
(1992) 03 MAD CK 0012

In the Madras High Court

Case No : Appls. No"s. 6004 and 6005 of 1991 in O.P. No. 547 of 1991

Neyveli Lignite Corporation, Neyveli

APPELLANT

Vs

M/s. Vinay Engineering, Sole Proprietors, New Delhi and
another

RESPONDENT

Date of Decision : 24-03-1992

Acts Referred:

Arbitration Act, 1940 — Section 14(2), 21, 31(1), 33, 41
Civil Procedure Code, 1908 (CPC) — Section 15, 19, 20
Contract Act, 1872 — Section 28

Citation : AIR 1992 Mad 332 : (1992) 2 LW 283

Hon'ble Judges : Lakshmanan, J

Bench : Single Bench

Advocate : R. Krishnaswami, for the Appellant; R. Muttukumaraswamy, for the Respondent

Judgement

1. Original Petition No. 547 of 1991 was filed by the first respondent herein M/s. Vinay Engineering u/s 14(2) of the Arbitration Act, hereinafter

referred to as the Act to direct the second respondent (the umpire) to file the award dated 2nd April, 1991 in the Contract No. 004/2700K/HIIT/

81-389, dated 21-5-1981 together with the deposition and documents etc.

2. Pursuant to the dispute that arose between Neyveli Lignite Corporation Limited hereinafter called as NLC and the first respondent Vinay

Engineering as regards the Contract, the first respondent sought reference of arbitration in terms of the arbitration agreement contained in clauses

23.1 and 23.2 of the contract. The arbitration was proceeded before Mr. M. G. Balasubramanian and Mr. P. K. J. Menon as the arbitrators

respectively appointed by NLC and Vinay Engineering respectively. Prior to that Mr. M. B. Balasubramanian and Mr. K. A. Ramasubramaniam

were functioning as the arbitrators, but before they could deliver their Award, Mr. K. A. Ramasubraminiam died and in his place Mr. P. K. J.

Menon was appointed as an arbitrator by the first respondent herein. However, the said arbitrator could not agree on the award and as such

delivered a notice to that effect that the second respondent as the Umpire appointed by the said arbitrators. The second respondent as the Umpire

entered on the reference and after hearing the parties has made and signed his award, dated 2nd April, 1991. A notice dated 2nd April, 1991 of

the making and signing of the award was given by the second respondent (the Umpire) to NLC and Vinay Engineering and a copy of the award

has been given by the second respondent on 1st May, 1991. In paragraph 7 of the main Original Petition, it is stated that the Contract, dated 21st

May, 1991 made between Vinay Engineering and NLC was signed at Madras within the jurisdiction of this Court and this Court has pecuniary

jurisdiction on the subject matter since the value of the contract given to Vinay Engineering as originally is more than Rs. 23 crores. The cause of

action for the present Original Petition arose on 2nd April, 1991, when the second respondent (Umpire) gave to Vinay Engineering and NLC a

notice of making and signing of the Award and thereafter on 1st May, 1991, when the copy of the Award was given by the second respondent

(Umpire) as aforestated.

3. On 23-10-1991, this Court ordered notice through Court and also privately to both parties. After the receipt of the notice in the main original

petition No. 547 of 1991, the second respondent (Umpire) has filed into this Court the entire records including the original Award on 3-12-1991.

I directed the main original petition to be posted along with Applications Nos. 6004 & 6005 of 1991 for enquiry. Accordingly, both the above

applications were posted before me for hearing.

