

(1991) 04 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 403 of 1990 and 558 of 1991

The Govt. of A.P. and Others

APPELLANT

Vs

S.V. Contractors

RESPONDENT

Date of Decision : 01-04-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 4, 141
Constitution of India, 1950 — Article 226, 229, 32
Writ Proceedings Rules, 1977 — Rule 24

Citation : (1991) 2 ALT 378

Hon'ble Judges : P. Venkatarama Reddy, J; Lakshmana Rao, J

Bench : Division Bench

Advocate : E. Dharma Rao, G.P, for the Appellant; Soli Sorabji, for M.R.K. Chowdary, for the Respondent

Final Decision : Dismissed

Judgement

P. Venkatarama Reddy, J.—An apparently innocuous order passed in a writ petition directing reference of the dispute to arbitration based upon the consent of the Counsel has given rise to these Writ Appeals.

2. The relevant facts are these: The respondent-firm was awarded a contract by the Superintending Engineer, Y.R.P. Circle, Visakhapatnam (3rd appellant herein) for the excavation of Yeleru left main canal between specified kilometres. The agreement in this regard was executed on 16-4-1987. It is the case of the respondent-writ petitioner that while the excavation work was in progress, he was encountered with hard rock which required blasting. In view of the objections from the villagers, controlled blasting had to be resorted to under the instructions of the concerned Engineers. Extra payment over and above the agreement was made only for a quantity of 15 200 cmt. in respect of which a supplemental agreement was also entered into on 24-3-1989 but the Department failed to make payment at the extra rate for the balance work said to have been done by the respondent-writ petitioner. Contending that the action

of the concerned authorities in not making the payment at the extra rate applicable for controlled blasting was arbitrary and amounts to breach of promise on the part of the appellants herein, the respondent filed W.P. No. 18280/89 in this Court. In the writ petition, the relief sought for was "to direct respondents to make the payment of extra expenditure incurred by the petitioner in connection with control blasting after excluding Rs. 48/-per cmt. covered by the agreement and after taking proper measurements of the work done by the petitioner and to pass such other order as this Hon''ble Court may deem fit and proper in the circumstances of the case."

3. In the counter filed by the appellants herein, the claim of the writ petitioner was resisted. In the counter an objection was taken to the very maintainability of the writ petition on the ground that the matter relates to a contract and the writ petitioner has a remedy by way of arbitration. With regard to merits, the claim of the writ petitioner that he carried out controlled blasting over and above the quantities for which payment was made, was denied. It was stated that in order to avoid objections from the villagers, the contractor was asked to carry out controlled blasting only in relation to an identified stretch for which payment had been arranged to him as per the supplemental agreement referred to above. The appellants therefore denied their liability to pay any extra amount.

4. The writ petition came up for hearing before the learned single Judge, M.N. Rao, J. on 29-12-1989. in the course of hearing, the learned Counsel for the writ petitioner and the learned Government Pleader appearing for the respondents represented that the matter may be referred to arbitration by a retired Judge of this Court. The learned Judge therefore passed the following order on 23-2-1990:

"Both sides agree that the matter may be referred to the arbitration of Sri Justice P. Rama Rao, a retired Judge of this Court. For ascertaining the views of Sri Justice P. Rama Rao whether he is agreeable to arbitrate in the matter, call on Monday (26-2-1990)."

When the writ petition came up for hearing on 26-2-1990, the learned single Judge passed the following order:

"The learned counsel for both sides represented that Sri Justice P. Rama Rao has agreed to act as arbitrator. In the circumstances, the matter under dispute is referred to arbitrator Justice Sri P. Rama Rao who shall enter upon his duties and pass award after notice to both sides, in accordance with the provisions of the Arbitration Act. The writ petition is closed. No costs.."

Thus, there was no decision on merits, but an order was passed on the basis of the consent given by both sides and the dispute raised in the writ petition was referred to an arbitrator agreed upon by both the Counsel.

5. Challenging this order, the present writ appeal (W.A. No. 403/90) has been filed. In the Memorandum of Grounds of writ appeal filed by the Government of Andhra Pradesh and its officials, it is contended that the learned single Judge

ought to have upheld the contention of the appellants that the writ petition was not maintainable in view of the judgment of this Court in National Thermal Power Corporation Ltd. Vs. Bhanu Construction Co. P. Ltd. and Others, that the appointment of Sri Justice P. Rama Rao as the sole arbitrator to settle the dispute was contrary to the relevant clause in the Agreement dated 16-4-1987 and that the consent given by a Counsel is not binding on the party unless a written undertaking had been given by the party. While this writ appeal was pending admission, probably taking cue from the observations made by the Bench, the appellants have filed a review petition before the learned single Judge, under Order 47 Rule 1, C.P.C. In the review petition, almost the same grounds raised in the Memorandum of Writ Appeal were taken. However, in the affidavit filed in support of the petition for stay pending Review, a reference was made to G.O. Ms. No. 430, Irrigation dated 24-10-1983 and the clause in the Agreement which provides for arbitration in case of claims above Rs. 50,000/- by a Court of competent jurisdiction. A further reference was made to the subsequent Government Order in G.O. Ms. No. 160 dated 1-6-1987 according to which all claims of Rs. 50,000/- and above shall be decided by the civil Court of competent jurisdiction by way of a regular suit. After referring to these G.Os, it was averred that the above G.Os were not brought to the notice of the Government Pleader at the time of drafting the counter-affidavit. Then it is stated in a some what unintelligible language : "The learned Government Pleader under the impression that arbitration proceedings also comes under the meaning of civil court, hence agreed for the appointment of Hon'ble Mr. Justice P. Rama Rao as an arbitrator. When the two G.Os brought to the notice of the Govt. Pleader, Writ Appeal No. 403/90 was filed....."

6. Pursuant to the order of the learned single Judge, the arbitrator, Mr. Justice Rama Rao, a retired Judge, had entered upon the reference and issued notice dated 14-3-1990 fixing the date of hearing as 31-3-1990. It was at that stage, the review petition was filed and the suspension of the order was sought for. On 26-4-1990, the learned single Judge, at the instance of the appellants (review petitioners) while allowing the arbitration proceedings to go on, stayed passing of the Award pending disposal of the review petition. Against this order, Writ Appeal No. 624/90 was filed. By an order dated 22nd May 1990, the writ appeal was dismissed by a Division Bench of this Court consisting of Radhakrishna Rao and Ranga Reddy, JJ. The short order passed by the learned Judges is extracted below:

"Under Section 21 of the Arbitration Act, the civil court is competent to appoint an arbitrator if both the parties gave consent. When such a right is there and when the circumstances justify, this Court feels that the High Court also under Article 226 of the Constitution of India, under exceptional cases, is competent to give a direction if both the parties agree. The impugned order reads that both the parties gave consent. Whether consent is there or not has to be judged in the review petition, as the parties have filed a review petition and the same is still pending and this fact has been asserted by Sri M.R.K.. Choudary. We see no

grounds to interfere in the writ appeal. The writ appeal is, therefore, dismissed."

