

(2003) 11 AP CK 0057

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No's. 4021 and 4022 of 2003

Superintending Engineer, N.S.R.C.

APPELLANT

Vs

R.K. Engineering

RESPONDENT

Date of Decision : 25-11-2003

Acts Referred:

Andhra Pradesh Industrial Facilitation Council (Arbitration) Rules, 1999 — Rule 12
Arbitration and Conciliation Act, 1996 — Section 16(5), 31, 31(3), 34
Constitution of India, 1950 — Article 227
Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 — Section 7A

Citation : (2004) 51 SCL 345

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : T. Jagdish, for the Respondent

Judgement

P.S. Narayana, J.—The Superintending Engineer, N.S.R.C. Circle, Peluru Camp, Ongole, Prakasam District, had preferred these Revisions under Article 227 of the Constitution of India as against M/s. R.K. Engineering, 142, R.P. Road, Secunderabad, having been aggrieved by the orders dated 8-8-2003 made in Case No. 29/3/0/1009 and Case No. 29/3/0/892 respectively.

2. M/s. R.K. Engineering, R.P. Road, Secunderabad, filed claim petitions before the A.P. Industrial Facilitation Council, hereinafter referred to as "Council" in short, and the Revision petitioner herein as respondent in the said cases referred to supra, raised preliminary objections before the council that the said claims are barred by limitation and further there is no arbitrable dispute referred to the said Council in the absence of any arbitration clause between the parties since copies of the agreements clearly indicate that claims over and above Rs. 50,000 shall be decided by a competent Civil Court having jurisdiction over the matter and hence the Council has no jurisdiction to entertain the claim in the absence of a valid and subsisting agreement to refer the matter to arbitration.

3. After hearing both the Counsels representing the respective parties, the Council aforesaid made the following order:

"1. This claimants application is with in the clause of limitation as per the parliamentary enactment.

2. The terms and agreements between the petitioner claimant and respondent is internal which cannot dictates the parliamentary enactment 32/1993, amendment 23/1998 and establishment of the councils for arbitration.

Further after going through the pre-conditions fulfilled by the claimant and merits of the case and also as per the powers delegated in Act and as per Clause 16(5) of the competence of arbitral rules on its jurisdiction the council hereby rejected the plea of the respondent and decided to continue with the Arbitral proceedings."

The said orders, as already aforesaid, are impugned in these Civil Revision Petitions by the Superintending Engineer, N.S.R.C. Circle, Peliru, Ongole, Prakasam District under Article 227 of the Constitution of India.

4. Sri Ramesh Ranganathan, the learned Additional Advocate General, while making elaborate submissions had explained different provisions of Interest on Delayed Payment of Small Scale and Ancillary Industrial Undertakings Act, 1993, in short hereinafter referred to as "Act", and also the Rules framed thereunder and had contended that the Council aforesaid is expected to discharge judicial functions or at any rate quasi-judicial functions and when a statutory body is vested with such powers, definitely such body would answer the test of a "Tribunal". The learned Additional Advocate General also had taken this Court through several decisions laying down the tests to be satisfied while deciding whether an authority is a "Tribunal" or not. The learned Additional Advocate General also had taken this Court through Sections 6, 7A and 7B of the Act. The A.P. Industry Facilitation Council (Arbitration) Rules, 1999, in short hereinafter referred to as "Rules" for the purpose of convenience, in general and Rules 2, 6, 8, 9, 10 and 12 of the said Rules in particular, and also Section 28 of the Arbitration and Conciliation Act, 1996. The learned Additional Advocate General also had explained the relevant provisions under the Arbitration and Conciliation Act, 1996, Sections 6, 7, 16, 34 and 43 of the Act and had commented that though detailed submissions were made, both written and oral, and though the Council is duty bound to record the reasons while ejecting the objections raised by the Revision petitioner, the Council had not recorded reasons at all and made a cryptic order and hence the impugned orders are not sustainable. At any rate, the learned Counsel submitted, once this Court is satisfied that the Council satisfies the test of a "Tribunal", inasmuch as reasons had not been recorded at all while rejecting the objections raised by the Revision petitioner, the orders impugned are liable to be set aside.

