F.A. Construction Vs. Narmada Valley Development Department and anr.

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Court : Madhya Pradesh

Decided On : Nov-17-2005

Reported in : 2006(2)MPHT216

Judge : Dipak Misra, J.

Acts : Arbitration and Conciliation Act, 1996 - Sections 9; Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 - Sections 17A and 20; Constitution of India - Article 226

Appeal No. : Writ Petition Nos. 1057 and 1058-1066/2005

Appellant : F.A. Construction

Respondent : Narmada Valley Development Department and anr.

Advocate for Def. : P.N. Dubey, Dy. Adv. General

Advocate for Pet/Ap. : R.P. Agrawal, Sr. Adv. and ;R. Upadhyay, Adv.

Judgement :
ORDER

Dipak Misra, J.

1. In this batch of writ petitions the centripodal issue being same and the question of law that emerges for consideration being similar it was heard analogously and is

disposed of by this singular order. For the sake of clarity and convenience the facts in W.P. No. 1063/2005 are adumbrated herein.

2. The petitioner, a registered partnership firm, is engaged in doing the job of civil and irrigation works. It entered into an agreement with the Narmada Valley Development Authority (presently known as Narmada Valley Development Department) vide agreement No. 2/DL/2002-2003 for construction of right bank main canal, Group-1. RD 16 KM to RD 20 KM. After acceptance of the tender, as pleaded, work order was issued in favour of the petitioner and thereafter, the petitioner approached the respondents for providing mark-out and handing over the site for commencement of the work but due to non-response of the respondents the petitioner was compelled to file an application under Section 9 of the Arbitration and Conciliation Act, 1996 (for brevity 'the Act') before the learned District Judge, Jabalpur.

3. It is contended in the petition that time had never been the essence of contract which is visible from the conduct of the respondents and further the delay in execution of the work was on the ground of the reasons which are exclusively attributable to the respondents. The hurdle created in smooth execution of the work was beyond the control of the petitioner as the petitioner-firm did not contravene any of the stipulations of the agreement. Despite the aforesaid obtaining situation the Executive Engineer of the respondents threatened to encash the security deposit, confiscate the entire plant and machinery including the construction material installed/kept at the site alleging that there had been breach of the agreement on the part of the petitioner. It is put forth that threat was given to appropriate the earnest money deposit which was otherwise refundable to the petitioner. The respondents deducted 5% of the amount towards additional security deposit at the time of payment of each running bill. Because of this threat the petitioner preferred an application under Section 9 of the Act praying therein that the respondents be restrained from encashing the security deposit, taking possession and selling of the plant and machinery as also the material stored at the site. A further prayer was also made restraining the respondents from appropriating additional security lying with the petitioner-firm as earnest money deposit. The learned District Judge passed an ad interim injunction directing the

parties to maintain 'status quo'. The respondents entered contest and after completion of the pleadings the learned District Judge dismissed the application which formed the subject-matter of MJC No. 22/2004. The impugned order dated 22-2-2004 has been brought on record as Annexure P-3. It is pleaded that the learned District Judge dismissed the application on the foundation that there is a statutory bar of taking cognizance of the dispute in view of the language employed under Section 20 of the M.P. Madhyastham Adhikaran Adhiniyam, 1983 (in short 'the 1983 Act').

4. It is not in dispute that the petitioner had already submitted his claims for adjudication as required under Clause 4.3.29.2 of the agreement before Superintending engineer of the respondents and the final verdict is awarded. After adjudication of the claim by the said Authority under the aforesaid clause of the agreement the petitioner has the right to refer the dispute under Section 17-A of the 1983 Act to the Arbitration Tribunal constituted under Section 9 of the aforesaid Statute. A reference has been made to Section 17-A of the 1983 Act which debars the Tribunal to pass an order of injunction stay or attachment before the award is passed. In view of the aforesaid the learned District Judge expressed the opinion that it has no jurisdiction to pass the order of restraint. Under these circumstances the petitioner has approached this Court for appropriate relief.