7. After hearing both the Counsel, the review petition--Rev. WPMP No. 8085/90 was dismissed by the learned single Judge, M.N. Rao, J. on 7-9-1990. The relevant portion of the order is extracted below:

"The learned Advocate General now contends that as per G.O. Ms. 430 dated 24-10-1983 as clarified by G.O. Ms. No. 160 dated 1-6-87 for all claims in respect of amounts involving more than Rs. 50,000/-, the remedy open to the contractor is only to approach a civil court by filing a regular civil suit and that no resort should be had to the provisions of the Arbitration Act. Admittedly as in the present case, the claim involved was more than Rs. 50,000/-, the learned Advocate General says that the order passed by me on 26-2-1990 must be reviewed. Based on the representation made before me I passed the order dated 26-2-1990. Before that order was passed, what transpired on 23-2-1990 has been recorded and the same is extracted supra. It is, therefore, not possible for me now to enquire into the question whether there has been an agreement between the counsel as to the appointment of an arbitrator. Such a course of action is not permissible. I must also add that the ground on which the order is sought to be reviewed is not tenable. The review petition, therefore, fails and it is accordingly dismissed. The interim stay granted earlier is extended by ten days.."

8. The Writ Appeal filed against the order in W.P. No. 18280/89 was admitted by the Bench on 13-9-1990. In the meanwhile, the proceedings before the Arbitrator concluded, but the Arbitrator has been restrained from passing the Award by virtue of the interim order issued by us. No writ appeal under Clause 15 of the Letters Patent was filed initially against the order dismissing the review petition. When the writ appeal filed against the order in the writ petition came up for hearing and the learned Advocate General argued the case for some time, the learned Counsel for the respondent Sri M.R.K. Choudary raised an objection with regard to the maintainability of this writ appeal inter alia on the ground that the order passed in the writ petition became merged with the order passed in the review petition. The learned Counsel for the respondent argued that even though the review petition was dismissed thereby affirming the order in the writ petition, that order should have been questioned by the appellants herein because, according to the learned counsel, the order passed in the review petition is the only operative order. After the arguments were heard by us on this aspect, the case had to be adjourned on a couple of occasions at the request of one or the other Counsel. At this stage, a writ appeal has been filed against the order in review petition as well. Thus, by the time the hearing of the case was resumed, the writ appeal against the review WPMP 8015/90 was on the file of this Court. However, the filing of writ appeal under Clause 15 of the Letters Patent against the review order had, by that time, become barred by limitation. No petition to condone the delay was filed till the date of the resumed hearing. Hence, the Writ Appeal was not numbered. When the Counsel for the respondent pointed out this

defect, a petition to condone the delay was filed on behalf of the appellant immediately. It is stated in the affidavit filed in support of the delay condonation petition that no appeal was filed against the order in the review petition as the appellants were under the impression that there was no need to file any appeal inasmuch as the Division Bench suspended the operation of the order passed in the review petition pending disposal of the writ appeal against the order in the main writ petition. Having regard to the fact that proceedings in the writ appeal filed against the order in the writ petition were pending in this Court by the time the review petition was disposed of and in view of the fact that the question whether writ appeal has to be filed against an order refusing review is a moot question, we feel that there are sufficient grounds to condone the delay. In fact we must say that there was no serious objection for entertaining the writ appeal against the review petition on the part of the respondent's Counsel, Sri Soli Sorabji though, as already mentioned, in the first instance, he pointed out that no petition for condonation of delay was filed. In view of these subsequent developments, it is not necessary for us to consider the objection initially raised by the learned counsel for the respondent that the writ appeal filed against the order in the writ petition is not maintainable when once the said order became the subject-matter of review.

9. Before we deal with the rival contentions, it is necessary to advert to the relevant clauses (Clauses 10 and 11) in the Agreement relating to arbitration and as to how they came to be interpreted by this Court. Clauses 10 and 11 read thus:

"10. Any claims or disputes arising out of the contract should be promptly submitted in writing to the Executive Engineer within fifteen (15) days from the date of cause of action. Claims raised beyond this time limit and raised subsequently at such a distance of time as to make it impossible to verify the facts are liable to be rejected.

11. The Arbitrator for fulfilling the duties set forth in the Arbitration clause of the standard preliminary specification shall consist of the following members in accordance with the orders laid down in G.O.Ms. No. 430 dated 24-10-83:

(1) Claims upto Rs. 10,000/- . Superintending Engineer, Y.R.P. Circle, Kakinada.
(2) Claims above Rs. 10,000/- Chief Engineer, Sriramsagar and upto Rs. 50,000/- . Project. (3) Claims above Rs. 50,000/- Court of competent jurisdiction." 10. The claim in the instant case is above Rs. 50,000/. In Government of A.P. v. United Constructions Co.(1990 (2) APLJ 230), a Division Bench of this Court following an earlier Division Bench decision, held while interpreting Clause 11, that in case of claims above Rs. 50,000/- the Court of competent jurisdiction will be the arbitrator and in case of refusal of the Court to act as arbitrator, an application u/s 8 of the Arbitration Act could be filed. Perhaps realising the fact that the language of the aforementioned clause was defective and failed to bring out the real intention of the Government, the Government issued G.O.Ms. No. 160 dated 1-6-1987 which expressly provides

that all claims above Rs. 50,000/- shall be decided by the civil court of competent jurisdiction by way of regular suit. The amendment issued in G.O.Ms. No. 160 dated 1-6-1987 was held to be prospective in operation in the above decision. In fact, this Court followed the judgment of the Supreme Court in Civil Appeal No. 3570/89 dated 2-3-1990 in holding that the said G.O. was prospective in operation. It is therefore clear that as far as the present Agreement is concerned, the Government order dated 1-6-1987 has no application and hence the remedy of arbitration is available to the parties.