4. Application No. 6004 of 1991 was filed by NLC to dismiss the main original petition No. 547 of 1991 on the ground that this Court has no

jurisdiction to entertain the petition. Application No. 6005 of 1991 was filed by NLC to issue direction to second respondent (Umpire) not to file

the Award in this Court pursuant to the notice issued by this Court in the above Original Petition as per orders dated 25-10-1991. The short facts

are :

NLC Limited entered into a contract with Vinay Engineering, hereinafter called as the Contractor for the manufacture and supply of equipments

and components of Indian Original, erection and commissioning of complete equipment for 3 X 210 MW Steam Generator installation at Neyveli

under the direction, control and supervision of M/s. Transelektro. The said contract was entered into on 21-5-1981 at Madras. The contract

contains an Arbitration clause. The dispute arose between the parties and the matter was referred to two arbitrators to refer the matter to the

Umpire Mr. Justice G. Ramanujam, the second respondent herein who passed the Award on 2-4-1991. The first respondent Vinay Engineering

has filed the main original petition No. 547 of 1991 u/s 14(2) of the Act before this Court. According to the applicants, NLC, this Court has no

jurisdiction to entertain the main original petition, as no part of the contract arose in view of clause 18.2. of the contract between the parties.

Clause 18.2 of the contract reads as follows :

The laws applicable to this contract shall be the laws applicable in India and the Civil Court having ordinary civil jurisdiction over Neyveli shall

have the jurisdiction over all matters concerning with this contract"".

NLC contends that the Court in Cuddalore which has ordinary original civil jurisdiction over Neyveli, is the competent Court to entertain any

application under the Act.

5. The respondent-contractor has filed a counter affidavit raising the following four principal contentions :

(1) The application NLC had moved this Court in O.P. No. 191 of 1982 on 1-7-1982 u/s 33 of the Act and therefore, the applicant itself has

accepted that the cause of action is at Madras;

(2) The respondent Contractor had filed Applications Nos, 402 to 404 of 1983 on the file of this Court u/s 41 of the Act questioning the validity of

the enforcement of the Bank guarantees. The application -- NLC has contested the above applications on merits;

(3) Clause 18.2 of the contract does not seek to exclude the jurisdiction of this Court and that therefore, the said provision cannot be invoked to

oust the jurisdiction of this Court;

and

(4) In view of the fact that the applicant --NLC itself has initiated proceedings before this Court, by which applications had also been taken out on

the file of this Court pursuant to the reference in question, this Court alone shall have the jurisdiction u/s 31(4) of the Act.

6. On these pleadings the following arguments were advanced by Mr. R. Krishnaswamy on behalf of the applicant NLC and Mr. R.

Muthukumaraswamy on behalf of the Contractor.

7. According to Mr. R. Krishnaswamy, learned counsel appearing for NLC-applicant, clause 18.2 of the contract is unambiguous and clear in its

terms which reads as follows :

Civil Court having ordinary civil jurisdiction over Neyveli shall have the jurisdiction over all matters concerned in this contract"".

Under Section 2(c) of the Act, Court is defined as the Civil Court having jurisdiction to decide the questions forming the subject matter of

reference, if the same had been the subject matter of a suit, does not except for the purpose of arbitration proceedings, u/s 21 includes Small

Cause Court.

8. It is contended by Mr. R. Muthukumaraswamy, learned counsel appearing on behalf of the Contractor that the contract having been entered

into at Madras, a part of cause of action has arisen and that therefore this Court alone has jurisdiction. In the instant case, two Courts have

jurisdiction to entertain any action (1) the Court in the city of Madras, where the contract has been executed and (2) the Court at Neyveli where

the contract was performed. Among these two Courts, according to Mr. R. Krishnaswamy, parties have selected under Clause 18.2 the Court at

Neyveli and such a contract is valid in law and excludes any action in the other Court even though it has jurisdiction to entertain it. He further

contended that it is not a question of ousting of jurisdiction, but it is a case of refusing to exercise the jurisdiction by a Court by giving effect to the

contractual terms of the parties.

9. Mr. R. Muthukumaraswamy argued that Clause 18.2 is an ambiguous clause, as it does not contain the specific words of "exclusive, alone, only"

after the words over "Neyveli" in the Clause 18.2 However, Mr. R. Krishnaswamy, contends that this argument is not sustainable in law and he

relies on the Judgment reported in A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P.