5. It is averred in the petition that without proper adjudication by lawful authority the respondents cannot recover the damage on the alleged breach of contract which is disputed by the petitioner and the respondents can not be its own arbiter of the cause as it would tantamount to becoming a judge of its own cause. In addition it is also put forth that recovery of damage by its own determination on the face of specific denial contravenes all fundamental norms and amounts to deprivation of justice. In the case at hand, as has been pleaded, the petitioner has unequivocally disputed the breach of terms of the contract as alleged by the respondent and hence, the said respondent had no authority to recover any amount by way of damage or encash the security deposit or proceed to confiscate the plant and machinery stored at the site. It is the assertion in the petition that unless there is an agreement the question of recovering the amount straightway is unjustified, illegal and impermissible. In this backdrop prayer has been made for

quashment of the notice dated 16-10-2003 contained in Annexure P-3 and further not to give effect to the same till the adjudication is made by the Arbitration Tribunal under 1983 Act. It is worth noting that certain conditions of contract as contained in Annexure P-7, the agreement in question, have been pressed into service by the petitioner.

6. A counter affidavit has been filed by the answering respondents contending, inter alia that the petition filed by the petitioner is totally misconceived inasmuch as the petitioner has removed the plant and machinery despite the order of status quo passed by the learned District Judge and the same has been commented upon in the final order passed by the Court below. It is asseverated that there has been suppression of material facts and the petitioner has not approached this Court in clean hands and hence inherent equitable jurisdiction of this Court under Article 226 of the Constitution of India should not be exercised. A plea has been advanced that the petitioner has alternative and efficacious remedy seeking adjudication of the lis in question before the Arbitration Tribunal and hence, this Court should not interfere. Reference has been made to certain clauses of the agreement specially Clause 4.3.2 to highlight that the Executive Engineer of the respondents has the power to terminate the contract and take possession of the whole or part of the work site, plant equipment and materials brought or placed thereon and cause the whole or part of the works, completed by utilising them through such agencies at the cost of the contractor. In that event, the value of the work done through such agencies would be credited to the contractor at his contract prices. It is further put forth that on completion of such work, if the expenses incurred for carryinig out such works, as certified by the Executive Engineer are in excess value of the work credited to the contractor, the difference would be paid by the contractor to the Government and he also would be liable for the liquidated damages under the contract. It is set forth that the said clause empowers the owner to take certain action if the contractor does not carry out the obligations stipulated in the agreement. It is urged that despite the notice the petitioner was not able to complete the work as per the agreement in question and hence, action was taken. A reference has been made to Clause 4.3.3.1 to show that power is vested with the Engineer-in-Charge to rescind the agreement of contract on failure on the part of the contractor to meet the obligations and Clause

4.3.3.3 empowers the respondents to proceed with the work by allotting the same to another contractor. The said clause also authorises the answering respondents to recover the excess amount spent in pending in getting the remaining work completed by another contractor from the defaulting contractor. Relying on these clauses action taken by the respondents is sought to be justified. It is highlighted that no liquidated damages are being recovered by the answering respondents in use of the power vested in them under the agreement. It is pleaded that what is being sought to be recovered is the amount determined which is based on the documents proved and the conditions of the agreement do so permit. The amount has already been determined by getting the work performed through another contractor which has come into being due to negligence of the petitioner and hence, the same can not be categorised as liquidated damages. It is the case of the respondents that as the action,taken is strictly in accordance with the terms of the agreement which has been executed by the petitioner keeping the eyes wide open it can not take a somersault. It is the stand of the respondents that after rescission of the contract there is deemed confiscation of all the items forfeiture of the earnest money and other money of the petitioner in custody of the answering respondents and these obligations are contractual in nature and hence, no illegality can be perceived in the same. It is also put forth that after rescinding of the contract the answering respondents have already encashed the amount and kept it in deposit which was lying with them towards the earnest money amount deposited by the petitioner at the time of tendering and hence, relief in this regard has become infructuous. It is put forth that performance of security amount could not be encashed because of the collusion of the petitioner with the bank and hence, the matter has been taken up with the higher authorities of the bank. It is the stand of the respondents that forfeiture and confiscation have been strictly done in accordance with clauses of the agreement and, therefore, no fault can be found with the action of the respondents. A distinction has been shown in respect of the action taken under the agreement and recovery of liquidated damages.

