

(2011) 09 AP CK 0062

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 5615 and 5863 of 2008

Union of India (UOI) and Another

APPELLANT

Vs

Ch. Gopalakrishna Murthy

RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96(3)
Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 19
Legal Services Authorities Act, 1987 — Section 21

Citation : (2011) 6 ALD 447 : (2011) 6 ALT 94

Hon'ble Judges : K.G. Shankar, J; Ghulam Mohammed, J

Bench : Division Bench

Advocate : S.R. Ashok, for the Appellant; A. Ramalingeshwar Rao, for the Respondent

Judgement

K.G. Shankar, J.—The Petitioners filed W.P. No. 5615 of 2006 seeking a Writ of Mandamus to declare the order and decree dated 11.02.2008 in I.A. No. 1067 of 2007 in O.P. No. 2 of 2005 on the file of the Lok Adalat, City Civil Court, Secunderabad and the Award dated 07.04.2007 in O.P. No. 2 of 2005 as illegal, arbitrary and void and to set aside the same. Further direction is sought to be issued to the Lok Adalat, City Civil Court, Secunderabad to return O.P. No. 2 of 2005 to the file of the III Senior Civil Judge, City Civil Court, Hyderabad for adjudication. The Petitioners also filed W.P. No. 5863 of 2008 challenging the order of the Lok Adalat bench in I.A. No. 1062 of 2007 in O.P. No. 1 of 2005 passed on the same date on 07.04.2007.

2. The circumstances in which the writs are filed may briefly be stated at this stage:

a) An agreement was entered into between the second Petitioner representing the South Central Railway and the sole Respondent on 31.10.1981. The agreement was to construct a building for the usage of the Railway Recruitment

Board, Secunderabad. The agreement value was Rs. 3,92,946/-. The work was to be executed by the Respondent within six months from the date of agreement. It would appear that the time was extended at the request of the Respondent. The work was completed on 31.03.1984. The Respondent received Rs. 3,70,411/- in full satisfaction of the execution of the works by him.

b) However, on 07.12.1994 the Respondent preferred five claims for reference to the Arbitrator. The General Manager of the South Central Railway rejected three of the claims and communicated the same to the Respondent-Contractor on 07.10.1996. Two of the claims, however, were referred to an Arbitrator. On 02.12.1996, the sole arbitrator passed an award for a sum of Rs. 2,14,106/- as against the claim for Rs. 2,50,000/- in respect of item No. 1. The Arbitrator also issued further directions. The trial Court, however, set aside the award passed by the sole arbitrator. In C.M.A. No. 465 of 1999 on the file of this Court, the order of the trial Court was set aside. The award of the sole arbitrator dated 02.12.1996 was made the Rule of the Court through judgment dated 15.10.2009. The South Central Railway paid Rs. 3,39,000/- and Rs. 24,642/- including interest to the Respondent-contractor in December, 1999 in terms of the award dated 02.12.1996.

c) While the award passed by the Arbitrator was before the trial Court, the Respondent-contractor raised three more claims through letter dated 14.06.1998. The General Manager was requested to refer the three claims for adjudication by the Arbitrator. On 13.02.2002, the General Manager rejected the request of the Respondent-contractor. The Respondent-contractor consequently filed O.P. No. 4 of 2002 seeking for the appointment of an Arbitrator. The trial Court passed orders on 13.10.2004 appointing another arbitrator (second Arbitrator, for short) as the sole arbitrator for the adjudication of the disputes.

d) Before the second arbitrator, the Respondent-contractor preferred seven claims. The learned second arbitrator allowed claims 5 and 7 only and rejected the rest of the claims through the award dated 16.08.2005. The learned second arbitrator allowed the claim to a tune of Rs. 58,74,383/- together with interest at 18% per annum from 01.01.2000 till the date of realization. The total value of the award of 2005 as on today is more than Rs. 1,50,00,000/-.