11. With this background of facts and the resume of proceedings, let us note the respective contentions. The learned Advocate General argues that the writ petition should have been straightaway dismissed in view of the judgment of this Court in N.T.F.C. Ltd. v. Bhanu Constructions Co. Pvt. Ltd. (1 supra) and of the Supreme Court in Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, inasmuch as the relief sought for in the writ petition arises out of and pertains to a non-statutory contract and in the absence of even a prayer for directing reference to arbitration, the learned single Judge had erred in law in referring the dispute to arbitration. The learned Advocate General contends that when the matter is governed by an agreement containing the arbitration clause-- which agreement was entered into under Article 299 of the Constitution, it is not open to the Counsel appearing for the Government without an express authority in writing, to agree to arbitration otherwise than in accordance with the terms of the arbitration clause. The learned Advocate General therefore submits that the so--called consent given by the Government Pleader had no legal sanctity and therefore the order passed by the learned single Judge based upon such consent is unsustainable. The learned Advocate General also submits that the reference to arbitration straightaway by this Court deprives the Government of the valuable opportunity to raise appropriate objections concerning the arbitrability of the dispute and to choose the forum prescribed by the agreement for the purpose of arbitration and in that sense the possibility of prejudice to the interests of the Government cannot be ruled out. Therefore he argues that the consent of the Government Pleader cannot be regarded as one given in the best interests of the client i.e., the Government. He also submits that the act of the learned Government Pleader in agreeing for arbitration without reference to the instructions of the appellants amounts to a concession on a legal issue which is not binding on the appellants and, therefore, the judgment under appeal is vitiated in law. The learned single Judge failed to exercise the review jurisdiction and to rectify the obvious error committed by him.

12. These contentions have been countered by the learned Counsel for the respondent, Sri Soli Sorabji appearing for Sri M.R.K. Choudary, Advocate. The learned Counsel submits that the High Court had undoubted jurisdiction to entertain the writ petition though the writ petition sought for the enforcement of contractual obligation, that there is a vital distinction between total absence of jurisdiction and refusal by the Court to exercise the jurisdiction, that a misconceived writ petition for misconceived reliefs does not affect the jurisdiction

of the Court to deal with it in an appropriate manner and that there is no legal bar-either constitutional or statutory which prevents this Court from making reference of a dispute for arbitration in any. legal proceeding including the writ petition. Viewed in this perspective, the learned Counsel argues that the order of the learned single Judge directing reference to arbitration on the basis of the consent cannot be found fault with. In this context the learned Counsel has pointed out that there have been very many instances where arbitrators were appointed even in proceedings other than those under the Arbitration Act. The learned Counsel Sri Soli Sorabji then submits that an advocate has implied authority to compromise the litigation and it includes the authority for reference of the dispute in Court to arbitration. The learned Counsel therefore maintains that an express authority to settle or compromise is not necessary and it does not make any difference even if the client is Government or public authority and Article 299 of the Constitution does not at all come in the way of giving such a consent. He refutes the argument of the learned Advocate General that consent in the instant case was not in the over-all interest of the client and submits that the Government Pleader by agreeing for reference of the dispute to arbitration by a retired Judge of the High Court did not make any fundamental departure from the terms of the Agreement and the action taken by him was neither detrimental to the interests of the State nor opposed to public policy. The learned Counsel has also raised the contention that no appeal under Clause 15 of the Letters Patent lies against the order of the single Judge which in substance and reality was based upon the consent of the parties--through their Counsel. The learned Counsel submits that any interference with the order of the learned single Judge in a case of this nature would lead to travesty of justice and diminishes the sanctity of the judgments rendered on the basis of concession or consent of the Counsel. The learned Counsel has also referred to the order of the Division Bench of this Court in W.A.No. 624/90 dated 22-5-1990 directed against the interlocutory order passed pending disposal of the review petition, and has submitted that the said order either constitutes *res judicata* or binds another co-ordinate Bench as a precedent. With regard to review petition it is submitted that the only ground of review petition being that the Government Pleader overlooked certain provisions of the Agreement read with the G.Os. does not furnish valid ground for review of the consent order.

13. On the basis of the rival submissions, the twin allied questions that prominently arise for consideration in these appeals are whether the learned single Judge inherently lacks the jurisdiction to issue the writ and whether the Government Pleader could have validly given consent for referring the dispute straightaway for arbitration by a retired Judge of this Court. If the order passed by the learned single Judge can be said to be an order suffering from inherent want of jurisdiction, then, the order cannot be allowed to stand because it is axiomatic that consent cannot confer jurisdiction and estoppel cannot legalise an *ultra vires* act. We would therefore address ourselves to the consideration of this aspect first. We are of the undoubted view that the exercise of jurisdiction under

Article 226 of the Constitution with respect to a contractual matter cannot be said to be one without jurisdiction. This Court refuses to interfere under Article 226 of the Constitution not because it has no jurisdiction but because it would be improper and inappropriate to do so for more than one reason. Firstly when once a contract is entered into between the State and the subject, the mutual rights and obligations flow out of the contract and are governed by the contract. Unless the contract is statutory in nature or some statutory provision comes into play, such contractual rights and obligations fall within the realm of private law even though the State is one of the contracting parties. As the writ jurisdiction is essentially a public law remedy to enforce the duties falling within public law field, no writ will be issued for redressing the alleged grievance connected with or concerning private law. Secondly, the adjudication with respect to contractual matters, most often involves investigation into disputed facts and raises triable issues and therefore an alternative forum is desirable. These are broadly the reason why the High Court in exercise of Article 226 jurisdiction refrains from giving any relief to a party to non-statutory contract. This position is fairly clear from the decided cases of this Court and of the Supreme Court. In the very judgment of this Court in *N.T.P.C. Ltd. v. Bhanu Constructions Co. Pvt. Ltd.* Hyderabad (1 supra) relied upon by the learned Advocate General to say that the present writ petition is misconceived, the following observations are relevant for our purpose ;

"The petitioner has asked for a writ of mandamus. It is true that acting under Article 226, the Courts in India are not shackled by the technical rules governing the issuance of mandamus and other prerogative writs, applicable in England. But that does not mean that there are no norms or guidance in the matter of exercise of jurisdiction under Article 226. It is well settled proposition that a writ petition is not the appropriate remedy for enforcing contractual rights, or in respect of disputes arising from a contract, unless, of course, the contract is statutory, or even where the contract is not statutory, the question raised involves constitutional or legal issue. In *Mohammed Hanif Vs. The State of Assam*, , the Supreme Court held :

"It is true that the jurisdiction of the High Court under Article 226 is an extraordinary jurisdiction vested in the High Court not for the purpose of declaring the private rights of the parties but for the purpose of ensuring that the law of the land is implicitly obeyed, and that the various tribunals and public authorities are kept within limits of their jurisdiction. In other words, the jurisdiction of the High Court under Article 226 is supervisory jurisdiction, a jurisdiction meant to supervise the work of the Tribunals and public authorities and to see that they act within the limits of their respective jurisdiction. In a proceeding under Article 226, the High Court is not concerned merely with the determination of the private rights of the parties ; the only object of such a proceeding under Article 226 is to ensure that the law of the land is implicitly obeyed and that the various authorities and Tribunals are within the limits of their respective jurisdiction.....It is obvious that the remedy provided under

Article 226 is remedy against the violation of the rights of a citizen by the State or statutory authority. In other words, it is a remedy in public law....."