7. A rejoinder affidavit has been filed putting forth the positive stand that the petitioner had not committed any breach of the order of 'status quo' inasmuch as a big boclain machine (excavator) costing about Rs. 50 lakhs, a stone crusher costing about Rs. 90 lakhs, a generator, six concrete mixtures and vibrators worth

about Rs. 5 lakhs are still available on the site and the petitioner has constructed steel structure costing about Rs. 6 lakhs for the purpose of keeping the machinery, quarters for engineers, supervisors and technicians in the vicinity of the site. Allegation of theft has also been made after the work has come into standstill. Emphasis has been placed on the principle that a person can not be a judge of his own case and, therefore, the adjudication or breach of terms and conditions of the contract by the respondents have to be decided by some other authority and not by the respondents. Interpretation of Clause 4.3.2 of the agreement by the respondents has been seriously disputed on the bedrock that such an interpretation amounts to negation of all cannon of justice and fair-play. The respondents were under the obligation to strictly adhere to the conditions of the agreement but they showed a callous and non-serious attitude as a result of which the entire work got paralysed for which the respondents have to be blamed. Various other grounds have been taken how there has been violation of the conditions of the contract by the respondents and how the petitioner is not responsible for the same.

8. I have heard Mr. R.P. Agrawal, learned Senior Counsel alongwith Mr. Rajesh Upadhyay for the petitioner and Mr. P.N. Dubey, learned Deputy Advocate General for the respondents/State.

9. Mr. Agrawal, learned Senior Counsel has raised the following contentions:

(i) The reliance of the respondents on various clauses of the agreement to take action against the petitioner on the breach of such conditions is fundamentally erroneous as of the owner or its functionaries can not adjudicate such controversy.

(ii) Though stipulations are there for taking action under the agreement, there has to be an independent adjudication inasmuch as no one can be a party and a Judge simultaneously as such a conception tantamounts to be a Judge of ones own cause which is basically violative of the principles of natural justice.

(iii) The M.P. Arbitration Tribunal has no power to pass an interim order and, therefore, this Court in exercise of power under Article 226 of the Constitution of India should protect the interest of the petitioner till the matter is adjudicated by the

Tribunal, as such a step would be in furtherance of the case of justice and also would be in consonance with striking the balance between the parties.

To bolster the aforesaid submissions Mr. Agrawal, learned Senior Counsel has placed reliance on the decision rendered in the case of State of Karataka v. Rameshwara Rice Mills, Thirthahalli, AIR 1987 SC 1359, and an unreported decision of this Court in the case of Mis. Thakurdas Narangand Sons v. State of M.P. and Ors. (W.P. No. 640/1998): 2001 Arb.W.LJ. 553.

10. Countering and combating the aforesaid submissions raised by Mr. Agrawal, Mr. P.N. Dubey, learned Deputy Advocate General for the State has raised the following submissions:

(a) Assertions put forth in the writ petition are basically fallacious inasmuch as the power conferred on the functionaries of the respondents is by way of a contract and, therefore, is in the realm of a contractual obligations and can not be a matter of controversy to be gone into in exercise of writ jurisdiction.

(b) The petitioner having executed the contract keeping his eyes wide open, can not question the same in a writ jurisdiction as that would tantamount to playing fast and loose which the law does not countenance.

(c) The Arbitration Tribunal may not have the jurisdiction to pass an interim order but such a situation does not entitle the petitioner per se to approach this Court for grant of interim protection since the ultimate award passed by the Tribunal would govern the lis from all spectrums including the facet relating to the breach by the respondents' authority.

(d) The colossal complaint that the respondent can not be a Judge of its own case or can not be an arbiter on his own, has no leg to stand upon a the said concept relates to recovery of liquidated damages whereas in the present case the question of damage does not arise.

(e) The securities which have been encashed and sought to be encashed are in the form of guarantees and as far as encashment of guarantees are concerned, the same can always be done without an adjudication, as the letter to the bank for

encashment of the same in terms of the agreement by the owner, is sufficient enough for taking such an action.

11. To appreciate the rival submissions raised at the Bar, it is necessary to refer to certain conditions of the contract which have been brought on record. Condition No. 4.3.2 deals with 'default by contractor'. The said clause reads as under:

4.3.2. Default by contractor: If the contractor shall neglect or fail to proceed with works with due diligence or he violates any provision of the contract the Executive Engineer may give the contractor a notice identifying deficiencies in performance and demanding corrective action. Such notice shall clearly state that it is given under the provisions of this clause. After such notice is given, the contract shall riot remove from the site any plant equipment and material. The Government shall have lien on all such plant, equipment and materials from the date of such notice, till the deficiencies have been corrected. If the contractor fails to take satisfactory corrective action within fourteen days after receipt of the notice, the Executive Engineer will terminate the contract in whole or in part. In case the entire contract is terminated the amount of security deposit together with the value of the work done but not paid for, shall stand forfeited to Government. The plant equipment and materials held under lien shall be at the disposal of the Government.