Agencies, Salem, which are reproduced as under:

When the Court has to decide the question of jurisdiction pursuant to an ouster clause it is necessary to construe the oustering expression or clause

properly. Often the stipulation is that the contract shall be deemed to have been made at a particular place. This would provide the connection

factor for jurisdiction to the Courts of that place in the matter of any dispute arising out of that contract. It would not, however, ipso facto take away

jurisdiction of other Courts. Thus in *Salem Chemical Industries, a registered Firm Vs. Bird and Co. (P) Ltd., Calcutta*, where the terms and

conditions attached to the quotation contained arbitration clause provided that :
""any order placed against this quotation shall be deemed to be a

contract made in Calcutta and any dispute arising therefrom shall be settled by an arbitrator to be jointly appointed by us. ""It was held that it merely

fixed the situs of the contract at Calcutta and it did not mean to confer an exclusive jurisdiction on the Court at Calcutta, and when a part of the

cause of action had arisen at Salem, the Court there had also jurisdiction to entertain the Suit u/s 20(c) of the Code of Civil Procedure"".

From the foregoing decisions it can be reasonably deduced that where such an ouster clause occurs, it is pertinent to see whether there is ouster

of jurisdiction of other Courts, when the clause is clear, unambiguous and specific accepted notions of contract would bind the parties and unless

the absence of *ad idem* can be shown, the other Courts should avoid exercising jurisdiction. As regards construction, of the ouster clause when

words like "alone", "only", "exclusive" and the like have been used there may be no difficulty. Even without such words in appropriate cases the

maxim "*expressio unius est exclusio alterius* -- expression of one is the exclusion of another may be applied. What is an appropriate case shall

depend on the facts of the case. In such a case, mention of one thing may imply exclusion of another. When certain jurisdiction is specified in a

contract an intention to exclude all others from its operation may in such cases be inferred. It has therefore to be properly construed.

Thus, Mr. R. Krishnaswamy contends that the absence of words "exclusive" etc., will not alter the situation. Secondly, it was argued by Mr. R.

Muthukumaraswamy that the parties by an agreement cannot oust the jurisdiction of the Court. On the contrary, Mr. R. Krishnaswamy contends

that it is not the case of ousting of jurisdiction and on the other hand it is a case of refusing to exercise jurisdiction. For this proposition he relied on

the Judgment reported in A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, , which according to him answers this point. Further,

Mr. R. Krishnaswamy relies on the case reported in Globe Transport Corporation Vs. Triveni Engineering Works and Another, . In the said

decision, the Supreme Court has held as follows :

It is not competent to the parties by agreement to invest a Court with jurisdiction which it does not otherwise possess but if there are more than

one forums where a suit can be filed, it is open to the parties by agreement to select a particular forum and exclude the other forums in regard to

claims which one party may have against the other under a contract. Since in the present case the appellant was carrying on business in Jaipur, in

view of Sections 19 and 20, CPC, the Court in Jaipur would have jurisdiction to entertain the suit filed by the respondent. In that event Clause 17

of the Contract of Carriage conferring exclusive jurisdiction on the Court in Jaipur city and excluding the jurisdiction of other Courts would be valid

and effective.

In the said decision. Globe Transport Corporation, appellant before the Supreme Court was carrying on transport business in Jaipur. The

consignor entrusted goods to the appellant (Globe Transport Corporation) at Baroda for carriage to Naini, Allahabd. The goods were damaged in

transit due to an accident and the damaged goods were delivered to the respondent, Triveni Engineering Works and another, who were the

endorsees of the consignment note. One of the conditions of the consignment note (Clause 17) was that the Court in Jaipur alone shall have

jurisdiction in respect of all claims and matters arising under the consignment. But the respondents Triveni Engineering Works filed a suit for

damages against the appellant Corporation in the Court of Civil Judge, Allahabad, being the place where the goods were delivered. The Civil

Court as well as the High Court held that since no part of the cause of action had arisen in Jaipur, the Civil Court in Jaipur had no jurisdiction,

allowing the said appeal. It is seen from the above Judgment that though a particular Court may not have jurisdiction in view of the fact that no part

of cause of action has arisen, yet, if the defendant resides, a suit could be filed

there and the parties agreed to have its disputes adjudicated in the place, where the defendant resides and that Court will alone have jurisdiction and not other Courts. In other words, it is the contractual terms between the parties that have been given effect to by the Court refusing to exercise its jurisdiction by honouring the terms of the contract and it is not case of ousting of jurisdiction.