It is significant that these observations were made dealing with the objection raised on behalf of the State that the petitioner was seeking to enforce contractual rights through a writ petition. Having made the said observations, the Court held that in that case the petitioner was not merely seeking to enforce his contractual rights and that since important constitutional issues were raised in the writ petition, it was maintainable."

14. In *Bareilly Development Authority v. Ajay Pal Singh* (3 supra), the Supreme Court in para 22 observed :

"In view of the authoritative judicial pronouncement of this Court in the series of cases dealing with the scope of interference of a High Court while exercising writ jurisdiction under Article 226 of the Constitution of India in cases of non-statutory concluded contracts like the one in hand, we are constrained to hold that the High Court in the present case has gone wrong in its finding that there is arbitrariness and unreasonableness on the part of the appellants herein in increasing the cost of the houses/flats and the rate of monthly instalments and giving directions in the writ petitions as prayed for".

(Italic is ours)

In *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, the following observations of the Supreme Court are pertinent :

"Analysing the situation here, a concluded contract must be held to have come into existence between the parties. The appellants have displayed ingenuity in their search for invalidating circumstances but a writ petition is not an appropriate remedy for impeaching contractual obligations."

(Italic is ours).

15. Thus, the salutary principle that the High Court should not issue a writ for the purpose of redressing the grievances arising out of a non-statutory contract is not one which goes to the root of jurisdiction of this Court under Article 226 nor is it a principle which stems from any constitutional or statutory mandate. Precedents are not lacking where the Supreme Court or the High Courts appointed arbitrators in proceedings under Article 32 or Article 226 of the Constitution. In a recent judgment of the Supreme Court in *Assam Sillimanite Ltd. and another Vs. Union of India and others*, the Supreme Court in a writ petition under Article 32, while holding that the premature termination of lease was invalid, appointed a retired Judge of the Supreme Court as arbitrator to decide the quantum of damages payable to the petitioner. This direction was given on the request of the Counsel though there was no such prayer in the writ petition.

16. The next question regarding consent given by the learned Government

Pleader assumes importance. If there was factually no consent, the impugned order is liable to be set aside without anything more. If the Counsel (Government Pleader) had no legal authority to agree for settlement by way of arbitration without express authority in writing, of course, the impugned order based upon the supposed consent loses its substratum. The consent given by him will then have no sanctity. On the other hand, if it is held that the consent was factually and lawfully given by the Government Pleader, we would not disturb the order of the learned single Judge, even if the relief granted by him is in respect of a non-statutory contract. In fact, on the principle underlying Section 96(3) C.P.C., no appeal under Clause 15 of the Letters Patent would lie against the said consent order. In *Katikara Chintamani Dora and Others Vs. Guntreddi Annamanaidu and Others*, the Supreme Court clarified that the bar to an appeal against a consent decree is based on the broad principle of estoppel. The appellant will therefore be estopped from questioning an order based upon the consent or concession which was within the authority of the counsel to make. In the present case, there is no dispute about the factual existence of the consent. The fact that the Government pleader had agreed for arbitration by a retired Judge of the High Court is mentioned in the judgment under appeal. It is not contended either in the grounds of writ appeal or in the review petition that such consent was in fact not given. The writ appeal and review petition proceed on the basis that the Government Pleader did consent to the impugned order being passed by the learned single Judge. The learned Advocate-General has also not argued before us that the Government Pleader did not agree to the arbitration by Mr. Justice Rama Rao.

17. We proceed to consider the next aspect whether the Counsel for the appellants (Govt. Pleader) had implied authority to compromise the matter by agreeing for reference of the dispute to an arbitrator, in the absence of an express authorisation from his clients. The law on the subject of an advocate's or Pleader's implied authority to settle or compromise the litigation is fairly well-settled. As far back as in 1890, a Full Bench of the Allahabad High Court in *Jang Bahadur Singh v. Shankar Rai* (ILR 1890 Allahabad 272) was dealing with a case where a party filed a review petition urging that he never authorized his advocate to agree for the terms of the decree that has been passed on the basis of the consent given by both the advocates. Chief Justice Edge observed that the Courts will be slow to interfere with the compromises or settlements effected by counsel on behalf of the clients. The learned Chief Justice, quoted with approval the following passage in the judgment of Blackburn, J. in *Strauss v. Francis* (L.R. 1, Q. B. 379) :

"... .Counsel therefore being ordinarily retained to conduct a cause without any limitation, the apparent authority with which he is clothed when he appears to conduct the cause is to do every thing which in the exercise of his discretion he may think best for the interest of his client in the conduct of the cause; and if, within the limits of this apparent authority, he enters into an agreement with the opposite counsel as to the cause on every principle this agreement should be

held binding."

The learned Chief Justice pointed out that "a client employing an advocate cannot restrict the powers of that advocate to bind him in the suit unless he gives notice to his opponent that he has withdrawn or limited the authority of the advocate to act for him." The following pertinent observations were also made by the learned Chief Justice :

"I have no doubt that if we were satisfied that any unjust advantage had been obtained by the other side, or that Mr. Spankie had acted under a mistake in such a way as to produce injustice to this applicant, we could interfere. In order that I may not be misunderstood I had better say that what I understand as unjust advantage is not the consenting to terms which the client may object to, and which he may consider unjust ; but some substantial injustice which should induce us to act....."

The next decision which we would like to refer is a Division Bench judgment of the Madras High Court in *Muthiah v. Karuppan* (AIR 1927 Madras 852). Kumaraswami Sastri, J. speaking for the Bench, laid down the following propositions deducible from the authorities referred to by him :

"(1) A Counsel has authority to make submissions in Court on behalf of his client on matters of fact relevant to the issues in the case in which he is engaged. Admissions on questions of law would not bind the client.

(2) A Counsel has authority to confess judgment, withdraw or compromise or refer to arbitration the suit in which he is instructed if his doing so is for his client's advantage or benefit even though he has no express authority from his client.

(3) A counsel cannot without express authority agree to compromise or refer to arbitration matters unconnected with the subject-matter of the suit in which he is instructed.

(4) Where, in the course of a suit, a counsel makes an admission as to a collateral matter, or gives up a doubtful claim which is not a subject-matter of the suit, there is a presumption that the counsel acts under instructions if the admissions or the giving up of the doubtful claim is for the benefit of the client.