The Executive Engineer may also take possession of the whole or part of the works, site plant equipment and materials brought or placed thereon and cause the whole or part of the works, contemplated by utilising them through such agencies shall be credited to the contractor at his contract prices. On completion of such work, if the expenses incurred for carrying out such works, as certified by the Executive Engineer are in excess of the value of the work credited to the contractor, the difference shall be paid by the contractor to Government. He shall also be liable for the liquidated damages under the contract.

The Executive Engineer may direct that the part of the whole of such plant, equipment and materials are to be removed from the site within a stipulated period. If the contractor fails to do so the Executive Engineer may cause them to be sold, holding the net proceeds of such sale to the credit of the contractor. After composition of the works and settlement of amounts, the lien by the Government

on the contractor plant, equipment and balance of materials shall be released.

Termination of contract either in whole or in part shall be adequate authority for the security performance.

12. Clause 4.3.3 deals with 'action when the contractor becomes liable for levy or penalty'. It reads as under :

4.3.3. Action when the contractor becomes liable for levy of penalty:In any case in which under any clause or clauses of the contract the contractor shall have rendered himself liable to pay compensation amounting to the whole of his security deposit (whether paid in one sum or deduced by installment) or committed a breach of any of the terms contained in Clause 4.3.24 or in the case of abandonment of the work owing to the serious illness or death of the contractor or any other cause. Divisional Officer on behalf of the Governor of Madhya Pradesh shall have power to adopt any one of the following courses, as he may deem best suited to the interests of Government.

13. Clause 4.3.3.1 which pertains to rescission of contract reads as under --

4.3.3.1. To rescind the contract (of which rescission notice in writing to the contractor under the hand of the Engineer-in-Charge shall be conclusive evidence) and in which case the security deposit and performance security deposit of the contractor shall stand forfeited and be absolutely at the disposal of Government.

14. Clauses 4.3.3.2 and 4.3.3.3 deal with certain consequences. They read as under:

4.3.3.2. To employ labour paid by Narmada Valley Development Department or by employing departmental machinery and supply of materials to carry out the work, or any part of the work debiting the contractor with the cost of the labour or hire charges of departmental; machinery and the price of the materials (of the amount of which cost and price a certificate of the Divisional Officer shall be final and conclusive against the contractor) and crediting him with the value of the work done, in all respects in the same manner and the same rates as if it had been carried out by contractor under the terms of his contract or the cost of the labour

and the price of the materials as certified by the Divisional Officer whichever is less. The certificate of the Divisional Officer as to the value of the work done shall be final and conclusive against the contractor. This does not qualify the contractor to any contractor saving, if any, will go to the Government.

4.3.3.3. To measure up the work of the contractor and to take such part thereof as shall be unexecuted of his hands and to give it to another contractor to complete in which case any expenses which may be incurred in excess of the sum which would have been paid to the original contractor, if the while work had been executed by him (for the amount of which excess, the certificate in writing of the Divisional Officer shall be final and conclusive) shall be borne and paid by the original contractor and may be deducted from any money due to him by Government under the contract or otherwise, or from his security deposit and performance security deposit or the proceeds of sale thereof, or a sufficient part thereof. If the work is carried out at lower rates, the contractor shall not be entitled for any refund or this count saving if any shall go to the Government.

In the event of any of the above courses being adopted by the Divisional Officer, the contractor shall have no claim to compensation for any loss sustained by him by reason of his having purchased or procured any materials or entered into engagements or made any advances on account of or with a view to the execution of the work or performance of the contract. And in case the contract shall be rescinded under the provisions aforesaid, the contractor shall not be entitled to recover or be paid any sum for any work there of actually performed under this contract. Unless and until the Sub-Divisional, Divisional Officer will have certified in writing the performance of such work and the value payable in respect thereof and he shall only be entitled to be paid the value so certified.

