 and 21 of the Constitution of India will have no application to the commercial

transactions.

80. Having regard to the above, we are of the opinion that the Judgment of the learned Single Judge in Raghunadharao's case (11 supra) is not correct in law.

81. The only other aspect which we have to deal with is the contention that the Judgment in Raghunadharao's case (11 supra) must be deemed to have been approved by the Judgment of the Supreme Court in Delhi Transport Corporation's case (13 supra) and, therefore, this Court is precluded from going into the validity or correctness of the said Judgment. In this connection, learned Counsel for the contractor drew our attention to the Judgment of the Division Bench of this Court in State of A.P. v. Raghunadlnrao (12 supra) which was rendered on appeal against the Judgment in Raghunadha Rao's case (11 supra).

82. In Delhi Transport Corporation's case (13 supra) the validity or otherwise of Regulation 9 (b) of the Delhi Transport Act, 1950 was considered. The said regulation provided for termination of service of even permanent employees by giving one month's notice or pay in lieu thereof. The contention raised was that the said regulation is arbitrary, illegal and unconstitutional. The regulation was similar to the one in Central Inland Water Transport Corporation case (18 supra). Regulation 9 (b) of the Delhi Transport Act, 1950 is a regulation concerning the services of the employees of Delhi Transport Corporation. By a majority of four to one, the said regulation was held to be unconstitutional as being arbitrary. Four of the learned Judges who constituted the majority rendered separate but concurring Judgments. K. Ramaswamy, J., who rendered a separate but concurring Judgment of the majority, while considering the service contracts and the regulations of the employees of the Delhi Transport Corporation observed in para 250 at page 192 of the report as under:

"These principles are accepted and followed by the Andhra Pradesh High Court in V. Raghunadha Rao v. State of Andhra Pradesh (1988) 1 ALT 461 dealing with A.P. Standard Specification Clauses 11, 29, 59, 62 (b) and 73 and declared some clauses to be ultra vires of Articles 14, 19(1)(g) and 21 of the Constitution and Sections 23 and 27 of the Contract Act."

The other three learned Judges who constituted the majority along with K. Ramaswamy, J., did not refer to the Judgment of the learned Single Judge of this Court. They did not either concur or express dissent from it. Delhi Transport Corporation's case (13 supra) itself was dealing with service regulation 9 (b) as mentioned above. Constitutional validity or otherwise of the contracts entered into by the State with a citizen in respect of execution of civil works was not in issue in that case.

83. In order to appreciate as to how the above passage in the Judgment of K. Ramaswamy, J., in Delhi Transport Corporation Case (13 supra) shall be read and understood, it may be useful to refer to the Judgment of the Supreme Court in Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., wherein the legal position with regard to precedents was stated. In the said case, the

Supreme Court was concerned with the question as to the scope of reassessment proceedings u/s 147 of the Income Tax Act. The following question was formulated for decision of the Supreme Court:

"Where an item unconnected with the escapement of income has been concluded finally against the assessee, how far in reassessment on an escaped item of income, is it open to the assessee to seek a review of the concluded item for the purpose of computation of the escaped income?"

The Supreme Court while answering the question against the assessee, held that "since the original agreement had been concluded finally against the assessee, it was not permissible for the assessee in the reassessment proceedings to seek a review/revision of the concluded assessment for the purpose of computation of the escaped income". The Judgment of the Calcutta High Court was reversed by their Lordships. In that case, strong reliance was placed by the assessee's Counsel on the observations made in the earlier decision of the Supreme Court in *V. Jaganmohan Rao and Others Vs. Commissioner of Income Tax and Excess Profits Tax, Andhra Pradesh*, . The Supreme Court noticed that the following observations made in *Jaganmohana Rao's* case formed the basis of the view taken by some of the High Courts that the entire assessment is reopened and the original assessment is wiped off and the assessee can put forward all pleas even if rejected during the original proceedings:

"Section 34 in terms states that once the Income Tax Officer decides to reopen the assessment he could do so within the period prescribed by serving on the person liable to pay tax a notice containing all or any of the requirements which may be included in a notice u/s 22(2) and may proceed to assess or reassess such income, profits or gains. It is, therefore, manifest that once an assessment is reopened by issuing a notice under Sub-section (2) of Section 22, the previous under-assessment is set aside and the whole assessment proceedings start afresh."