e) The South Central Railway challenged the award of the second arbitrator through O.P. No. 1 of 2005 on the file of the III Additional Senior Civil Judge, Secunderabad. The Respondent-contractor in his turn filed O.P. No. 2 of 2005 on the file of the same Court seeking to make the Award the Rule of the Court. While so, on 15.09.2005, the Respondent addressed a letter to the South Central Railway seeking for a negotiated settlement. A similar letter was addressed by him to the Principal Chief Engineer, South Central Railway, Secunderabad on 14.11.2006 for outside the Court settlement.

f) The file was circulated to the General Manager on 16.01.2007. The Respondent-contractor addressed a letter to the negotiation committee on

01.03.2007 offering to reduce the rate of interest. It is the case of the Petitioner that the note circulated to the General Manager on 29.03.2007 unfortunately contained an incorrect notation that the negotiations concluded. On 29.03.2007, the then General Manager of South Central Railway accepted the terms and conditions of the negotiations for an agreement of settlement outside the Court.

g) An agreement of settlement outside the Court was entered into between the parties on 05.04.2007. Consequent upon the agreement of settlement outside the Court, the Lok Adalat bench, City Civil Court, Secunderabad passed separate awards in O.P. Nos. 1 and 2 of 2005 on the file of the III Additional Senior Civil Judge, Secunderabad. O.P. No. 1 of 2005 was dismissed and O.P. No. 2 of 2005 was decreed in terms of the compromise in view of the settlement outside the Court.

h) The Petitioners later considered that the compromise accepted by the South Central Railway was on account of fraud played upon the General Manager, South Central Railway by its employees and that the acceptance of the compromise as recorded in O.P. No. 2 of 2005 by the Lok Adalat bench was hit by fraud. Consequently, the South Central Railway filed I.A. No. 1067 of 2007 in O.P. No. 2 of 2005 and I.A. No. 1062 of 2007 in O.P. No. 1 of 2005 on the file of Lok Adalat, Secunderabad to recall the awards dated 07.04.2007 in two separate petitions. The Lok Adalat bench, City Civil Court, Secunderabad passed the impugned orders dated 11.02.2008 rejecting the request of the South Central Railway to recall the two awards.

3. Consequently, the South Central Railway filed one of the present writ petitions in WP No. 5615 of 2008 to set aside the award dated 07.04.2007 in O.P. No. 2 of 2005. The South Central Railway also laid another Writ in W.P. No. 5863 of 2007 which is also disposed of through this common order, seeking for setting aside of the award dated 07.04.2000 in O.P. No. 1 of 2005.

4. It is the case of the writ Petitioners that when the basis of the Lok Adalat Award was fraud and where the relief that can be sought against a Lok Adalat Award is by way of a writ only, the two writ petitions seeking Writ of Mandamus to declare the orders in O.P. Nos. 1 & 2 of 2005 dated 11.02.2008 are bad and for a direction that O.P. Nos. 1 and 2 of 2005 shall be restored to the file of III Additional Judge, City Civil Court, Secunderabad for disposal according to law would lie. Thus, the contention of the Petitioners is two fold, viz., that the basis of the compromise was fraud and that the redressal of the grievance of the Petitioners can be only through the special extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India.

5. On the other hand, Sri D. Ramalingeshwara Rao, Learned Counsel for the Respondent-contractor claimed that when the award was passed by the Lok Adalat after the conscious consent by both sides, the award cannot be set aside and that if the consent was given by the South Central Railway on account of fraud by his own employees, the South Central Railway would be able to redress

grievance through a civil suit and not through a Writ of Mandamus.

6. Sri S.R. Ashok, learned Senior Counsel representing the Petitioners contended that the employees of the second Petitioner South Central Railway played fraud on the General Manager of the South Central Railway and obtained consent of the General Manager, South Central Railway for settlement of the dispute outside the Court. He further pointed out that a compromise as entered into would never have been reached by a conscious consent since while the agreed value of the contract itself was about Rs. 3,43,000/-, the award was for a sum over Rs. 58,74,383/- together with interest and that the awarded amount would be about Rs. 1,50,00,000/- as on today. He tried to expose the absurdity of the difference between the agreed value of the works and the amounts for which the award was passed by the learned second Arbitrator. He further contended that once the matter was referred to the arbitration and had been resolved, the very reference to the second arbitrator would be bad and that the then General Manager signed the terms and conditions of the agreement in view of the fraud played upon him or he was misled to believe the validity of the second arbitral proceedings.