10. In this context, it is useful to refer to a Full Bench Judgment of Madhya Bharat High Court reported in Premadib Pictures v. New Sound

Pictures, AIR 1955 MB 193 cited by Mr. R. Muthukumaraswamy to the proposition that parties cannot enter into an agreement ousting the jurisdiction of the Court. In the said decision, the Full Bench of Madhya Bharat High Court held as follows:

It is one thing to say that the Court has no jurisdiction and quite another to say that the Court should not entertain the suit because of the

agreement of the parties to file a suit in the particular Court. In the former case the Court lacks the necessary jurisdiction. In the latter case the

Court retains its jurisdiction but refuses to entertain a suit in order to give effect to the valid stipulation of the contract between the parties.

To say that the Court has no jurisdiction because the parties agreed to file a suit in another Court of competent jurisdiction is to lay down a

proposition that the parties can, by an agreement, oust the jurisdiction of the Court, a proposition which is not tenable in law. It is now well settled

that the parties cannot, by consent confer or oust the jurisdiction of a Court.

11. Explaining the stand taken by the applicant -- NLC, Mr. R. Krishnaswamy further contends that it is not the case of the application that the

Court in Madias has no jurisdiction at all. On the other hand, the application is made out to signify its refusal to entertain any proceeding in respect

of the arbitration agreement, where the clause relating to adjudication of disputes has restricted to one Court. In other words, the applicant has

prayed this Court to honour the contractual terms of the parties in regard to the adjudication of disputes.

12. Mr. R. Muthukumaraswamy, learned counsel appearing for the respondent relied on the Judgments reported in Hakam Sing Vs. Gammon

(India) Ltd., ; Nanak Chand Shadurain Vs. The Tinnelvally-Tuticorin Electric Supply Co. Ltd., Calcutta, ; Mohamed Sali Vs. Siluvai Arikkanjir

Fernande (died) and Others, . All the decisions converge to the proposition of law that the exclusion of jurisdiction should be strictly construed and

that the clause should be unambiguous and specific in its terms and there cannot be an ouster of jurisdiction, on the other hand the Court can refuse

its jurisdiction, if exclusion clause is present in the contract between the parties. In the decision reported in Hakam Sing Vs. Gammon (India) Ltd.,

the Supreme Court has observed thus (at p. 741 of AIR) :

The CPC in its entirety applies to proceedings under the Arbitration Act. The jurisdiction of the Courts under the Arbitration Act to entertain a

proceeding for filing an award is accordingly governed by the provisions of the Code of Civil Procedure. By Cl. 13 of the agreement, it was

expressly stipulated between the parties that the contract shall be deemed to have been entered into by the parties concerned in the City of

Bombay. In any event the respondents have their principal office in Bombay and they were liable in respect of a cause of action arising under the

terms of the tender to be sued in the Courts at Bombay. It is not open to the parties by agreement to confer by their agreement jurisdiction on a

Court which it does not possess under the Code. But where two Courts or more have under the CPC jurisdiction to try a suit or proceeding an

agreement between the parties that the dispute between them shall be tried in (sic) such Courts is not contrary to public (sic). Such an agreement

does not con-(sic) S. 28 of the Contract Act.