The Supreme Court referred to the facts in *V. Jaganmohan Rao and Others Vs. Commissioner of Income Tax and Excess Profits Tax, Andhra Pradesh*, which are briefly as follows: The assessee was the kartha of a Hindu undivided family. The assessee purchased a spinning mill in the year 1941. At the time of purchase there was a litigation between the sons of the vendor and the vendor in respect of the spinning mill and certain other properties. Ultimately, the matter went up to the Privy Council. When the appeal to the Privy Council was pending, the assessments were made for the years 1944 to 1947. Thereafter, the Privy Council disposed of the appeal. Based on the decision of the Privy Council, the Income Tax Officer issued a notice u/s 34 of the Income Tax Act 1922 proposing to assess a sum of Rs. 1,09,618/- received by the assessee as lease income of the mill. While questioning the validity of the re-assessment proceedings, one of the contentions raised before the Supreme Court was that, at the time the original order of assessment was made, the Income Tax Officer could have legitimately assessed 1/3 rd share of the income which was due to be assessed

as per the Judgment of the Madras High Court and that in the circumstances these was escapement only to the extent of 2/3 rds share of the income. Repelling the plea of the assessee that the Income Tax Officer could have legitimately assessed one-third share of the income which was due to the assessee according to the Judgment of the High Court at the time when the order of original assessment was passed, the Supreme Court observed that once the re-assessment proceedings were validly initiated with regard to two-thirds share of the income, the jurisdiction of the Income Tax Officer could not be confined only to that portion of the income but extended to bring to tax the "entire escaped income and set aside the under assessment previously made." Their Lordships then pointed out that the true ratio of the Judgment in Jaganmohan Rao's case (21 supra) is that the previous under assessment stood set aside but not the original assessment. It was observed that "Jaganmohan Rao's case (21 supra) cannot be read to imply as laying down that, in the re-assessment proceedings validly initiated, the assessee can seek reopening of the whole assessment and claim credit in respect of items finally concluded in the original assessment." Their Lordships pointed out that any such interpretation would amount to reading that Judgment totally out of context in which the question arose for decision in that case. The following pertinent observations were made:

"It is neither desirable nor permissible to pick out a word or a sentence from the Judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete "law" declared by this Court. The Judgment must be read as a whole and the observations from the Judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and, while applying the decision to a later case, the Courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the Judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings."

84. The observations of K. Ramaswamy, J., in his separate Judgment in Delhi Transport case (13 supra) do not, in our view, tantamount to approval of the Judgment in Raghunadharao's case (11 supra) declaring Clause 73 and other Clauses of the agreement as ultra vires the Constitution. The mere reference to the Judgment in Raghunadharao's case (11 supra) in the context to the principles enunciated in the earlier part of the Judgment does not mean and imply that the ratio and conclusions in Raghunadharao's case (11 supra) was endorsed by the Supreme Court. We do not find any such words in the guardedly worded passage in the judgment of K. Ramaswamy, J., as extracted above.

85. In Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others, it was stated that the observations in a Judgment should be understood in the context of the facts of that particular case and that the

decision should not be taken or understood out of context. The said case was dealing with the validity of college-wise institutional preference. Rule 4 (a) of the Rules framed by the Bombay Municipal Corporation for admission in to Post-graduate degree courses in its medical colleges required that while selecting candidates for admission to the Post-graduate courses, preference will be given to the candidates applying for admission at the Medical College at which the candidate passes his qualifying examination. In other words, preference should be given to the person who passes the qualifying examination in a particular college for admission in the said college to the post-graduate course i.e., given "college-wise institutional preference". The question was whether that rule was valid along with the impugned portion of Rule 5 which is also to the same effect.

86. Learned Judges of the Supreme Court while upholding the decision of the Bombay High Court, held that "college-wise institutional preference" is invalid. Before the learned Judges, the Judgment in Pradeep Jain v. Union of India AIR 1982 SC 1420 was pressed into service in support of the contention that college-wise institutional preference was already held to be valid in the said case and therefore, it is binding on the learned Judges.

87. The facts in the case of Pradeep Join v. Union of India AIR 1982 SC 1420 were whether reservation of seats in Medical Colleges on the ground of domicile or residence of particular region within the State is valid or not. The case had nothing to do with giving preference to the candidates who passed in the same college for admission to the post-graduate course in the very same college. Bhagwathi, J., while delivering the judgment in Pradeep Jain's case AIR 1982 SC 1420 stated as follows:

"A certain percentage of seats may in the present circumstances be reserved on the basis of institutional preference in the sense that a student who has passed M.B.B.S. course for a medical college or University, may be given preference for admission to the post-graduate course in the same Medical College or university..."