7. Thus, the fundamental contention of the learned senior counsel for the Petitioners is that the employees of the second Petitioner-South Central Railway played fraud upon the General Manager of the South Central Railway, so much so, the General Manager entered into a settlement before the Lok Adalat bench, Secunderabad in view of fraud played upon by its employees. On the other hand, Sri A. Rmalingeswar Rao, Learned Counsel for the sole Respondent contended that there is no proof of fraud on the part of the Respondent and that assuming that, there was fraud, the Petitioner can redress the same through a civil suit and not through a Writ of Mandamus to recall the orders of the Lok Adalat. This is the basic controversy. Two questions arise from this controversy viz., i) whether the General Manager, South Central Railway entered into settlement with the Respondent on account of fraud played upon him and ii) whether fraud is played or not, can the Petitioners seek for the recalling of the orders passed by the Lok Adalat recording settlement in O.P. Nos. 1 of 2005 and 2 of 2005 on the file of the III Senior Civil Judge, City Civil Court, Secunderabad.

8. The learned senior counsel for the Petitioners contended that unless fraud was played upon him, the General Manager would not have entered into settlement outside the Court with the Respondent herein. He drew our attention to the fact that the dispute was initially referred to arbitration on 07.12.1992. The sole arbitrator passed award for a sum of Rs. 2,14,106/- on 02.12.1996. The Court set aside the award when the South Central Railway impugned the award of the Arbitrator before the Court. In C.M.A. No. 465 of 1999 preferred by the Respondent, this Court reversed the order of the trial Court, confirmed the award of the sole arbitrator and made the award of the sole arbitrator the rule of the Court through orders dated 15.10.1999. The South Central Railway paid Rs. 3,39,24,642/- under the two claims adjudicated by the sole arbitrator. The arbitral proceedings came to an end in December 1999 when the South Central

Railway paid the monies covered by the arbitral award including interest to the Respondent. Thus far, there is no controversy.

9. The learned senior counsel for the Petitioners contended that the actions taken by the South Central Railway are incorrect which were actuated by the fraud played upon the General Manager of the South Central Railway by the employees of the South Central Railway. The Respondent raised three claims on 14.06.1998 and 16.10.2001 and sought for referring of the same to arbitration. It may be noticed that the references sought by the Respondent was after the disposal of the award by the sole arbitrator on 02.12.1996. Indeed, the General Manager of the South Central Railway rejected the demand of the Respondent to refer the additional claims to arbitration through proceedings dated 13.02.2002. However, O.P. No. 4 of 2002 was filed by the Respondent before the trial Court seeking for the appointment of arbitrator and the trial Court passed orders on 13.10.2004 appointing the learned second Arbitrator to adjudicate the claims.

10. It is from this stage that the controversy started. When the learned second Arbitrator was appointed through the intervention of the Court, the South Central Railway was expected to prefer proceedings against the orders in O.P. No. 4 of 2002 and to take steps for the setting aside of the order appointing the second arbitrator. It would appear that the South Central Railway did not take such legal step. It would also appear that the South Central Railway participated in the second arbitral proceedings before the learned second arbitrator. However, the learned senior counsel for the Petitioners cannot and perhaps did not suggest that these steps are fraudulent and that the award is liable to be set aside as induced by fraud. The case of the Petitioners relating to fraud is with reference to agreeing for out of settlement before the Lok Adalat bench, Secunderabad.

11. When the award was passed by the learned second arbitrator, the Standing Counsel for the South Central Railway opined on 22.08.2005 that it was a fit case to challenge the award. The South Central Railway consequently filed O.P. No. 1 of 2005 before the III Senior Civil Judge, City Civil Court, Secunderabad to set aside the award. In his turn, the Respondent filed O.P. No. 2 of 2005 before the same Court to make the award the rule of the Court. Again, it is not the case of the Petitioners that there was fraud in between the date of the second award and filing of petitions by the South Central Railway and the Respondents seeking for the setting aside of the award and making the award the rule of the Court respectively.