(sic) the judgment reported in Nanak Chand Shadurain Vs. The Tinnelvely-Tuticorin Electric Supply Co. Ltd., Calcutta, , (sic) Judgment was

referred by a Division (sic) of this Court, consisting of Rama- (sic) Rao, J and Natarajan, J. (as they (sic) were). The Division Bench of this Court

(sic) the said decision held as under (at pp. 107 and 108 of AIR):

A marked distinction exists between cases in which Courts lack jurisdiction to try the cases and where jurisdiction is irregularly exercised by

Courts, In the former case the Court ought not to have entered upon trial of the suit; in the latter it could have avoided trial, but necessarily not.

Competency of a Court to try an action goes to the root of the matter and when such competence is not found, it has no jurisdiction at all to try the

case. But objection based on irregular exercise of jurisdiction is a matter which parties can waive. Equally well settled is the proposition that where

there are two or more competent Courts which can entertain a suit parties to the concerned transaction can contract to vest jurisdiction in one of

such Courts to try disputes. If such a contract is clear, unambiguous, not vague and explicit, it is not hit by S. 28 of the Contract Act. This should

not be understood as parties contracting against statute. But this is one of many series of contracts available in mercantile practice and forged in the name of commercial expediency.

However, invariably, the whole question resolves itself into one of fact. If the parties at the inception applied their mind and choose one of the

competent Courts as the Court in which disputes have to be adjudicated and decided upon, and if such a consensus is demonstrable in a given

case, Courts ought not to be astute to find a different contract between the parties.

Held on facts that it cannot be said that there has been an ouster of jurisdiction of the Court at Tuticorin and that there has been a demonstrable

consensus between the parties to vest jurisdiction only in Courts in the city of Madras. Case law reviewed.

The learned counsel for the respondent has also invited my attention to the decision of our High Court reported in Savani Transport Pvt. Ltd.,

Bombay Vs. Chinnaswami Mudaliar and Co., whereunder, Ramaprasada Rao, C.J. (as he then was) has held as follows :

D (Carriers) was a firm carrying on business in Bombay. The firm Entrusted textile goods to D. Goods were transported belatedly by D which

occasioned loss of goods. P instituted suit at Erode against D for recovery of the value of such goods. A specific clause in the contract of

affrayment stated that the Court at Bombay alone shall have jurisdiction. Accordingly, D contended that Court at Erode had no jurisdiction. The

Court decided the issue of jurisdiction against D. On revision :

Held that the finding of the Court below, that the civil Court at Erode had jurisdiction to entertain the suit instituted by P was against law and

without jurisdiction.

If it can be presumed that the parties were aware that there were two competent Courts in either of which they can claim relief if there is a violation

of any one or more of the conditions of the contract agreed upon, then such a choice voluntarily exercised by them is an acceptable one, and an

enforceable one too, and they cannot wriggle out of it for convenience at different stages for different purposes.

In the decision reported in *Mohamed Sali v. S.A. Fernande* (1969) 1 Mad LJ 415, Alagiri-swami, J. (as he then was) held as follows :

The parties cannot by consent confer jurisdiction on a Court which did not have jurisdiction. Similarly, parties cannot by consent take away the

jurisdiction of a Court. It is open to them to agree that of two Courts having jurisdiction the suit should be instituted only in one of them. The

present case can even be brought under that rule. It cannot, in any case, be said that either, because the plaintiff wanted the plaint to be relumed to

him for representation to the proper Court or because of the Order of the learned District Munsif of Tuticorin returning the plaint, consequent of

that request, the plaintiff is debarred from contending that the Court of the District Munsif, Tuticorin, had jurisdiction, especially for deciding the

question whether the suit is within time. The wrong order of the learned District Munsif, Tuticorin returning the plaint cannot, therefore, be res

judicata even for the purpose of deciding the question of limitation.

It is a well known proposition of law that a wrong order of the Court cannot act to prejudice of litigants. Therefore, the wrong order of the District

Munsif, Tuticorin, returning the plaint for presentation to the proper Court, cannot be held to prejudice the plaintiff in this case. The suit should be

deemed to be pending throughout in the right Court whether it be the Court of the District Munsif, Tulicorin or the Court of the District Munsif,

Nagercoil.