15. Clauses 4.3.4.1 and 4.3.4.2 being essential for understanding the controversy are reproduced below:

4.3.4.1. Contractor remains liable to pay compensation if action not taken under Clause 4.3.4: In any case in which any of the powers conferred upon the Divisional Officer, by Clause 4.3.3 hereof, shall have become exercisable and the same shall not be exercised, the non-exercise thereof shall not constitute a waiver of any of

the conditions hereof and such powers shall notwithstanding be exercisable in the event of any further case of default by the contractor for which by any clause or clauses here of he is declared liability of the contractor for past and future compensation shall remain unaffected.

4.3.4.2.: Power to take possession of or require removal or sell contractor's plant:

In the event of the Divisional Officer putting in force either of the powers 4.3.3 of 4.3.3.3 vested in him under the preceding clause he may if he so desired, take possession of all or any tools, plants, materials and stores, in or upon the work at the site thereof, or belonging to the contractor procured by him and intended to be used for the execution of the work or any part thereof paying or allowing for the same in the account at the contract rates or in case of these not being applicable at current market rates to be certified by the Divisional Officer whose certificates thereof shall be final. Otherwise the Divisional Officer may by notice in writing to the contractor or his clerk of the works, stores from, the premises (within a time to be specified in such notice).

In the event of the contractor failing to comply with any such requisition the Divisional Officer may remove them at the contractor's expenses of sell them by auction or private sale on account of the contractor and at his risk in all respects and the certificate of the Divisional Officer as to the expenses of any such removal and the amount of the proceeds and expenses or any such sale shall be final and conclusive against the contractor.

16. I have reproduced the conditions of agreement to understand and appreciate the jurisdiction of the owner and consider the same on the anvil of the law laid down in the case of Rameshwara Rice Mills (supra). In the aforesaid case the Apex Court in Paragraphs 7 and 8 held as under:

7. On consideration of the matter we find ourselves unable to accept the contentions of Mr. Iyengar. The terms of Clause 12 do not afford scope for a liberal construction being made regarding the powers of the Deputy Commissioner to adjudicate upon a disputed question of breach as well as to assess the damages arising from the breach. The crucial words in Clause 12 are 'and for any breach of

conditions set forth hereinbefore, the first party shall be liable to pay damages to the second party as may be assessed by the second party'. On a plain reading of the words it is clear that the right of the second party to assess damages would arise only if the breach of conditions is admitted or if no issue is made of it. If it was the intention of the parties that the officer acting on behalf of the State was also entitled to adjudicate upon a dispute regarding the breach of conditions the wording of Clause 12 would have been entirely different. It can not also be argued that a right to adjudicate upon an issue relating to a breach of conditions of the contract would flow from or is inhered in the right conferred to assess the damages arising from a breach of conditions. The power to assess damages, as pointed out by the Full Bench, is a subsidiary and consequential power and not the primary power. Even assuming for argument's sake that the terms of Clause 12 afford scope for being construed as empowering the officer of the State to decide upon the question of breach as well as assess the quantum of damages, we do not think that adjudication by the Officer regarding the breach of the contract can be sustained under law because a party to the agreement can not be an arbiter in his own cause. Interests of justice and equity require that where a party to a contract disputes the committing of any breach of conditions the adjudication should be by an independent person or body and not by the other party to the contract. The position will, however, be different where there is no dispute or there is consensus between the contracting parties retarding the breach of conditions. In such a case the Officer of the State, even though a party to the contract will be well within his rights in assessing the damages occasioned by the breach in view of the specific terms of Clause 12.

8. We are, therefore, in agreement with the view of the Full Bench that the powers of the State under the agreement entered into by the State under an agreement entered into by it with a private person providing for assessment of damages for breach of conditions and recovery of the damages will stand confined only to those cases where the breach of conditions is admitted or it is not disputed.

17. The learned Single Judge in the case of Mis. Thakurdas Narangand Sons (supra), after referring to the various clauses in the agreement which have some similarity to the present case referred to the decision rendered in the case of

Rameshwara Rice Mills (supra) and eventually in Paras 17 to 19 expressed the view as under:

17. From the judgment of the Supreme Court, it would clearly appear that interest of justice and equity require that where a party to the contract disputes committing of any breach of conditions, the adjudication should be by an independent person or body and not by the other party to the contract.

