IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 3352 of 2021
With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2021
In R/SPECIAL CIVIL APPLICATION NO. 3352 of 2021
With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2022
In R/SPECIAL CIVIL APPLICATION NO. 3352 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SANGEETA K. VISHEN

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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GUJARAT MINERAL DEVELOPMENT CORPORATION LIMITED
Versus
MORRIS SAMUEL CHRISTIAN

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Appearance:
G H VIRK(7392) for the Petitioner(s) No. 1
MR GIRISH M DAS(2323) for the Respondent(s) No. 1
MR SHAILESH V RAVAL(2953) for the Respondent(s) No. 2

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CORAM:**HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**
Date : 06/06/2023
CAV JUDGMENT

With the consent of the learned advocates appearing for the respective parties, the matter is taken up for final disposal.

2. Issue Rule, returnable forthwith. Mr Girish M. Das, learned advocate waives service of notice of rule on behalf of the

respondent no.1 and Mr Shailesh V. Raval, learned advocate waives service of notice of rule on behalf of the respondent no.2.

3. The petitioner, i.e. Gujarat Mineral Development Corporation Limited has filed the captioned writ petition, praying for quashing and setting aside the mandate, constitution and authority of the respondent no.1 – Morris Samuel Christian in relation to the Arbitration Case no.21 of 2015; with a further request to quash and set aside the document dated 23.10.2020, titled 'Final Awarding' passed by the respondent no.1 – Morris Samuel Christian. The prayers in the writ petition, read thus:

> "A. Issue appropriate Writ, order and/or direction quashing and setting aside the mandate, constitution and authority of the Respondent No.1 – Morris Samuel Christian in the so-called Arbitration Case No. 21 of 2015; and further be pleased to quash and set aside the document dated 23.10.2020, titled *"FINAL AWARDING"* signed by the Respondent No. 1 – Morris Samuel Christian or any such other and/or further communications, letters, notices or documents as may have been issued by the Respondent No. 1 – Morris Samuel Christian;
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> B. Stay the operation and implementation of the document dated 23.10.2020, titled *"FINAL AWARDING"* signed by the Respondent No. 1 – Morris Samuel Christian or any such other and/or further communications, letters, notices or documents as may have been issued by the Respondent No. 1 – Morris Samuel Christian;
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> C. Issue *ex parte ad interim* relief in terms of Prayer Clause 12(B), above;
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> D. Grant any such other and/or further order/s that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case;
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> E. Award exemplary costs against the Respondent Nos. 1 and 2; and
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> F. Award cost of the present Petition in favour of the Petitioner and against the Respondents."

4. Tersely stated are the facts as culled out from the captioned writ petition:

4.1. Three work orders, were issued by the petitioner in favour of respondent no.2; two of which were in the year 2006 and another, in the year 2007 for the sale of non-plant grade Bauxite from the Meswana mines operated by the petitioner. All the three work orders, contained the clause that any dispute arising out of the contract, shall be subject to the jurisdiction of Ahmedabad Court only. The contractual relationship between the petitioner and the respondent no.2, came to an end in the year 2008. Long after the statutorily prescribed limitation for institution of suit proceedings has came to an end, on 30.03.2015, after more than 7 years the petitioner received an unusual notice signed by the respondent no.1, informing the petitioner that hearing has been fixed on 13.04.2015 and asking it to remain present.

4.2. It is the case of the petitioner that the notice lacks clarity as to how respondent no.1 was appointed by the parties and after following which procedure under the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act of 1996”). It is also the case of the petitioner that it is not coming forth as to how the respondent no.2 has filed the claim before the respondent no.1 when, the parties had never agreed for appointment of the respondent no.1 as an arbitrator. It is the specific case of the petitioner that filing of such application before the respondent no.1 was unilateral and therefore, the petitioner raised an objection dated 10.04.2015 that it has not agreed to the respondent no.1 being appointed as an arbitrator. Also, in absence of any arbitration clause, the appointment of the respondent no.1, would be an illegal exercise.

4.3. Disregarding the objection, the respondent no.1 proceeded to pass an award titled 'Interim Measure Awarding', *inter alia,* holding that it has jurisdiction and such order cannot be said to be illegal or without jurisdiction at this stage for, the competent legislature has conferred power on arbitral tribunal to rule on its own jurisdiction. The respondent no.1, while recording that the petitioner itself or through its representative was not present to file the reply or had sent any communication to the sole arbiter, except sending a communication through email dated 10.04.2015, proceeded to pass an award dated 13.04.2015 in favour of the respondent no.2 allowing the claim of Rs.5,00,97,343/-.