12. On 15.09.2005, it would appear that the Respondent addressed a letter seeking for a negotiated settlement. On 14.11.2006, the Respondent addressed the Principal Chief Engineer, South Central Railway, Secunderabad seeking for the outside the Court settlement. The Respondent pointed out that earlier he wrote a letter on 24.09.2006 for settlement outside the Court and that the Respondent was again requesting for settlement of the dispute outside the Court. The Respondent wrote a lengthy and detailed letter to the General Manager, South Central Railway on 03.01.2007. He sought for the examination of his claim in

accordance with the agreement conditions and release of the monies due to him forthwith. In the meanwhile, the South Central Railway circulated the earlier request of the Respondent dated 14.01.2006 for a settlement outside the Court. In point No. 3 of the note dated 10.01.2007, it was recorded that many cases were settled outside the Court through settlement and that in the absence of such settlement outside the Court, litigation would have no quietus. It was also noted that one of the options open was to contest the award (by way of continuing the proceedings in O.P. Nos. 1 of 2005 and 2 of 2005 on the file of the III Senior Civil Judge, City Civil Courts, Secunderabad). On 16.01.2007 the General Manager would appear to have agreed for an outside the Court settlement and directed the concerned to fulfill the necessary formalities so as to place the matter before the negotiation committee to negotiate the dispute. On 01.03.2007 the Respondent addressed a letter to the negotiation committee offering to reduce the rate of interest claimed by him from 18% to 14% per annum on the awarded amount of nearly Rs. 59,00,000/- with effect from 01.01.2000. The case of the learned senior counsel is that from this stage onwards, mischief and fraud was played upon the General Manager, South Central Railway by its employees.

13. The office note dated 29.03.2007 of the General Manager points out various parameters of the arbitral award and records that the second award was a speaking award. The note also pointed out that courts generally do not interfere with the speaking arbitral awards. There was no reference to the negotiation and what transpired as the result of the negotiation. Surprisingly, at the end of the note, after Point No. 10, it was recorded "In view of the above reasons General Manager may accept as negotiated".

14. This noting is the point on which the learned Senior counsel for the Petitioners heavily relies upon to show that the noting was incorrect and deliberate fraudulent feeding to the General Manager. As can be seen from the noting, while as many as 10 points were recorded, evidently, there was no reference to any negotiation before the negotiation committee. On 01.03.2007, the Respondent addressed letter to the negotiation committee offering to receive interest at 14% only. However, the end portion of the noting read as if the negotiation committee had already negotiated and the General Manager might consider accepting the negotiation. The General Manager endorsed on the note file on 29.03.2007 that he was accepting the subject as negotiate. In other words, what he was accepting was the negotiation which was accepted and not the process of negotiation.

15. Thereafter other legal incidences moved swiftly. The Lok Adalat was informed on 05.04.2007 about the settlement. The Lok Adalat passed the award on 07.04.2007. However, the incorrect noting which was allegedly on account of fraud was detected by the Finance Department in its note dated 19.04.2007. The Finance Department recorded that the claims were inflated by the Respondent, that the South Central Railway ought not to have agreed for the negotiation and

the consent award and that the South Central Railway should contest the matter in a Court. The then General Manager endorsed on 09.05.2007 on the note file that appropriate legal action should be initiated. It is the contention of the learned senior counsel for the Petitioners that the agreement on behalf of South Central Railway before the Lok Adalat was on the basis of the approval of the General Manager on the note file on 29.03.1997 and that the General Manager passed orders on the note file on the basis of the incorrect noting that the negotiation had already taken place. Thus, it is the contention of the learned senior counsel for the Petitioners that factually the negotiation had not taken place.