13. All these decisions cited by the respondent-contractor, according to Mr. R. Krishnaswamy, learned counsel for the NLC support the case of

NLC that the clear terms of clause 18.2 restricting the jurisdiction to the original jurisdiction of Courts at Neyveli is an enforceable term of the

contract.

14. It is then submitted by Mr. R. Muthukumaraswamy, learned counsel for the respondent-contractor that clause 18.2 refers to ""Court having

oridinary original civil jurisdiction over Neyveli"" includes the High Court. In my opinion this is wrong. Section 15 of C.P.C. reads ""Every suit shall

be instituted in the Court of the lowest grade competent to try it."" Clause 11 of the Letters Patent defines "Local limits" of the ordinary original civil

jurisdiction of the High Court. Clause 11 of the letters patent is as follows :

11 Local Limits of the Ordinary Original Jurisdiction of the High Court -- And we do hereby ordain that the said High Court of judicature at

Madras shall have and exercise ordinary original civil jurisdiction within such local limits as may from time to time be declared and prescribed by

any law made by the Governor in Council, and until some local limits shall be so declared and prescribed within the limits of the local jurisdiction

of the said High Court of Madras at the date of the publication of these presents, and the ordinary original civil jurisdiction of the said

Court shall not extend beyond the limits the time being declared and prescribed as local limits of such jurisdiction".

In my view, clause 11 of the Letters postulates that the "Ordinary Original Civil Jurisdiction of the High Court means only the geographical

limits of the jurisdiction and not jurisdiction conferred by operation of law or by statutes or by clause 12 of the Letters Patent. Therefore, the

argument of Mr. Muthukumaraswamy that the High Court's jurisdiction in the exercise of clause 11 of the Letters Patent extends beyond the

geographical limit is not sustainable.

15. The next point urged by Mr. Muthukumaraswamy, learned counsel for contractor is that the applicant has filed Original Petition No. 191 of

1982 under S. 33 of the Act on 1-7-1982 and that the respondent-contractor had moved two applications under S. 41(b) of the Act

(Applications Nos. 402 and 404 of 1983). These applications are the applications under the Act made in a Court competent to entertain it within

the meaning of S. 31(4) of the Act and hence, the present petition filed under S. 14(2) of the Act is maintainable. According to Mr. R. Krishna-

swamy, the said submission made by the respondent-contractor presupposes the following two conditions:

(1) Applications made under the Act and

(2) They are before a Court competent to entertain it

elaborating further, Mr. R. Krishnaswamy contended that looking at any angle, the previous proceedings cannot vest jurisdiction to a wrong Court,

even assuming applications are filed therein for reliefs. The words "before a competent Court to entertain if assume significance. A competent

Court would mean a Court in which an action could be entertained. In the

present case, though under S. 2(c) of the Act, an arbitration case be filed in a Court where part of cause of action has arisen, that has to be interpreted in conjunction with the terms of contract between the parties.