(5) It is a question of fact in each case whether the counsel acts under instructions when he compromises or refers to arbitration matters not involved in the suit and the court on a consideration of the probabilities and the circumstances of the case can find that the counsel acted on instruction even though there is no direct evidence on the point.

(6) A counsel has no power to make an admission in or compromise or refer to arbitration a suit if he is instructed not to do so, without express authority from his client."

18. The Full Bench decision of the Nagpur High Court in *Jiwibai v. Ramkuwar* (AIR

1947 Nagpur 17 (F.B.)) is instructive and also apposite in the present context because the Full Bench was concerned with the question of the power of counsel to refer a dispute pending in a Court to arbitration without express authority from the client. The question referred to the Full Bench was as follows :

"Whether counsel in India (Advocates including Barristers) have implied powers to compromise a pending suit or refer it to arbitration without express authority or consent of the client, even though they cannot act without a written authority from the client, or plead without filing a memorandum of appearance."

The Full Bench answered the question by saying that :

"Counsel in India, whether Barristers, Advocates, or Pleaders, have inherent powers, both to compromise claims, and also to refer disputes in Court to arbitration, without the authority or consent of the client, unless their powers in this behalf have been expressly countermanded and this, whether the law requires a written authority to "act" or "plead" or not."

The Full Bench referred to the Privy Council decision in AIR 1930 158 (Privy Council) which held that the power to compromise a suit without reference to the client is inherent in the position of an Advocate in India and observed :

"It is implied in the authority conferred on him by the client to conduct the suit on his behalf in the best way possible, unless the implied authority is expressly countermanded or withdrawn."

The Full Bench then observed :

"It is thus implicit in his appointment. It is true their Lordships were dealing with an Advocate who was entitled to appear without a power and that they reserved their judgment in a suit like the present where a power is necessary, but in our opinion there is no difference between the two cases."

The Full Bench gave a broad interpretation to the word "act" occurring in Order III Rule 4 C.P.C. and held that it embraces not only the authority to compromise but also to refer to arbitration except where such authority has been expressly withdrawn.

19. The next decision which needs reference is the judgment of the Full Bench of Kerala High Court in Chengan Souri Nayakam Vs. A.N. Menon, . Mathew, J. speaking for majority held :

"The vakalat in the case did not give express authority to counsel to compromise the suit or confess judgment, but we are not satisfied that there was any express limitation on the implied power of counsel to compromise the suit or confess judgment. We do not think that when counsel is appointed under a document, the enumeration of certain powers in it would exclude the implied powers necessarily inherent in the appointment."

It was further observed :

"That counsel is not a mere agent of the client would be made clear if we look at the nature of his duties and relationship with the public and the court. Counsel has a tripartite relationship, one with the public, another with the court, and the third with his client. That is a unique feature."

The learned Judge then conveyed a word of caution in these terms :

"Although we see no reason to limit or restrict the implied authority of counsel to compromise an action or confess judgment unless expressly done so by the client, we think that both in the interest of the client and the good reputation of the counsel, it is always advisable that he should get specific instructions before taking such a radical step."

The views expressed in these century and a half old cases find their echo in the illuminating judgment of the Supreme Court in *Jamilabai Abdul Kadar Vs. Shankarlal Gulabchand and Others*, The Supreme Court, after referring to the various decisions on the subject including those referred to above, categorically upheld the implied authority of a legal practitioner to act by way of compromising a case in which he is engaged even without specific consent from his client. The Supreme Court however voiced a rule of prudence that as far as possible a lawyer must prefer to get his client's concurrence to the proposed settlement. In the same judgment, the Supreme Court has also reiterated the limitations subject to which the implied authority of a counsel could be exercised. We will advert to them a little later.

20. The well settled legal position regarding the implied authority of the Counsel as discussed above was the one obtaining before the amendment of Order XXIII Rule 3 C.P.C. by the C.P.C. (Amendment) Act of 1976. The relevant portion of Order XXIII, Rule 3 as amended, provides that where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by a lawful agreement or compromise in writing and signed by the parties (underlined words were added by C.P.C. (Amendment) Act of 1976) the Court shall order such agreement or compromise to be recorded and pass a decree in accordance therewith. The Supreme Court while construing this amended Rule in *Gurpreet Singh Vs. Chatur Bhuj Goel*, , held that even in a case where the parties entered into a compromise during the hearing of a suit or appeal, the Court must insist upon the parties to reduce the terms of compromise into writing before a decree is passed, prima facie, it appears to us that after the amendment of Order XXIII Rule 3, the implied authority of the Counsel to agree for the adjustment of a suit or a proceeding connected therewith has been substantially eroded and it is doubtful whether such power could still be exercised. However, it is not necessary for us to pursue this line of enquiry because we are of the view that the requirements of Order XXIII Rule 3 do not come in the way of the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution, passing appropriate orders otherwise than in accordance with the procedure laid down by Order XXIII, Rule 3. In view of Explanation to Section 141 added by the C.P.C. (Amendment) Act of 1976, it is no longer in doubt the provisions of C.P.C. in

regard to suits do not ipso facto apply to the proceedings under Article 226 of the Constitution. We do not think that Rule 24 of the Writ Proceedings Rules framed by the High Court of Andhra Pradesh under Article 225 of the Constitution casts a mandatory obligation on the High Court exercising writ jurisdiction to observe the procedure envisaged by Order XXIII Rule 3 for passing an order in terms of compromise or settlement. It cannot be said that the entire gamut of the procedural provisions of C.P.C. should be imported and assimilated while disposing of a writ petition. Rule 24 of the Writ Proceedings Rules cannot be so interpreted as to fetter the exercise of the extraordinary jurisdiction under the Constitution or to lead to incongruous results. It is not the intention or purport of Rule 24 that all the procedural provisions governing the disposal of the suit should be invariably applied to a writ petition as well. For instance, it is not the practice in a writ petition to frame issues, to set down the case for trial and to take oral evidence (except in every rare cases where oral evidence is to be taken in the interests of justice). A literal interpretation of Rule 24 and the elevation of the said Rule to the status of a mandatory provision would not permit the High Court to deviate even from these requirements. This would lead to absurd results. Hence we feel that Rule 24 is only a rule of guidance and the provisions of C.P.C. can be made use of by the High Court exercising writ jurisdiction to the extent necessary and expedient just like observing certain self-imposed restrictions while dealing with a petition under Article 226. If the learned single Judge was satisfied that an agreement had been arrived at by both the Counsel with regard to the resolution of the dispute on hand and such agreement was neither unlawful nor opposed to the interests of their clients, there is nothing in law which precludes the learned Judge from granting relief in terms of the agreement arrived at by the Counsel acting within the scope of their implied authority. This is what has exactly happened in this case. We are fortified in our view by a recent Division Bench judgment of the Calcutta High Court in *Garden Reach Shipbuilders and Engineers Staff Association and another Vs. Garden Reach Shipbuilders and Engineers Ltd. and others*, After referring to the implied authority of the legal practitioner to compromise a case even without the specific consent of his client subject to the limitations set out in *Jamilabai case* (13 *supra*), P.D. Desai, C.J. speaking for the Division Bench observed :