16. However, the Respondent has not figured anywhere in the negotiation, the question is whether the Respondent was party to the fraud. In *A.V. Papayya Sastry and Others Vs. Government of A.P. and Others*, it was observed that fraud vitiates all judicial acts whether the actions were in respect of rights in ream or right in person and that a decree or order obtained by fraud is liable to be treated as non set and nullity. On the strength of this decision, it is contended by the learned senior counsel for the Petitioners that the Lok Adalat award which was passed on account of fraud is liable to be set aside. The Learned Counsel for the Respondent claimed that this decision has no application to the facts of the case on the ground that the decision is an authority regarding the fraud played upon the Court and not fraud played upon one party by his own men. In that case, the Special Officer and the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 passed award holding that the applicants were "non-surplus holders" and that the possession of the land was already handed over to the Port Trust Authority. When the Government later realized that possession was not taken from the earlier owner, Government of A.P., in exercise of its suo moto revision powers, set aside the orders of the Special Officer and Competent Authority. The applicants/land owners filed the writ petition before the High Court of Andhra Pradesh and obtained orders in their favour. The matter ultimately culminated in favour of the landowners till the Supreme Court stage.

17. The State of A.P. subsequently sought to recall the orders of the High Court on the ground that fraud was committed upon the Government and that material facts were suppressed by the landowners. The Supreme Court, as already pointed out, held that the decree or order obtained by fraud was non est. The contention of the Learned Counsel for the Respondent that the decision is an authority on preposition that fraud vitiates proceedings if fraud is played upon the Court is not correct. In the present case, the landowners did not play any fraud upon the Court. The fraud was allegedly played upon the State Government. Consequently, this decision certainly is applicable to the present situation where admittedly there was no incidence of fraud by the Respondents upon the Court. Nevertheless, so long as there is fraud, the decision of the Supreme Court in *Papayya Sastry* would apply.

18. The Learned Counsel for the Respondent, however, contended that in

Papayya Sastry's case, fraud was played upon by one of the parties upon the other party and that in the present case, the alleged fraud was committed by the employees upon their General Manager and not by the Respondent. He further pointed out that the Respondent was not a beneficiary out of such a fraud and that the cited decision therefore has no application.

19. In *Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Others*, the Supreme Court observed that fraud in private law is not the same as fraud in public law and that fraud in relation to a statute must be a colorable transaction to evade the provisions of a statute. The Supreme Court further clarified that misrepresentation itself would be tantamount to fraud. It is contended by the learned senior counsel on behalf of the Petitioners that the employees of the General Manager misrepresented to the General Manager through a note file that the negotiations had concluded and that the Petitioners may act upon and that as it was a clear case of misrepresentation, the agreement of the General Manager to enter into a settlement outside the Court before the Lok Adalat was hit by fraud and becomes non est. He further pointed out that it is not merely as though the employees of the General Manager duped the General Manager to enter into an agreement with the Respondent; it is his further case that the Respondent was also a party to this fraud. In *Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education and Others*, relied upon by the learned senior counsel for the Petitioners, there was fraud. The third Respondent was the sole beneficiary of the fraud. The Supreme Court held that it would be presumed that the sole beneficiary was a party to the fraud. In the present case, the original amount of the works entrusted to the Petitioner was for Rs. 3,92,946/-. The second arbitral award was for Rs. 51,74,383/- together with interest. If the same is accepted as a judgment outside the Court, it is the Respondent who would be the sole beneficiary. We, therefore, consider that the Respondent, as the sole beneficiary, was a party to the fraud played upon the General Manager, South Central Railway. Once it is presumed that the Respondent played fraud upon the Petitioner making him enter into agreement before the Lok Adalat, the primarily edifice of the case that the Respondent cannot be punished for the fraud committed by employees of the Petitioner upon the General Manager of the Petitioner stands collapsed. It would be a clear case of fraud by one party on the other. In view of the presumption, we assume that the Respondent claimant played fraud upon the Petitioners, lest the General Manager would not have entered into the agreement with the Respondent for the settlement of the dispute outside the Court. Thus, it is clear that the agreement was entered into between the parties on account of fraud played upon the General Manager of South Central Railway by its employees as well as by the Respondents. However, the question is whether the Petitioner is entitled to the relief of setting aside of the award.