4.4. The petitioner, being aggrieved by the said 'Interim Measure Awarding' dated 13.04.2015, preferred a writ petition being Special Civil Application no.13283 of 2015 and this Court, was kind enough to grant ad-interim relief vide order dated 20.08.2015 which, after hearing the parties, came to be confirmed on 03.09.2015. For the period from 2015 to 2020, according to the petitioner, the respondent no.1, did not take any steps; however, on 23.10.2020, the respondent no.1 passed an award titled 'Final Awarding', disregarding the injunctive and prohibitory order passed by this Court against him. The respondent no.1 allowed the claim of Rs.11,25,29,524/- in favour of respondent no.2 with a further direction to the parties to pay the arbitral fees to the tune of Rs.15 lakhs per party. Hence, the present writ petition with the aforementioned prayers.

5. Mr Gursharan H. Virk, learned advocate appearing for the petitioner submitted that the work orders, were awarded in the years 2006 and 2007 respectively and the contractual relationship between the petitioner and respondent no.2 came to an end in the year 2008; however, after more than seven years, i.e. statutorily

prescribed limitation for institution of the suit proceedings had ended, in the year 2015, the petitioner received a communication requiring the petitioner to remain present in connection with Arbitration Case no.21 of 2015 on 13.04.2015. Together with the communication, the petitioner received a purported statement of claim with similar language, font and style as notice of arbitration signed by the respondent no.1. It is submitted that a bare perusal of the language contained in the statement of claim so also the notice, it is clear that the person who has drafted the notice, is the same person, who drafted the statement of claim.

5.1 It is further submitted that in continuation of the notice, the petitioner has received a document titled 'Interim Measure Awarding' which appears to be an interim order under Section 17 of the Act of 1996 which, was signed by the respondent no.1; however, there was no such application filed under Section 17 by the respondent no.2. Also, no hearing was afforded to the petitioner and straightaway, 'Interim Measure Awarding' has been passed awarding Rs.5 crore to be paid by the petitioner to the respondent no.2. It is submitted that the petitioner, being aggrieved, approached this Court and vide order dated 20.08.2015, this Court, had issued notice and stayed the interim award dated 13.04.2015 so also further proceedings in connection with the Arbitration Case No. 21 of 2015 pending before the respondent no.1. It is further submitted that the respondent no.1 was directed to remain present but, he did not and the interim order was directed to be continued till further orders. After passing of the interim order, till the year 2020, no hearing took place and all of a sudden, in a cryptic manner, the respondent no.1 has passed 'final awarding' order dated 23.10.2020. Surprisingly, the so called award, has been passed directing the petitioner to pay an amount of Rs.11,25,29,524/- together with cost of Rs.15 lakhs to be paid to the

Tribunal. It is submitted that the award has been passed in contravention of the order dated 20.08.2015 read with order dated 03.09.2015 passed by this Court. Clearly, the said 'final awarding' order suggest that it is not an award, but a one page direction.

5.2 It is next submitted that the so-called award, is nothing, but arbitrary, unreasonable, judicially unconscionable and perverse exercise on the part of the respondent no.1 who, posed himself as a self-appointed suo motu sole arbiter. It is submitted that the respondent no.1, despite patently lacking jurisdiction under the Act of 1996, unilaterally influenced and contemplated the so called arbitration proceedings. It is further submitted that despite patently lacking jurisdiction under the Act of 1996 and the prohibitory and injunctive orders dated 20.08.2015 and 03.09.2015 passed by this Court, the respondent no.1 unilaterally commenced and completed the so called arbitration proceedings. It is submitted that not only the award, is patently lacking in jurisdiction but is passed in violation of the principles of natural justice, as, the proceedings have been initiated without any notice and the procedure under Section 11 of the Act of 1996 has not been followed.