"It is apparent, therefore, that the implied authority an Advocate (which term is used in a generic sense) to enter into an agreement or compromise in a writ petition in which he is appearing, even without specific prior approval of his client, subject to the overriding considerations and conditions mentioned in *Jamilabai Abdul Kadar Vs. Shankarlal Gulabchand and Others*, , is not in any manner affected by the enactment of Order XXIII, Rule 3, as amended, nor is such an agreement or compromise required to be in writing and signed by the parties before it can be reduced and acted upon by the Writ Court. It is open to the Writ Court of course, for its satisfaction to insist that the agreement or compromise, which the parties request it to record and act upon, should be in writing and signed by them."

21. It is apposite to refer to the observations of the Supreme Court in *Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others*, though the Supreme Court was concerned with the impact of Section 141 C.P.C. (as it stood then) on Article 226 of the Constitution. The Supreme Court held :

"The words "as far as it can be made applicable" in Section 141, Civil P.C. make it clear that in applying the various provisions of the Code to proceedings other than those of a suit, the Court must take into account the nature of these proceedings and the relief sought. The object of Article 226 is to provide a quick and inexpensive remedy to aggrieved parties. If the procedure of a suit had also to be adhered to in the case of writ petitions, the entire purpose of having a quick and inexpensive remedy would be defeated. A writ petition under Article 226, is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under Article 226. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right of relief, the questions of fact may fall to be determined."

In the light of the above discussion, we are of the view that if the learned single Judge in his wisdom did not feel it necessary to insist upon the compliance of the requirement of Order XXIII Rule 3 but chose to act upon the consent given by the Government Pleader for referring the dispute to arbitration, the order of the learned Judge cannot be invalidated by applying Rule 24 of the Writ Proceedings Rules read with Order XXIII, R. 3, C.P.C.

22. In our view, there is nothing in Article 299 of the Constitution which affects the well-recognised power and authority of the Counsel to agree to settlement or compromise of litigation so as to bind his client. Article 299 has nothing to do with a compromise or connection in a pending legal proceedings by a counsel acting on behalf of his client. We do not agree with the learned Advocate General that a fresh agreement in accordance with Article 299 should be entered into between the parties before agreeing for settlement of the dispute in the manner in which it has been agreed to in the instant case.

23. We are also of the view that for the purpose of exercising the implied authority which a legal practitioner has, to compromise or concede a point at issue, it does not make any difference in principle whether he is a counsel appearing for a private party or the Government. It is true that a Government Counsel does not file a vakalath as contemplated by Order. III Rule 4 CPC, but merely enters appearance on behalf of the Government or its officials. But that does not in any way curtail his powers as a legal practitioner and restrict his implied and inherent authority as a counsel. An Advocate who is designated as Government Pleader is retained by the Government during the tenure of his office to act and plead for the Government within the limits of the work assigned to him. His duty is to tender advice to the Government, to handle legal briefs on behalf of the Government and of course to assist the Court, just as any other counsel. Under Order XXVII Rule 4 C.P.C. he is the agent of the Government to

receive the processes. Inasmuch as he acts as a standing counsel for the concerned Departments of the Government by virtue of a general authorisation given to him, filing of vakalath is dispensed with under Rule 21 of the Appellate side Rules. But as already pointed out, that has no bearing on the powers and duties of the Government Pleader qua legal practitioner.

24. We shall now take up the next question whether the Government Pleader had transgressed the well-recognised limitations on the implied authority of an advocate to concede or compromise. What those limitations or qualifications are, have been succinctly stated by the Supreme Court in the judgment aforementioned-- *Jamili Bai v. Shankarlal* (13 supra). At Paragraph 20, it was observed :

"Another facet of the limit on lawyer's powers is articulated in the Bombay view, if we may use that expression for convenience, the ruling--viz., *Waikar* (AIR 1960 Bombay 20)--being one relating to the implied power of an advocate to compromise. Certainly, as pointed out there, the power cannot extend to matters extraneous to the action."

At paragraph 22 it was laid down :

"We must uphold the actual, though implied authority of a pleader (which is a generic expression including all legal practitioners as indicated in Section 2(15) Civil P.C.) to act by way of compromising a case in which he is engaged even without specific consent from his client, subject undoubtedly to two overriding considerations : (i) He must act in good faith and for the benefit of his client : otherwise the power foils; (ii) It is prudent and proper to consult his client and take his consent if there is time and opportunity. In any case, if there is any instruction to the contrary or withdrawal of authority, the implicit power to compromise in the pleader will fall to the ground....."

25. In the light of the above enunciation of law, the first and foremost question we have to consider is whether the Government Pleader acted bona fide and in the interests of the appellants for whom he was appearing. No bad faith or oblique motives have been imputed or alleged against the Government Pleader. Whether the concession made by the Government Pleader agreeing for reference of the dispute to arbitration by a retired Judge of the High Court is in any way prejudicial or detrimental to the interests of the Government, is the next point. On the facts of the case, we do not think that the Government Pleader had acted contrary to the interests of the State by agreeing to arbitration in the manner afore-, said. In view of the two Division Bench judgments of this Court (referred to earlier), it is not denied nor can it be denied that the dispute between the parties is to be resolved through arbitration. In that sense there is no fundamental departure from the terms and spirit of the agreement. The only departure made by the Counsel is with regard to the manner and methodology of taking recourse to arbitration. If Clause-II of the Agreement is to be strictly applied, the aggrieved party shall first approach the Presiding Officer of the Court