Otherwise, the clause restraining the jurisdiction to one of the two competent Courts will lose its legal force and effect. Mr. R. Krishnaswamy also cited an example, out of the two competent Courts, one Court is chosen by the parties under the contract. Section 2(c) would apply only to the Court which is chosen by the parties. The interpretation of a Section in a statute should give effect to its meaningful application and not to result in ignoring the contract between the parties. Therefore the words appearing in S. 31(4) of the Act "Court competent to entertain in" would mean court competent to entertain a case between the parties in the light of the terms of the parties agreed to. The test is whether the respondent/contractor can ignoring clause 18.2 file an action in a "wrong Court" (wrong court in view of clause 18.2) i.e. the Court which was not agreed to between the parties, it cannot be done. Therefore according to Mr. R. Krishnaswamy, in the instant case "Court competent to entertain it" would only mean the only Court (out of the two Courts) in which the parties have agreed to agitate their disputes. The question of estoppel or acquiescence will not arise as S. 31(4) of the Act starts by saying "Notwithstanding anything contained elsewhere in the Act or in any other law for the time being in force" which excludes all other laws or statutory provisions. Mr. R. Krishnaswamy, strongly relied on my Judgment reported in Sabson (India) Pvt. Ltd. Vs. Neyveli Lignite Corporation Ltd., wherein this Court has declared that S. 31(4) of the Act contains a non obstante clause which carves out an exception to the general question of jurisdiction of the Court in which award may be filed elsewhere provided in the Act in respect of the proceedings referred to in sub-sec. (4) having an overriding effect in relation to the filing of the award if the conditions therein are satisfied, the Court other than the one envisaged in S. 14(2) or S. 31(1) will be the Court in which the award will have to be filed. This is the effect of non obstante clause in sub section (4) of S. 31 of the Act. Again, this Court has held that the Court in which the application is made in any reference should be the Court of competence to entertain as the Court having jurisdiction. In the instant case, the Court of Madras city is not a

competent Court to entertain the proceedings as the parties have agreed to have the disputes settled in a Court at Neyveli. Therefore, it is

submitted by Mr. R. Krishnaswamy, learned counsel for NLC that S, 31(4) of the Act has no application to the facts and circumstances of the case on hand.

16. Per contra and in answer to the submissions made by Mr. R. Krishnaswamy, learned counsel appearing for N.L.C., Mr. R.

Muthukumaraswamy, learned counsel appearing for the respondent-contractor has contended as follows :

Clause 18-2 of the Contract entered into between the parties cannot be construed as a clause excluding the jurisdiction of this Court. Clause 18.2

of the contract is not an exclusion clause, excluding the jurisdiction of this Court. All that clause 18.2 of the contract provides is that the Court

exercising ordinary original civil jurisdiction over Neyveli shall have jurisdiction in respect of all the disputes. Admittedly part of cause of action had

arisen within the jurisdiction of this Court. Hence clause 18.2 of the contract cannot be construed to amount to a clear and unambiguous contract

to vest exclusive jurisdiction in a local Court exercising ordinary original civil jurisdiction, over Neyveli. This is so particularly when the contracting

parties belong to different states. As held by the Supreme Court in A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, an ouster

clause cannot be construed to amount to an exclusion clause unless, it is clear and unambiguous. The words "Court exercising ordinary original civil

jurisdiction over Neyveli" cannot be said to be a clear clause conferring exclusive jurisdiction over a local" Court exercising ordinary original civil

jurisdiction over Neyveli.

Clause 18.2 has been understood by the parties to include the Madras High Court as well which is obvious from the fact there had been several

proceedings initiated by either parties on the "file of this Court, arising under the same contract. The first one was O.P. No. 191 of 1982 filed

under S. 33 of the Act by NLC. The second was the Applications Nos. 402 to 404 of 1983 filed by Vinay Engineering Company under S. 41 of

the Act. It would thus be clear that the parties have understood clause 18.2 to include the Madras High Court also as a Court of ordinary original

civil jurisdiction over Neyveli. In this context, reference can also be made to the

decision reported in Nanak Chand Shadurain Vs. The Tinnelvally-

Tuticorin Electric Supply Co. Ltd., Calcutta, where this Court has held that if there is consensus about the competency of Courts demonstrated by

proceedings that would give an indication of the question relating to jurisdiction, it would certainly clinch the issue.

17. I have given my anxious consideration to the arguments advanced by respective counsel. I have already extracted clause 18.2 of the agreement

between the parties. That clause merely provides that the Civil Court having ordinary original civil jurisdiction over Neyveli shall have the

jurisdiction over all the matters concerning the contract. It is pertinent to notice that this clause does not oust the jurisdiction of other Courts.