5. Per contra, Sri Jagadish, the learned Counsel representing the respondent had explained elaborately the object of the Act and also the different provisions of the

Act and the meaning of deemed acceptance. The learned Counsel had made elaborate submissions relating to different provisions of the Act and the Rules and also the different provisions of the Arbitration and Conciliation Act, 1996, in general and Sections 16(5), 16(6) and Section 34 of the Arbitration and Conciliation Act, 1996, in particular. The learned Counsel also had explained in detail how the question of limitation would not arise at all. The learned Counsel with all emphasis contended that the Council aforesaid cannot be deemed to be a "Tribunal" since there is no adjudicatory power vested in the Council and at the most it can be said to be a statutory body or an administrative authority empowered to pass orders on administrative side to implement the provisions of the Act and hence the remedy if any available to the petitioner is elsewhere and definitely not by filing these Civil Revision Petitions under Article 227 of the Constitution of India.

6. Heard both the Counsels at length and also perused the reasons, which had been recorded in the impugned orders by the Council, in these Civil Revision Petitions.

7. M/s. R.K. Engineering, the respondent in these Civil Revision Petitions, moved applications C.M.P. No. 21712/2003 in C.R.P. No. 4021/2003 and C.M.P. No. 23051/2003 in C.R.P. No. 4022/2003 to vacate the interim stay granted by this Court and at that stage both the learned Counsel - the learned Additional Advocate General Sri Ramesh Ranganathan and also Sri Jagadish, made a request to dispose of the main Civil Revision Petitions at the stage of hearing of the vacate applications and that is how the Civil Revision Petitions are being disposed of finally.

8. The respondent herein moved the claim petitions before the Council wherein the Revision petitioner had raised preliminary objections before the Council relating to bar of limitation and also relating to the jurisdiction and the Council had rejected the same and had decided to continue the arbitral proceedings and aggrieved by the said orders, the present Civil Revision Petitions are filed. This Court while admitting the Civil Revision Petitions had granted interim stay on 22-8-2003 and applications as aforesaid are filed to vacate the said orders.

9. The Act - Act 32 of 1993, is an Act to provide for and regulate the payment of interest on delayed payment to Small Scale and Ancillary Industrial Undertakings and matters connected therewith or incidental thereto. Section 2(b) of the Act defines "appointed day" as:

"(b) appointed day means the day following immediately after the expiry of the period of thirty days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier;

Explanation--For the purposes of this clause,--

(i) "the day of acceptance" means,--

(a) the day of the actual delivery of goods or the rendering of services; or

(b) where any objection is made in writing by the buyer regarding acceptance of goods or services within thirty days from the day of delivery of goods or the rendering of services, the day on which such objection is removed by the supplier;

(II) "the day of deemed acceptance" means, where no objection is made in writing by the buyer regarding acceptance of goods or services within thirty days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services;"

10. Section 3 of the Act deals with Liability of buyer to make payment. Section 4 of the Act deals with the Date from which and rate at which interest is payable. Likewise, Section 5 of the Act deals with Liability of the buyer to pay compound interest. Section 6 of the Act dealing with Recovery of amount due reads as hereunder:

1. The amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of Sections 4 and 5, shall be recoverable by the supplier from the buyer by way of a suit or other proceeding under any law for the time being in force.

2. Notwithstanding anything contained in Sub-section (1), any party to a dispute may make a reference to the Industry Facilitation Council for acting as an arbitrator or conciliator in respect of the matters referred to in that sub-section and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such disputes as the arbitration or conciliation were pursuant to an arbitration agreement referred to in Sub-section (1) of Section 7 of that Act.

11. Section 7 of the Act deals with Appeal. Section 7A of the Act dealing with Establishment of Industry Facilitation Council reads:

"The State Government may, by notification in the Official Gazette, establish one or more Industry Facilitation Councils at such places exercising such jurisdiction and for such areas, as may be specified in the notification."