18. On face of this judgment, Shri Seth, learned Counsel for respondents now submits that in the matter of State of Kamataka, Supreme Court was considering a case of recovery of damages, while present is a case of recovery of excess expenses suffered by the State. In his submission, in a case where the State has to recover the damages, it may not be permitted to enter into the field of making the decision, but in a case where the State has suffered extra expenses because of the breach committed by the contractor/petitioner, the State certainly is entitled to recover the amount which was paid by the State to the debitable agency through which or under whose hands the work was got executed. In the opinion of this Court, the argument is not sustainable. The question for consideration simply is that who committed the breach. Unless it is decided that the petitioner committed the breach, the State would not be entitled to recover the amount spent in excess of the original contract amount. Everything would depend upon a finding as to who committed the breach. Should the task be given to a party to the contract, that is, the State and its officers, or should it be submitted to a third agency, arbiter, Court or Tribunal. If the task is handed over to the State Government, then it would certainly run contrary to the age old saying audi-alteram-partem. The principles of natural justice clearly provide that neither one should be condemned unheard nor a party should be a Judge or Arbiter in his own case or cause. If the State is given the authority to decide that who committed the breach, then possibility of a prejudice and bias cannot be ruled out. However, fair the authority is, it would always offend the principles 'that justice should not only be done, but it should appear to have been done'. If the State decides that who committed the breach, then this would again run contrary to the judgment of the Supreme Court in the matter State of Karnataka. While appreciating Clause 12 of the agreement of the said matter, the Supreme Court observed that on a plain

reading of the words it would be clear that right of the second party to assess damages would arise only if the breach of conditions was admitted or if no issue was made of it. The Supreme Court further observed that even if the Clause 12 afforded scope for being construed as empowering the officer of the State to decide upon the question of breach as well as assess the quantum of damages, that adjudication by the officer regarding the breach of the contract cannot be sustained under law because a party to the agreement cannot be an arbiter in his own cause and case. In the present case, the State is simply relying upon the actions of the Executive Engineer. According to them, the rescission of the contract was in accordance with law and as the State had to pay extra expenses, the State was entitled to recover the money. Unfortunately the actions of the State do not take into consideration as to who has to decide that who committed the breach of the terms. In the present case, the State certainly can recover the money provided a third party decides that because of the breach committed by the petitioner the State had to suffer extra expenses. Though the agreement does not give any power, right or authority to the State or its agency to decide the question of breach, but even assuming the State had such a power, then too, it could not decide the question as to who committed the breach nor would it be entitled to assess the quantum of extra expenses because in such a situation, State would be acting as an arbiter or a Judge in its own cause.

19. Undisputedly, the question of the breach of the contract has not been decided by any competent authority, arbitrator, Court or Tribunal and unless such a decision is given by such an authority, the State would not be entitled to recover the money. I must hasten to say that if a private party is required to approach the Court or Tribunal for establishment of his claim, then the State, though Almighty, must seek a proper decision on the dispute and should not decide its own case, take the authority in its own hands and proceed to recover the money through its own agency.

18. In the case at hand action is sought to be taken under the agreement. This Court as an ad interim measure had directed that in respect of the FDR, additional security, plant & machinery and the materials stored at the site 'status-quo' shall be maintained by the party. Submission of Mr. Dubey is that no attempts are being

made by the respondents to recover the liquidated damages. The learned Counsel has commended me to Paragraph 15 of the return. It is not clear whether the performance of security was provided by way of bank guarantee. If the performance security has been provided by way of bank guarantee, in my considered opinion, the owner can not be restrained to encash the bank guarantee as per law laid down in the case of Larsen and Toubro Limited v. Maharashtra State Electricity Board and Ors. : AIR 1996 SC334 .

19. As far as recovery of damages is concerned, the same can not be done without proper adjudication. As regards to the other action it is appropriate that the order of 'status- quo' passed by this Court be maintained till the matter is adjudicated by the M.P. Arbitration Tribunal. Be it noted, the interim order in this case gives protective umbrella but the same should not be construed as this Court has not stated anything with regard to the merits of the case. The petitioner has, as a matter of fact, can not claim the benefit of the same on the ground that some adjudication has been done. It is open to the petitioner to approach the Tribunal for adjudication of the controversy. If the petitioner approaches the Tribunal it shall decide the matter as expeditiously as possible preferably within a period of four months from the date of receipt of presentation of the claim. Till the matter is adjudicated by the Tribunal the interim order shall remain in force. At the cost of repetition it is stated that the interim order would not be applicable to bank guarantees though such encashment would be subject to final adjudication by the Tribunal and further Superior Courts.

20. The writ petitions are disposed of on above terms without any order as to costs.