5.3. While inviting the attention to the tabulated summary, it is submitted that various cases, have been initiated against the respondent no.1 before this Court. It is submitted that even the ICADR, has issued a public notice declaring that no person can pose himself as a sole arbitrator or conduct any arbitration proceedings without the consent of both the parties. It has also been clarified that no member can represent ICADR as an arbitrator. It is submitted that the respondent no.1, is a habitual impersonator, who concocts arbitration agreements when exists none and takes up the arbitration proceedings at the instance of any parties with an obvious intent of deceiving the parties, who got frightened on

receipt of the notices and making pay a huge arbitral fees. Therefore, the act on the part of the respondent no.1, is a fraud on society which, deserves to be condemned.

5.4. Reliance is placed on the judgment of the Apex Court in the case of *Harbanslal Sahnia v. Indian Oil Corporation Ltd* reported in (2003) 2 SCC 107. Reliance is also placed on the judgment of the High Court of Delhi rendered in CM (M) 1272/2019 and CM Appl.38540-61/2019 in the case of *Surender Kumar Singhal v. Arun Kumar Bhalotia.* It is submitted that the High Court of Delhi in paragraph 24 while considering various judgments, including the judgment in the case of *Deep Industries Limited vs. Oil and Natural Gas Corporation Limited* reported in (2020) 15 SCC 796 of the Apex Court in connection with the provisions of the Act of 1996 has held and observed that the arbitral tribunal is a tribunal against which, a petition under Article 226/227 would be maintainable. It has also held and observed that interference is permissible, if the order is perverse and patently lacking in inherent jurisdiction. It is therefore, submitted that in the petition, the respondent no.1 has been arraigned inasmuch as, the conducted of the respondent no.1 is an insult to the arbitration proceedings. It is therefore submitted that the so called 'Interim Measure Awarding' and 'Final Awarding' deserve to be quashed and set aside.

6. On the other hand, Mr Girish Das, learned advocate appearing for the respondent no.1 has opposed the entertainment of the writ petition. At the outset, it is submitted that Section 16 of the Act of 1996 provides for competence of arbitral tribunal to rule on its jurisdiction. It is submitted that it will be open for the tribunal to rule on its own jurisdiction, including the ruling on any objections with respect to the existence or validity of the arbitration agreement. It is submitted that arbitration clause which forms part of a contract,

shall be treated as an agreement independent of other terms of the contract. Sub-section (2) of Section 16 further provides for the stage for raising the plea. Sub-section (3) of Section 16 provides about raising of a plea that the tribunal is exceeding the scope of its authority and the stage thereof. Similarly, sub-section (4) of Section 16 provides for admitting of the plea and sub-section (5) provides for a decision on the plea by the tribunal. Sub-section (6) of Section 16 provides for the remedy and according to which, the said plea can be raised while challenging the award in accordance with Section 34. It is also submitted that the petitioner, could have waited and not rushed to this Court. It is also submitted that the respondent no.1, has been arraigned in private capacity and not as an arbitrator and therefore, petition is not maintainable. It is submitted that the respondent no.1 is not obliged to file any reply yet, the affidavit has been filed to maintain sanctity of this Court, so also the order dated 21.6.2021, treating it of having passed under Section 404 of the Criminal Procedure Code, 1973.

6.1. It is further submitted that reliance placed on the judgment dated 22.2.2013 of this Court passed in the petition under Arbitration Act no.101 of 2012, is in persona and not in rem and therefore, not applicable. It is further submitted that when there is an arbitration clause, as per the provisions of Section 8 of the Act of 1996, there is a power in the authority to refer parties to the arbitration, notwithstanding any judgment, decree or order of the Supreme Court or any Court.

6.2. It is further submitted that for the stay, separate application together with the petition challenging arbitral award is *sine qua non.* In absence of any such separate application, the stay granted, may not be continued inasmuch as, the same would be and against the mandate of sub-section (2) of Section 36. It is submitted that

therefore, either for grant or for the extension there has to be a separate application together with the reasons for staying the award. While reiterating, it is submitted that in the present case, in absence of any separate application, the stay ought not to have been granted and so also the extension. It is next submitted that contention raised by the petitioner that there is no arbitration clause is fallacious. A false statement has been made and therefore, no prayers deserve to be granted of quashing of the document.

6.3. Learned advocate appearing for the respondent no.1, has filed the additional arguments, gist whereof is:

(i) that there were four contempt petitions filed against the respondent no.1 which, have been finally heard and decided on 08.12.2021. No contempt proceeding has been initiated against the respondent no.1 as alleged.

(ii) that contempt petition being suo motu contempt – Miscellaneous Criminal Application no.20923 of 2015 in Special Civil Application no.13283 of 2015 has been disposed of without initiating any contempt proceeding against the respondent no.1.