12. Section 7B of the Act dealing with Composition of Industry Facilitation Council reads as hereunder:

(1) The Industry Facilitation Council shall consist of one or more members to be appointed from amongst the following categories:--

(i) Director of Industries by whatever name called or any other officer not below the rank of such Director, of the State Government;

(ii) representatives of banks and financial institutions;

(iii) office bearers or representatives of State Industry Associations; and

(iv) persons having special knowledge in the field of Industry, Finance, Law, Trade and Commerce.

(2) The person appointed under Clause (i) of Sub-section (1) shall be the Chairperson of the Industry Facilitation Council.

(3) The composition of the Industry Facilitation Council, the manner of filling vacancies among, and the procedure to be followed in the discharge of their functions by, the members shall be such as may be prescribed by the State Government."

13. Section 7C of the Act deals with Laying of rules before State Legislature. Section 10 of the Act dealing with Overriding effect reads:

"The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

14. Section 2(e) of the Rules specifies:

"Council" means any Industry Facilitation Council established by the State Government u/s 7A of the Act having jurisdiction to arbitrate over the dispute and every such Council shall be an arbitral Tribunal for the purposes of the Arbitration and Conciliation Act, 1996."

15. Rules 6 to 10 of the Rules read:

"6. Reference to be by statement of claim--(1) A reference to the Council shall be made by way of a statement of claim in Form 1 accompanied by such documents and facts supporting his claim enclosing the requisite number of copies together with an initial share deposit towards costs of an amount of rupees five hundred by way of a demand draft in the name of the Council.

(2) If any reference contains any claim in respect of the matters other than those referred to in Sub-section (1) of Section 6 of the Act, the Council shall return the claim to the claimant for deletion of the matters extraneous to that section.

Provided that if the claimant does not comply within thirty days of such return, the Council may terminate the proceedings without prejudice to the right of the claimant to make any fresh reference if he is otherwise entitled so to do.

(3) The Council may require any claimant to paid any better statement on particulars of claim or any further documents in support of the claim as it may consider necessary for the purpose of the proceedings and if the claimant fails or omits to do so within thirty days of the receipt of such communication or within such further time as the Council may, for sufficient cause, allow, the Council to terminate the proceedings without prejudice to the right of the claimant to make any fresh reference if he is otherwise entitled so to do.

7. Challenge of member--(1) On receipt of a statement of claim every member shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality and any such disclosure shall be sent to the parties along with the notices in Form 2 calling for a statement of defence and thereafter the requirements of Sub-section (2) of Section 12 of the

Arbitration and Conciliation Act shall apply.

(2) The grounds for challenge of a member and the procedure for challenge shall be in accordance with Sections 12 and 13 of the Arbitration and Conciliation Act.

(3) On a successful challenge, the Council shall cease to proceed with the reference and transfer the case to such other Council having alternate or concurrent jurisdiction over the dispute and such other Council shall thereafter proceed with the reference afresh or as it may deem fit having regard to the stage of proceedings completed in the former Council.

8. Statement of defence.--(1) The Council shall if it is satisfied that, on the facts stated therein, it has jurisdiction to proceed with the reference and that the claimant is entitled under the Act to make a reference, cause a copy of the statement of claim to be sent by registered post to the respondent along with copies of the attached documents and issue notice in Form 2 to the respondent asking him to furnish within thirty days a statement of defence in Form 3 with such documents and facts in support of his defence or having a bearing on the matter under reference together with his half share of deposit for costs in such manner as may be specified therein and within the time allowed to the respondent for furnishing his statement of defence.

(2) A copy of the notice in Form 2 shall also be sent by registered post to the claimant along with a notice in Form 4 calling upon the claimant to pay a further amount after adjusting the initial deposit made by him towards his share of deposit for costs in such manner as may be specified therein and within the time allowed to the respondent for furnishing his statement of defence.