of competent jurisdiction to act as arbitrator and on the refusal of the concerned Presiding Judge, to file an application u/s 8 of the Arbitration Act before the competent civil court for appointment of an arbitrator. The eventuality of the presiding Judge of the competent civil court agreeing to act as an arbitrator is a very remote possibility. We can perhaps take judicial notice of the fact that in view of heavy workload and the administrative constraints, no presiding officer of the civil court will take upon himself the task of acting as an arbitrator at the request of the contending parties. Then the only course left open, in case the Government is not willing for arbitration, is to approach the court of competent jurisdiction u/s 8, for the appointment of an arbitrator whom the parties will have to refer the dispute. If there is no consensus amongst the parties as to the arbitrator to be appointed, the civil Court will appoint an arbitrator of its choice. Very often the retired Judges are appointed to act as arbitrators. This exercise will not in any way result in furthering the interests of any party nor does it advance the cause of justice, it would only result in avoidable delay in resolution of the dispute by way of arbitration, its only merit being adherence to formalities. It is net as if the request for arbitration is barred by time or there is any other legal impediment for arbitration. When such is the position, it shall not be the desideratum of the functionaries of the Government to postpone the crucial day--good day or evil day, on mere technicalities. It is needless to emphasise that the Government should strive in its own interest to expedite the process of settling a pending dispute. Where the remedy of arbitration is provided for by the Agreement itself, normally, the Government should not be loathe to agree for arbitration by a retired Judge of this Court. It is in this background that the conduct of the Government Pleader in agreeing for arbitration of a retired High Court Judge without insisting upon the procedural technicalities should be viewed. The twin considerations that might have weighed with the Government Pleader in making a concession and agreeing for immediate reference of the dispute to arbitration are the avoidance of delay and unnecessary expenditure for the State. If the Government Pleader had not acted promptly and favourably reacted to the suggestion to refer the dispute to arbitration, the parties would have landed themselves into the same situation in which they are now placed, after a lapse of, say two or three years. Keeping all these factors in view, we do not perceive any detriment whatsoever to the interests of the State by agreeing for arbitration in the manner in which it has been done by the Government Pleader. The consent given by the Government Pleader is within the scope of the implied authority as an advocate pleading for the Government and the concession or consent is not in respect of any matter "extraneous" to the subject matter of dispute. By consenting to arbitration and inducing the Court to pass an order in terms of such consent, it cannot be said that any unjust advantage has been derived by the respondent-contractor or any injustice or prejudice has been caused to the appellants. It is well to recapitulate in this connection the observations of Edge, C.J. in the Allahabad case referred to supra.

26. The learned Advocate General made a passing comment that the possibility

of prejudice to the Government cannot be ruled out inasmuch as, if Section 8 application had been filed in the civil court, the Government could have objected to the very arbitrability of the dispute. When we pointed out that the arbitrability of the dispute arising out of the agreement containing arbitration clause (Clause II) is within the domain of the arbitrator to decide, Sri Soli Sorabji, the learned Counsel for the respondent promptly stated that his client would not object to any such plea being taken before the arbitrator even now although such plea has not so far been raised before the arbitrator. Therefore, even that apprehension expressed by the learned Advocate General need not weigh with us any longer. Apart from making a general submission that it might have been in the better interests of the Government if the parties were relegated to the forum and method contemplated by the Arbitration Act, the learned Advocate General has not specifically pointed out any factors which might reasonably suggest the likelihood of prejudice, handicap or detriment to the appellants in proceeding with the arbitration before the retired Judge of this Court. We have, therefore, no hesitation to reject the contention of the learned Advocate-General. There is one more aspect which we would like to advert to. It is pertinent to notice that even after the judgments of this Court reported in *N.P.T.C. Ltd. v. Bhanu Constructions Co. P. Ltd.* (1 supra) and *Bereilly Development Authority v. Ajay Pal Singh* (3 supra), some of the observations ;n a later decision of the Supreme Court, especially those at paragraph 27 gave room for doubt vis-a-vis the legal position regarding the amplitude of the power under Article 226 of the Constitution to interfere in contractual matters (*Vide Dwarakadas Marfatia & Sons v. Board of Trustees, Bombay Port*, (AIR 1989 SC 1647)) However, this doubt must be taken to have been resolved by the Full Bench judgment of this Court in *Sri Konaseema Co-op. Central Bank Ltd. v. N. Seetharama Raju*, (AIR 1990 A.P. 171) decided on 5-3-1990 which explained the dicta of the Supreme Court in the aforementioned case. By the time the writ petition came up for hearing before the learned single Judge, the Full Bench decision was not rendered. In that state of things, probably if the Government Pleader felt that it would be better not to invite the decision of the Court on merits, it cannot be said that he had acted against the interests of his clients.

27. It is no doubt true that the Supreme Court pointed out that it is prudent and proper to take the consent of the client if there is time and opportunity, but it is only a rule of prudence or caution that has been laid down but not a mandatory requirement. The reference to the observations of Mathew J. in *C.B. Nayakam v. A.N. Menon* (12 supra) and *Surendra Shankar Walkar Vs. Laxman Shankar Waikar and Others*, that were cited with approval by the Supreme Court would also make it clear that the rule of prudence advocated by the Supreme Court cannot be elevated to the position of a mandatory legal principle limiting the scope of the authority of the Counsel. In any case, going by the facts of the present case, admittedly the Government Pleader did try to get the instructions of his client by writing a letter to the Executive Engineer (4th appellant) but on the date of hearing he did not receive any communication.

28. The learned Advocate General then contends that the consent given by the Government Pleader was contrary to the instructions communicated by the Superintending Engineer (3rd appellant) and hence the implicit power to compromise falls to ground, as pointed out by the Supreme Court. We have to reject this argument for the reason that it was never the case of the appellants either in the writ appeal or in the review petition that there were any such instructions and the Government Pleader acted in disregard of them. This plea raised in the course of arguments for the first time was sought to be substantiated by filing an application for receiving certain documents as additional evidence. The said application bearing W.A.M.P-No. 182/91 was filed on 5-2-1991--at the fag end of the arguments. The documents filed are--a letter dated 9-2-1990 from the Government Pleader addressed to the Executive Engineer seeking information whether the Department was willing for arbitration and a telegram and letter dated 15-2-1990 addressed by the Superintending Engineer to the Government Pleader informing him that the Department was agreeable for referring the dispute to the Court of competent jurisdiction as per the Arbitration Clause. In the affidavit filed by the Deputy Executive Engineer, Y.R.P. Circle, Visakhapatnam in support of the said application, nothing has been stated as to why these facts were not pleaded at any point of time earlier, it is stated in the affidavit in the vaguest terms "that the correspondence could not be filed by oversight". As the new plea raised is entirely a factual plea contradicting the stand taken by the appellants in the review petition and the Memorandum of Writ Appeal, it would not be fair and proper to allow the appellants to build up their case on the basis of this new plea coupled with the documents aforementioned filed almost on the verge of closure of the case. In the affidavit it is also averred by the Deputy Executive Engineer that Government Pleader had no knowledge of these communications because "the concerned cleric did not appear to have brought it to the notice of the learned Government Pleader". Obviously the Deputy Executive Engineer who is not even a party to the case and who is not in any way connected with the Government Pleader's Office, has no competence to speak to these alleged facts in such vague terms. We are, therefore, not inclined to act upon this affidavit apart from the fact that the application itself has been filed very belatedly. In any case, even according to the plea raised by the appellants, it is beyond dispute that the Government Pleader did not have before him any instructions from the client on the date of hearing of the writ petition, though admittedly he did write to his client. Hence we are of the view that the present case does not fall within the mischief of any of the exceptions or limitations laid down by the Supreme Court in Jamilbai case (13 supra).