20. The learned senior counsel for the Petitioners contended that there is no alternative relief for the Petitioner except invocation of Article 226 of the Constitution of India for redressal. The learned senior counsel for the Petitioners

placed reliance upon State of Punjab and Another Vs. Jalour Singh and Others, wherein it was observed that the only remedy available for setting aside of the award in Lok Adalat is the invocation of the special original jurisdiction of the High Court under Article 226. The learned senior counsel for the Petitioners further contended that when any judicial proceeding is hit by fraud, the proceeding would be liable to be set aside and that when the proceeding before the Lok Adalat was hit by fraud, it is liable to be set aside. His contention is that albeit the Petitioners brought it to the notice of the Lok Adalat bench about the circumstances in which the Petitioners entered into compromise, the Lok Adalat bench was not willing to exercise its jurisdiction to recall the awards passed by it. As the two awards are hit by fraud, the learned Senior Counsel seeks to set aside the same.

21. The Learned Counsel for the Petitioners contended that fraud in any circumstances would vitiate the proceedings and that it is not necessary that fraud should be by the Respondent himself. He placed reliance upon The Secretary to Government, Revenue Department and Others Vs. Mudiki Bhimesh Nanda, in support of his contention. In that case, the Government issued direction to the Government Pleader to withdraw the appeal on the basis of a misleading note file prepared by lower level officials. The Court considered that it was not a case where the memo to withdraw the appeal was filed consciously after assessing the true facts. The Division Bench of this Court observed

67. Unless the Courts give absolute freedom to the concerned authorities to exercise their discretion without fear or favour, there is every likelihood of the public properties going into the hands of the persons like the Petitioner and the trust reposed by the people on the concerned officers is likely to be breached. The concerned Mandal Revenue Officer is the Assigning Authority. He is the officer in the field and he is the best person to assess whether the Petitioner is eligible for such assignment? Whether the land is free from any legal obstacles for the purpose of assignment? and he is the best person to impose the necessary conditions at the time of granting the assignment. From the beginning the Mandal Revenue Officer and the Collector have been crying to their highest pitch that this is not a fit case where the Petitioner can be granted assignment. But unfortunately the Government" as a big Boss, which is supposed to sit on revision over the orders of the Collector, started directly interfering in the matter and instructed the Government Pleader to withdraw the appeal without taking the opinion of the Collector or the concerned Assigning Authority. The continuous protest made by the Collectors in succession is a clear indication that this is a case where the Government as well as the Court has to take a serious note of their anxiety in protecting the land and to prevent the Petitioner from selling away the land on the pretext of assignment.

On the strength of this decision, it is contended that where fraud was played by the officials of the Petitioner, the Petitioner was entitled to seek for the setting aside of the award on the ground that the consent was given by the Petitioner on

account of misleading, misrepresenting and fraudulent notation on the note file.

22. The Learned Counsel for the Respondent contended that Bhimesh Nanda is not an authority for the proposition that when fraud is committed by the lower staff of the Petitioner motivating the Petitioner to enter into a compromise in the Court, the Petitioner would be entitled to seek for the recall of the order reached on the basis of such representation by the Petitioner before the Court. He referred to the facts of that case which were enumerated in paras 73 and 74 of the judgment and pointed out that when fraud was played upon the Court, the Court was always entitled to recall the orders and that in Bhimesh Nanda, fraud was played upon the Court. However, para 67 of the judgment already referred to, is clear that it is not a case of fraud played upon the Court. Their Lordships propounded the legal position in para 67. It is indeed a case where fraud was played upon the Court also. However, the observation of the Division Bench in para 67 is a ratio but not an obiter dictum. We, therefore, consider that the Court took the view way back in 2004 that where a consent order was passed on the basis of the consent which was obtained by fraud, whether the fraud was occasioned on account of the mischief of the subordinates of the Petitioner or the Respondent, such a decision would be set aside at the instance of the Petitioner or the Respondent, as the case may be.

23. The Learned Counsel for the Respondent contended that the Lok Adalat award was final and binding on the parties and that the same could not be set aside or recalled. Section 21 of the Legal Services Authority Act envisages that an order of the Lok Adalat is final and that no appeal would lie therefore. The Petitioners would appear to be conscious of the provisions of Section 21 of the Legal Services Authority Act. In fact, the learned senior counsel placed reliance upon Jalour Singh to show that the only remedy available when Lok Adalat award was hit by fraud is to move a writ petition invoking the special original jurisdiction of the High Court. In P.T. Thomas Vs. Thomas Job, it was observed that as the award of the Lok Adalat was a consent award, no appeal would lie therefore not only in view of Section 21 of the Legal Services Authority Act, but also on account of Section 96(3) CPC In Damera Raj Kumar Vs. Doli Srinivas, a question arose whether the Respondent obtained the consent of the Petitioner by coercion and threat. A single Judge of this Court held that the plea of coercion or obtaining the award on threats was primarily a question of fact. We may, however, refer to the earlier decision of this Court in Bhimesh Nanda where the parties were given freedom to exercise their discretion in reaching the consent award without fear or favour.