(3) The Council may, on an application made by the respondent showing sufficient cause, allow such further time for the statement of defence as it may consider fit, but not exceeding sixty days from the date of receipt by the respondent of the notice under Sub-rule (1).

9. Hearings and written proceedings.--(1) On receipt of the statement of defence and if the amount of deposits be paid by the parties, the Council shall send a copy of the statement of defence to the claimant and fix a date for appearance and hearing of the parties and issue notice by registered post in Form 5.

(2) If the respondent fail or omit to send a statement of defence within the time allowed to him, the Council shall proceed to fix a date for the appearance and hearing of the parties and issue notice by registered post in Form 5.

Provided that if the respondent has failed or omitted to pay his share of the deposit, the Council shall call upon the claimant to pay that share also within fifteen days of receipt of the notice;

Provided further that if the claimant has not paid the aforesaid share, the Council may suspend or terminate the proceedings.

(3) At the first hearing, the Council shall not proceed to enter upon the merits of

the subject-matter in dispute, till it has decided on any challenge to jurisdiction or any challenge to any of its members.

(4) The Council shall decide whether to hold oral hearings for the presentation of evidence or for total argument, or without proceedings shall be conducted on the basis of documents and other materials:

Provided that the Council shall hold oral hearings at an appropriate stage of the proceedings, on request by a party, unless the parties have agreed that no oral hearing shall be held.

(5) The parties shall be given sufficient advance notice of any hearing and of any meeting of the Council for the purposes of inspection of documents, goods or other property.

(6) All statements, documents or other information supplied to, or applications made to the Council by one party shall be communicated to the other party, and any expert report or evidentiary document on which the Council may rely in making its decision shall be communicated to the parties."

(7) Where, without cause,--

(a) the claimant fails to communicate his statement of claim in accordance with these rules and Section 23(1) of the Arbitration and Conciliation Act, the Council shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with these rules and Section 23(1) of the Arbitration and Conciliation Act, the Council shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant;

(c) a party fails to appear at an oral hearing or to produce documentary evidence, the Council may continue the proceedings and make the arbitral award on the evidence before it.

(8) The Council may, appoint one or more experts in terms of Section 26 of the Arbitration and Conciliation Act.

(9) The Council, or a party with the approval of the Council, may apply to Court u/s 27 of the Arbitration and Conciliation Act for assistance in taking evidence.

(10) The Council may with the agreement of the parties, at any time during the proceedings, use mediation, conciliation or other procedures to encourage settlement of the dispute u/s 30 of the Arbitration and Conciliation Act.

(11) The Council shall conduct its proceedings at such place as the Government may specify in the notification.

(12) The Council, on such terms as it may think fit at any stage for reasonable or sufficient cause, adjourn the hearing from time to time but it shall so conduct the proceedings that the decision is given, as far as possible, within ninety days of

the first date of hearing.

(13) At any stage of the proceedings if the parties jointly apply to the Council that the proceedings be terminated, the Council shall terminate the proceedings.

10. Decision by Council--(1) Where the Council is composed of three members, any decision of the Council shall be by a majority of all its members;

(2) Notwithstanding anything contained in Sub-rule (1), if authorized by the parties or all the members of the Council, questions of procedure may be decided by the Chairperson.

Likewise, Rule 12 of the Rules reads as hereunder:

Arbitral Award.--(1) The Council shall make an arbitral award in accordance with Section 31 of the Arbitration and Conciliation Act;

(2) The Arbitral award shall be stamped in accordance with the relevant law in force.

16. The Arbitration and Conciliation Act, 1996 (Act 26 of 1996), is an Act to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto. Section 2 of the Arbitration and Conciliation Act, 1996 deals with Definitions and Section 2(c) defines "arbitral award" as:

"arbitral award includes an interim award"

Section 2(4) of the Arbitration and Conciliation Act, 1996 reads :

"This part except Sub-section (1) of Section 40, Sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder."