29. The learned Advocate General than submitted that the concession of a party or counsel on a legal issue does not bind the client and therefore the concession made by the Government Pleader has no effect whatsoever. The learned Advocate General relied upon the judgment of the Supreme Court in Government of Tamil Nadu and Others Vs. Badrinath and Others, wherein it was observed that

"the concession made by the learned Advocate General being on a matter of law is not binding." In *Muthiah v. Karuppan* (9 supra) which we have already referred to earlier, it was laid down that "admissions on questions of law would not bind the client." But we do not think that the aforementioned principle has any application to this case. We are unable to say that the Government Pleader by agreeing to arbitration which is a remedy contemplated by the Agreement itself, probably with a view to expedite the early settlement of the dispute, made a concession on a legal question. There was no issue or controversy on any question of law before the learned single Judge and there was really no occasion for making any concession with reference thereto. What all the Government Pleader had done was to agree to certain terms which are slightly different from the terms in the contract in so far as the procedural formalities are concerned. This does not in any way amount to a concession on a question of law.

30. The learned Advocate General referred to the judgment of the Supreme Court in *Periyar and Pareekamni Rubbers Ltd. v. State of Kerala* (AIR 1990 SC 2193) In that case, the Supreme Court was concerned with the determination of market value of the land acquired. The Supreme Court held that the High Court was justified in fixing the market value at Rs. 18/- per cent of land on the basis of the statement made by the learned Advocate General across the Bar that the market value can be fixed at that rate having regard to the evidence on record. K. Ramaswamy, J. speaking for the Bench observed :

"As a limb of the argument Shri Sanghi has placed reliance off the concession made by the Government pleader in the trial Court that Ex. P-9 would form the basis for determination of the market value which worked out Rs. 43-50 per cent. We are unable to accept the submission of the learned counsel. Any concession made by the Government pleader in the trial Court cannot bind the Government as it is obviously always unsafe to rely on the wrong or erroneous or wanton concession made by the counsel appearing for the State unless it is in writing on instructions from responsible officer. Otherwise it would place undue and needless heavy burden on the public exchequer. But the same yardstick cannot be applied when the Advocate General has made a statement across the bar since the Advocate General makes the statement with all responsibility. In those circumstances we have no hesitation to accept the statement of the learned Advocate General and hold that the market value of the lands would be fixed at Rs. 18/- per cent..."

We do not understand the aforementioned observations of the Supreme Court as making a distinction between a Government Pleader of the High Court and Advocate General in the matter of giving effect to a concession made across the bar on the basis of the evidence already on record. Nor can we construe the observations to mean that a Government advocate is precluded from exercising his implied authority to compromise or settle the matter in the interests of his client. The Supreme Court was dealing with a case of concession made by a Government Pleader appearing in the trial Court that a particular document could

legitimately form the basis for determination of the market value though the document in question did not furnish any evidence of comparable sale. It is in that context the observations above cited were made by the Supreme Court. The factual situation here is not the same.

31. The learned Advocate General submitted that there was no prayer in the writ petition seeking for reference to an arbitrator, and therefore the learned Government Pleader had no authority to concede in respect of a matter extraneous to the writ petition and the learned single Judge erred in granting a relief not sought for in the writ petition. We are unable to agree. It is to be noted that in the counter filed by the respondents in the writ petition (appellants herein), it was specifically averred that arbitration was the proper remedy. Thus the question whether the matter has to go to arbitration is something integrally connected with the dispute raised in the writ petition and it is not extraneous to the subject-matter of the writ petition. Nor the absence of specific prayer will come in the way of this Court exercising jurisdiction under Article 226 of the Constitution moulding the relief to suit the circumstances of the case.

32. In the light of the above discussion, we hold that no valid grounds are made out for interfering with the order passed by the learned single judge. In the view we have taken, is not necessary for us to deal with the argument of Sri Soli Sorabji regarding the scope and effect of the order of this Court in Writ Appeal No. 624/90 directed against the interlocutory order passed pending review.

33. Coming to the review petition, as already noticed, the grounds raised are no different from the grounds raised in the Writ Appeal against the judgment in the main writ petition. Nothing is said about the consent as to why it should not have been acted upon. However, as already pointed out, in the affidavit filed in support of the stay application, an averment has been made (hat the two G.Os were not brought to the notice of the Government Pleader at the time of drafting the counter and that the Government Pleader was under some sort of misapprehension with regard to the legal position emerging from these two G.Os. We do not find any substance in these contentions. The amendment made by first G.O. of 1983 had already been incorporated in the Agreement. Clause (11) makes a specific reference thereto and reproduces what is stated in that G.O. The later G.O. dated 1-6-1987 has no relevance because that G.O. does not affect the pre-existing agreement as ruled by this Court and the Supreme Court. That apart, the failure of the Counsel to urge a point on account of the alleged mistaken notion on the part of the counsel is no ground for review. The following observations of Wardsworth, J. in *Ameeth Ali v. Dayaram Singh*, (AIR 1944 Madras 570) are apposite in this connection :

"The present case is one in which admittedly both parties consented to the compromise. One of them gave his consent owing to a mistake which probably could have been avoided with a little more care but the mistake was one affecting the judgment of the party. There is no mistake affecting the decision of the Court. It seems to me that if we look upon this compromise as a mere

contract, it could not be set aside merely because one of the parties had given his consent owing to an error of fact to some extent of his own making; and it seems to me that the Court has no jurisdiction in review to set aside a decree passed on a compromise which compromise would, by the ordinary law of contracts be binding on the party."

In the writ appeal filed against the order in review petition, a ground has been taken that the Government Pleader committed a mistake in agreeing for the appointment of arbitrator even though there were no written instructions from the Department and therefore the learned single Judge should have reviewed the order. We have already held that no written instructions are necessary for clothing the Government advocate with authority to concede or adjust, the LIS subject to the limitations noticed above. Regarding the alleged mistake, nothing has been said as to what is the nature of the mistake committed by him. Viewed from any angle, we are of the view that the learned single Judge rightly dismissed the review petition and no interference is called for in the writ appeal (SR No. 7494/90).

34. Accordingly, we dismiss both the writ appeals. There will be no order as to costs Advocate's fee. Rs. 250/- in each.

35. The arbitrator is at liberty to pronounce the Award after the expiry of three weeks from the date of this judgment. In the meanwhile, it is open to the appellants to raise any objections as to the arbitrability of the dispute if they are so advised.