24. The Learned Counsel for the Respondent also contended that it would not be sufficient if the party makes an allegation that the award was on account of fraud played upon it but should establish the same in clear and cogent terms. We make it clear that the note file and the noting on 29.03.2007 clearly show that the General Manager was misled by the subordinates as if the negotiation committee had entered into and arrived at a consent figure in the negotiations. Thus, the

Petitioners clearly established fraud played upon the General Manager so as to misguide the General Manager to give consent before the Lok Adalat.

25. The Learned Counsel for the Respondent placed reliance upon Section 19 of the Contract Act. Section 19 of the Contract Act envisages that a party to a contract may avoid the contract when the consent of the party was obtained by coercion, fraud or misrepresentation. Exception to Section 19 of the Contract Act, as envisaged in Section 19 itself, is that if the party giving consent had sufficient means to discover the truth with ordinary diligence, such a party would not be entitled to invoke Section 19 of the Contract Act. In *Namayya v. Union of India* AIR 1958 AP 533 relying upon Section 19 of the Contract Act, the Division Bench of this Court held that when a party could have had knowledge about the work sought to be undertaken by him by his knowledge about all the facts of such a work, such a party could not avoid the work by invoking Section 19 of the Contract Act.

26. This is not a case where the General Manager could have understood the fraud played upon by him by his subordinates. Had the General Manager had such an apprehension, the entire note file would have been read by him. In such an event, the question of according consent would have been a conscious decision on the part of the General Manager. Where the General Manager proceeded in the usual course of business and acted on the basis of the note file, we cannot consider that the General Manager would fall within the exception of Section 19 of the Indian Contract Act. That apart it would be a question of fact, which cannot be gone into in the writ petitions before us.

27. We, therefore, consider that it would be appropriate to request the Lok Adalat bench to re-examine the representation of South Central Railway afresh to determine whether the consent given by the General Manager was on account of fraud played upon by him and to pass appropriate orders. We would, however, make it clear that if fraud was played upon by the Petitioners, whether the author of fraud was the Respondent or the employees of the Petitioners is irrelevant. The Lok Adalat bench, therefore, shall examine whether the consent was given by the Petitioners on account of fraud played upon the General Manager of the South Central Railway. If the Lok Adalat bench arrives at such a conclusion on the question of fact in the affirmative, the Lok Adalat bench shall set aside two awards and shall probe into the possibility of arriving at a consent award afresh. If the same is not possible, the Lok Adalat shall return the cases in O.P. Nos. 1 & 2 of 2005 to the Court of III Additional Senior Civil Judge, Secunderabad for disposal of the same on merits. We, however, make it clear that the rejection of the petitions in I.A. Nos. 1062 and 1067 of 2007 by the Lok Adalat bench is incorrect, as the Lok Adalat bench erroneously concluded that there was no fraud and also erroneously concluded that the consent orders could not be set aside.

28. In the facts and circumstances of the case, it would be just and proper to set aside the Lok Adalat awards. We, however, did not consider it appropriate to

recall the awards in I.A. Nos. 1062 of 2007 and 1067 of 2007 in O.P. Nos. 1 and 2 of the 2005 on the file of the Lok Adalat bench. We would prefer to set aside the impugned orders of the Lok Adalat, and remit the cases to Lok Adalat bench for fresh consideration to determine whether there is possibility of negotiation to pass a consent award if possible. The Lok Adalat shall have to return the cases to III Additional Senior Civil Judge, City Civil Court, Secunderbad in the event the parties do not agree to a consent award.

29. These Writ Petitions are, accordingly, disposed of. No costs.