Words like "alone", "only", "exclusive" are not found in clause 18.2 of the contract between parties. Hence it cannot be contended that clause

18.2 excludes the jurisdiction of other Courts. Admittedly, the contract was entered into within the jurisdiction of this Court and therefore part of

the cause of action had arisen in Madras. Hence, there is no force in the contention of NLC that the Court at Neyveli alone has jurisdiction to the

exclusion of all others.

18. In fact, NLC itself has rightly understood the scope of clause 18.2 and had instituted O.P. No. 191 of 1982 under S. 33 of the Act in this

Court. Similarly, the contractor had also filed Applications Nos. 402 to 404 of 1983 under S. 41 of the Act and rightly NLC did not contest the

jurisdiction of this Court to entertain the petition u/S. 41 of the Act. Therefore, rightly the jurisdiction of this Court is invoked by the contractor and

rightly the Umpire has filed the original award etc., in this Court. Therefore both NLC and the Contractor have correctly understood the scope and

ambit of clause 18.2 of the contract.

19. Therefore in my opinion, it is futile on the part of the NLC to contend to the contrary. As referred to already, admittedly this Court

has jurisdiction as part of the cause of action had arisen in Madras. The competency of this Court to try an action between the parties continues to

exist and therefore in the light of the conduct of the parties in having acquiesced in the jurisdiction of this Court, it is not now open to NLC to

contend that clause 18.2 is a bar to the exercise of jurisdiction of this Court. Therefore clause 18.2 of the contract cannot be pressed into service

by the NLC.

20. In any event in view of the proceedings initiated by either parties earlier and the petition filed under S. 14(2) of the Act by M/ s Vinay

Engineering Company on the file of this Court, and in view of S. 31(4) of the Act, this Court alone in my opinion would have jurisdiction in the

matter to try the original petition. In the decision reported in Sabson (India) Pvt. Ltd. Vs. Neyveli Lignite Corporation Ltd., I have strongly relied

on the judgment of the Supreme Court in Kumbha Mawji Vs. Union of India (UOI), . Admittedly, part of cause of action arose at Madras and

hence this Court would have jurisdiction to entertain an action. In the circumstances, notwithstanding clause 18.2 may amount to an exclusion of

clause, still this Court will be a Court competent to entertain actions. In Section 31(4) of the Act, the word "competent Court" is used. Since the

agreement does not affect the competency of a Court to exercise jurisdiction, the proceedings initiated in this Court earlier would amount to an

institution of proceedings in a Court competent to exercise jurisdiction and hence this Court can exercise jurisdiction in terms of the said provision.

As a matter of fact, the passages contained in paragraphs 16 and 17 of the Judgment reported in Sabson (India) Pvt. Ltd. Vs. Neyveli Lignite

Corporation Ltd., would go to show that this Court alone would have jurisdiction and the reasoning given by me in that judgment to hold that this

Court will have no jurisdiction was solely on account of the fact that no part of cause of action arose at Madras. In the present case, admittedly,

part of cause of action had arisen at Madras and hence the ratio of the said judgment would be a complete answer in favour of the contractor. It is

also not disputed by the learned counsel for the NLC applicant that this Court has jurisdiction where the contract has been executed. But he only

says that the parties have selected under clause 18-2 of the contract/agreement the Court at Neyveli and that such an agreement is valid in law and

since cause of action arose in the other Court that Court alone has jurisdiction to entertain it. I am unable to agree with the said contention. Hence,

I reject the submissions made by the learned counsel appearing for the NLC applicant.

21. For the foregoing reasons, I dismiss Application No. 6004 of 1991 and hold that this Court has jurisdiction to entertain the main original

petition No. 547 of 1991. In view of the dismissal of Application No. 6004 of 1991, Application No. 6005 of 1991 has become infructuous, in

view of the filing of the award and all the other connected records into this Court by the umpire on 3-12-1991. Original Petition No. 547 of 1991

is taken on file. The award filed by the Umpire together with all other documents are received and taken on file. Issue notice to the respondents in

regard to the filing of the award by the Umpire through Court and also privately returnable by four weeks.

22. Order accordingly.