17. Section 7 deals with Arbitration agreement and the said provision reads as hereunder:

(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in,--

- (a) a document signed by the parties;
- (b) an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or
- (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not defined by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

18. Chapter IV of the Arbitration and Conciliation Act, 1996 deals with Jurisdiction of Arbitral Tribunals and Section 16 deals with Competence of arbitral Tribunal to rule on its jurisdiction. Sub-section (5) and Sub-section (6) of Section 16 read :

(5) The arbitral Tribunal shall decide on a plea referred to in Sub-section (2) or Sub-section (3) and, where the arbitral Tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with Section 34.

Sub-section (2) and Sub-section (3) of Section 16 read :

(2) A plea that the arbitral Tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral Tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

19. Section 28 of the said Act deals with Rules applicable to substance of dispute and Sub-section(3) of Section 28 reads as hereunder:

"In all cases, the arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction."

20. Section 31 of the Arbitration and Conciliation Act, 1996 deals with Form and contents of arbitral award and the said provision reads as hereunder:

(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral Tribunal.

(2) For the purposes of Sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral Tribunal shall be sufficient so long as the reason for any omitted signature is

stated.

(3) The arbitral award shall state the reasons upon which it is based, unless,--

(a) the parties have agreed that no reasons are to be given; or

(b) the award is an arbitral award on agreed terms u/s 30.

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with Section 20 and the award shall be deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

(6) The arbitral Tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

(7)(a) Unless otherwise agreed by the parties, where and insofar as an arbitral award is for the payment of money, the arbitral Tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment.

(8) Unless otherwise agreed by the parties,--

(a) the costs of an arbitration shall be fixed by the arbitral Tribunal;

(b) the arbitral Tribunal shall specify,--

(i) the party entitled to costs;

(ii) the party who shall pay the costs;

(iii) the amount of costs or method of determining that amount; and

(iv) the manner in which the costs shall be paid.

Explanation,--For the purpose of Clause (a), "costs" means reasonable costs relating to,--

(i) the fees and expenses of the arbitrators and witnesses;

(ii) legal fees and expenses;

(iii) any administration fees of the institution supervising the arbitration; and

(iv) any other expenses incurred in connection with the arbitral proceedings and

the arbitral award.

21. Sub-section (3) of Section 31 specifies that the arbitral award shall state reasons upon which it is based unless the parties have agreed that no reasons are to be given or the award is an arbitral award on agreed terms u/s 30. Section 30 of the Arbitration and Conciliation Act, 1996 deals with settlement. Section 34 of the Arbitration and Conciliation Act, 1996 deals with application for setting aside arbitral award. Section 43 of the Arbitration and Conciliation Act, 1996 deals with Limitations and the said provisions reads as hereunder :

(1) The Limitation Act, 1963 (36 of 1963) shall apply to arbitrations as it applies to proceedings in Court.

(2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred in Section 21.

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of the opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.

22. Sub-section (1) of the Indian Evidence Act, 1872, no doubt specifically excludes the applicability of its provisions to the proceedings before an arbitrator. Elaborate submissions were made on the buyer and supplier relationship and the meaning of deemed acceptance and over-riding effect of the Act and the remedy u/s 34 of the Arbitration and Conciliation Act, 1996. Section 16(5) of the Arbitration and Conciliation Act, 1996 simply says "...continue with the arbitral proceedings and make an arbitral award". Likewise, Sub-section (6) of Section 16 of the Arbitration and Conciliation Act, 1996 specifies :

"A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with Section 34."

Suffice to state that a careful reading of the different provisions of the Act would definitely go to show that the Council is not a mere administrative authority, but a body vested with quasi-judicial functions and, hence, I have no hesitation in holding that it is a "Tribunal" within the meaning of Article 227 of the Constitution of India amenable to the supervisory jurisdiction of this Court.