Relying upon the said observations, it was contended before the learned Judges of the Supreme Court in Thukral Anjali's case (22 supra) that college-wise institutional preference was upheld by the Supreme Court in Pradeep Jain's case AIR 1982 SC 1420 and therefore, it is binding on the learned Judges who decided the case in Thukral Anjali's case (22 supra). The learned judges while dealing with the said contention stated as follows:

"It is true the expression "Institutional preference" has been vised in the said observation in respect of a Medical College or University, but we do not think that in making that observation, Bhagwathi, J., had in his mind college-wise institutional preference. Any observation in a Judgment has to be read and understood in the context of facts of that particular case in respect of which such observation has been made".

Having regard to the above statement of law we are of the opinion that the

question with regard to arbitration clause or the question that Government officials, by the very fact that they are holding posts under the Government, will be biased in favour of the Government was not before the learned Judges in Delhi Transport Corporation's case (13 supra). Therefore, it is not possible to accept the contention that Raghunadha Rao's case (11 supra) having been referred to in one of the separate but concurring Judgments in our opinion, will not amount to approval of the same or declaration of law on that aspect within the meaning of Article 141 of the Constitution of India.

88. Having regard to the law laid down by the Supreme Court in Sun Engineering Works Limited's case (20 supra) and Thukral Anjali's case (22 supra) it cannot be concluded that the observations contained in para 250 of the report in Delhi Transport Corporation's case (13 supra) approved the law laid down in Raghunadharao's case (11 supra).

89. It must be remembered, in this connection, that none of the clauses of the Preliminary Specifications which are in Part-I of the A.P. Detailed Standard Specifications was in issue before the Supreme Court in Delhi Transport Corporation's case (13 supra). It was neither in issue nor was it raised nor was there any discussion in the Judgment in respect of the same. The only aspect that fell for consideration and in fact considered by the learned judges was the validity or otherwise of Regulation 9 (b) of the Delhi Transport Act, 1950. Therefore, the observations in para 250 of Delhi Transport Corporation's case (13 supra) cannot be taken as law declared under Article 141 of the Constitution of India on the question under consideration.

90. Even assuming for a minute that the observations amount to obiter dicta we are confronted with two Judgments now before us. One is the obiter dicta arising out of the observations of the learned Judge in para 250 of the report at Page 192 in Delhi Transport Corporation's case (13 supra) and the other Judgment in Munuswamy's case (15 supra) wherein the Standard Preliminary Specifications which form part of Madras Detailed Standard Specifications (which are adopted by the Government of Andhra Pradesh) were in issue, particularly the arbitration clause of the preliminary specifications. While dealing with the arbitration clause contained in the preliminary specifications, learned Judges of the Supreme Court clearly rejected the contention of official bias attributed to the panel of arbitrators and they made the following pertinent remarks which require repetition:

"13. This Court in International Airports Authority of India Vs. K.D. Bali and Anr, held that there must be reasonable evidence to satisfy that there was a real likelihood of bias. Vague suspicions of whimsical, capricious and unreasonable people should not be made the standard to regulate normal human conduct. In this country in numerous contracts with the Government, clauses requiring the Superintending Engineer or some official of the Govt. to be the arbitrator are there. It cannot be said that the Superintending Engineer, as such, cannot be entrusted with the work of arbitration and that an apprehension, simpliciter in

the mind of the contractor without any tangible ground, would be a justification for removal. No other ground for the alleged apprehension was indicated in the pleadings before the learned Judge or the decision of the learned Judge. There was, in our opinion, no ground for removal of the arbitrator. Mere imagination of a ground cannot be an excuse for apprehending bias in the mind of the chosen arbitrator."