Strong emphasis was laid on the contention that inasmuch as the Council is discharging quasi-judicial functions, when objections relating to jurisdiction and limitation are taken as preliminary objections and when elaborate submissions were made and several decisions were cited and written arguments were submitted, non-recording of reasons definitely would be bad in law. Reliance was placed on *The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay*, *Jaswant Sugar Mills Ltd. v. Lakshmichand AIR 1963 SC 617*, *Indo-China Steam Navigation Co. Ltd. Vs. Jasjit Singh, Additional Collector of Customs and Others*, *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, *Manmohan Singh Jaitla Vs. Commissioner, Union Territory of Chandigarh and Others*, *S.P. Subramanya Shetty and others Vs. Karnataka State of Road Transport Corporation and others*, *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, *Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others*, *Jaswant Sugar Milk Ltd.'s case (supra)*, *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, *D.N. Banerji Vs. P.R. Mukherjee and Others*, *A.V. D'costa Vs. B.C. Patel and Another*, *Indira Sohanlal Vs. Custodian of Evacuee Property, Delhi and Others*, *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, .

23. It is no doubt true that Sub-section (3) of Section 31 is applicable in the case of an arbitral award. It is needless to say that the Council which is expected to discharge quasi-judicial functions is bound to record reasons and bound to follow the principles of natural justice by recording reasons whenever such objections of far reaching consequences relating to jurisdictional aspect and limitation aspect are specifically raised. In the light of the definition of the "arbitral award" it is clear that the impugned orders do not fall within the meaning of "arbitral award", either interim or final, in view of Section 16(5) read with Section 34 of the Arbitration and Conciliation Act, 1996 and hence elaborate submissions made by the Counsel in this regard representing the respondent cannot be accepted that an alternative remedy is available to the Revision petitioner u/s 34 of the Arbitration and Conciliation Act, 1996. On the question of jurisdiction and limitation, reliance was placed on the following decisions : *State of Rajasthan Vs. Ram Kishan*, ; *Panchu Gopal Bose Vs. Board of Trustees for Port of Calcutta*, , *State of Andhra Pradesh and Another Vs. Tippireddy Channareddy and Others*, , *M.V.V. Satyanarayana Vs. Union of India and Others*, , *Kolleru Constructions, Hyd. Vs. Nectar Laboratories, Ltd., Hyd.*, , *G.V. Pratap Reddy v. State of A.P. [1997] (2) ALD 713*, *Nellore Dist. Co-op. Central Bank Ltd. v. President, The Nellore Dist Co-op. Central Bank Employees Association [2001] (2) ALD 913*, *Kwality Construction Engineers Vs. University Engineer, Central University of Hyderabad*, , *M/s. Pandit Munshi Ram and Associates (Private) Ltd. Vs. Delhi Development Authority and another*, and *Union of India Vs. M/s. Momin Construction Company*, .

24. In the light of the different provisions of the Act and the Rules framed thereunder, since the Council is expected to decide the preliminary objection raised relating to the question of jurisdiction and the question of limitation, passing a cryptic order without recording reasons would be definitely bad in law and the same is in violation of the principles of natural justice. It is also pertinent to note that the Council also had specifically observed that it would further proceed with the arbitral proceedings, and when such opinion is expressed by the Council it is too much on the part of the respondent to contend that it would fall under the definition of "arbitral award" and the remedy is only to invoke Section 34 of the Arbitration and Conciliation Act, 1996. Keeping in view the different provisions of the Act and the Rules made thereunder and also the Arbitration and Conciliation Act, 1996, I am of the considered opinion that the Council which is bound to record the respective contentions and also reasons thereto while considering the objections raised by the Revision petitioner, since the Council being a quasi-judicial authority, had failed to do so and hence the impugned orders in these Civil Revision Petitions cannot be sustained and are liable to be set aside on this ground alone. No doubt, both the Counsels had virtually argued the merits and demerits of the claims and it is needless to say that these are all matters which may have to be decided by the Council after affording opportunity to both the parties. But, however, when preliminary objections are taken at the threshold, inasmuch as it is the bounden duty of the Council to record reasons, the impugned orders are hereby set aside and the matters are remitted to the Council to afford opportunity to both the parties and pass appropriate orders, in accordance with law, in this regard.

25. The Civil Revision Petitions are hereby allowed to the extent indicated above. No order as to costs.