91. In this case, the question which squarely fell for consideration is in respect of arbitration clause of the preliminary specifications in the context of official bias. Learned Judges rejected the contention in respect of official bias and upheld the arbitration clause which provided for a panel of official arbitrators. This, as we understand, is a judicial dicta. When we are confronted with judicial dicta and obiter dicta contained in the Judgments in Munuswamy's case (15 supra) and Delhi Transport Corporation case (13 supra) respectively, we are bound necessarily by judicial dicta. Having regard to the decision in Munuswamy's case (15 supra) which is directly in point and the decision having been rendered with reference to a similar issue raised before the learned Judges, we are of the opinion that we are bound by the decision of the Supreme Court in Munuswamy's case (15 supra). If that is so, we have to necessarily hold that the Judgment of the learned Single Judge in Raghunadha Rao's case (11 supra) is not correctly decided. In fact the Judgment of the Supreme Court in Munuswamy's case (15 supra) was not brought to the notice of the Division Bench of this Court in State of A.P. v. Raghunadha rao (12 supra).

92. It was then contended by the learned Counsel for the contractor that constitutional validity of Clause 73 of the preliminary Specifications was not raised or argued before the Supreme Court and, therefore, it should not be taken as an authority for that proposition. We are afraid that it is not possible to accede to this argument. The Supreme Court held in Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherji and Others, that when once a Judgment was rendered by the Supreme Court, it should not be contended later that a particular point was not raised or considered by the learned Judges and, therefore, it is open to the Court once again to re-consider the same.

93. It is then contended by the learned Counsel for the contractor that the capability and ability of the arbitrators appointed by the Lower Court are not in question and, therefore, the appointment of arbitrators should not be disturbed. We are not on the question of ability or capability of the arbitrator. But as a matter of law and on principle, we have already held that the panel of designated officials as arbitrators is valid and the panel can be made certain and even if it cannot be made certain, the Court in its discretion has to appoint a panel of arbitrators and not sole arbitrator and that too, technically unqualified person. The Court would then be giving effect to the wishes of the parties as nearly as possible and also furthering their intention.

94. Lastly it was contended that Sub-section (4) of Section 20 provides for appointment of an arbitrator and not arbitrators. This contention need not detain

us any longer. "Arbitrator" includes Arbitrators. When the parties intended to have a panel of arbitrators, it is not proper for the Court to appoint a sole arbitrator and it has power under Sub-section (4) of Section 20 to appoint a panel of arbitrators.

95. Having regard to the above, we answer the reference as follows: Where the panel of arbitrators comprises of three designated officials and if there is more than one incumbent conforming to that designation, the panel cannot be said to be vague and it can be made certain by referring the dispute to any one of the persons who are holding the post of specified designation.

96. Even if it is held that the panel is vague and uncertain, having regard to the fact that there is more than one incumbent in any one or two or even all of the designated offices, it would be proper for the Court to refer the dispute/ disputes to a panel but not to a sole arbitrator. The panel may consist of the incumbents satisfying the designations mentioned in the agreement. If for any reason, it is not feasible to do so, it is open to the Court to refer the disputes to a panel consisting of serving senior officials having technical and accounts experience. Such a reference will be in conformity with the intention of the parties as reflected in the arbitration clause.

97. As a matter of rule or law, it cannot be said that the designated officials who constitute panel of arbitrators are biased by virtue of their office in favour of the State. No hard and fast rule can be laid down in that regard. If bias is attributed, it is for the party to prove the same and if so proved, the Court while appointing arbitrator must keep in mind what is stated in the preceding paragraph.

98. In this case there is not even pleading of bias against the panel of arbitrators consisting of designated officials. Therefore, we are of the opinion that the Court below is not entitled to appoint a sole arbitrator.

99. For the reasons mentioned above, the judgments of the Division Benches of this Court in C.M.A.No. 1136 of 1985 and batch dt. 2-2-1988 (K. AMARESWARI and Y. BHASKAR RAO, JJ.); C.M.A.No. 1331 of 1989 dated 13-9-1990 (M. JAGANNADHA RAO and P. VENKATARAMA REDDI JJ.) and C.M.A. Nos. 1129 to 1133 of 1986 and batch dated 27-10-1986 (B.P. JEEVANREDDY and P. RAMARAO JJ.) to the extent of upholding the appointment of sole arbitrator and the Judgments in Raghunadha Rao v. State of A.P. (11 supra) and State of A.P. v. Ramalingareddy (16 supra) to the extent they are inconsistent with this Judgment are overruled. The Judgment of the Division Bench of this Court in State of A.P. v. Raghunadha Rao (12 supra) to the extent it declared that the Delhi Transport Corporation case (13 supra) must be deemed to have approved the law laid down in Raghunadha Rao's case (11 supra) is held to be not correct and is, therefore, overruled.

100. The reference is accordingly answered and the appeals and revision petitions are directed to be posted before the Division Bench.