(iii) that Special Civil Application no.13283 of 2015, has been filed by the petitioner against the interim award and the captioned writ petition, is filed against the final award and therefore, the subject matter is same.

(iv) that the suo motu contempt proceeding being Miscellaneous Criminal Application no.20923 of 2015, was argued by the learned advocate appearing for the petitioner. The contention raised in the captioned writ petition, was raised before the Division Bench. Request was also made to restrain the respondent no.1 from passing the awards; however, after hearing the learned advocate, the Hon’ble Division Bench, disposed of the contempt proceedings without initiating any proceedings on condition that the respondent no.1 shall remain present during the hearing of the captioned writ petition.

(v) that Apex Court, has dismissed the Special Leave Petition (Civil) Diary no.16139 of 2021 on the ground of delay, with a further clarification that the respondent no.1 shall continuously appear before the High Court in contempt petition personally on every date

of hearing and to abide by the directions that may be issued by the High Court.

(vi) that the respondent no.1, has obtained the Ph.D. decree in law from group of university certifying and reflecting the name of respondent no.1, as Dr Morris Christian.

No other and further submissions have been made.

7. Mr Shailesh V. Raval, learned advocate appearing for the respondent no.2 submitted that the final award has been passed and the petitioner, has been directed to make the payment. It is submitted that the Court may decide the quantum. It is also submitted that there is a delay of 14 years in making the payment, which is huge delay. Under the circumstances, the petition is not maintainable and be dismissed.

8. Heard the learned advocates appearing for the respective parties and perused the documents available on the record.

9. From the documents and various orders passed by this Court in different proceedings, the instant proceedings, turns out to be a classic case of perversity and arbitrary exercise of powers, by the respondent no.1. The respondent no.1, portrays himself as an arbitrator, conducts arbitration proceedings suo motu and awards are stated to be passed under the provisions of the Act of 1996. It is not clear as to how, when and under which provision and by what procedure his appointments are been effected. It appears that the respondent no.1, with the help and in connivance of the private parties, appoints himself as arbiter, get the applications prepared giving a colour of the arbitration proceedings and passes the so called awards. The respondent no.1, to say the least, has made a mockery of the proceedings before the Tribunal. The aforesaid statements, are substantiated by the orders passed in the

proceedings initiated against the respondent no.1, which are:- (i) Special Civil Application no.6027 of 2015, (ii) Special Civil Application no.6029 of 2015, (iii) Special Civil Application no.8052 of 2015, and (iv) Special Civil Application no.13283 of 2015.

10. In Special Civil Application no.6027 of 2015 and other allied matters, this Court, passed an order dated 03.09.2015. Original record was called for to examine as to under which authority or the provisions of the Act of 1996, that the respondent no.3 therein (the respondent no.1 herein), has functioned as sole arbitrator. Paragraphs 4, 5, 6 and 7 of the said order read thus:

> "4. By earlier order, the original record in all these petitions were called for, especially in order to examine that under which authority or under which provisions of the Arbitration Act, 1996, respondent No.3 has functioned as Sole Arbitrator in all these matters. Learned counsel for the petitioners in each of the petitions have categorically stated that no orders for appointment of respondent No.3 have been passed by any competent authority under the provisions of the Arbitration Act, 1996. The matter being serious, this Court had passed an order for calling for the original record.
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> 5. Ms.Manisha L. Shah, learned Government Pleader has expressed her inability to get the record except in one matter as respondent No.3 is not available at the given/known addresses.
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> 6. In opinion of this Court, respondent No.3 is avoiding the Court proceedings and has deliberately flouted the orders of this Court. Therefore, appropriate actions are required to be taken against respondent No.3 under the provisions of the Contempt Act, 1971 and under Article 215 of the Constitution of India.
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> 7. These matters be placed before Hon'ble the Acting Chief Justice for placing before the appropriate Bench taking up contempt matters."

11. Notably, this Court, observed that the matter is serious as respondent no.1, has functioned as sole arbitrator without any orders passed by any competent authority under the provisions of

the Act, and also is avoiding the Court proceedings and has deliberately flouted the order. Observing thus, the co-ordinate Bench directed initiation of the action under the Contempt of Courts Act, 1971 and under Article 215 of the Constitution of India. With this, the matter was directed to be placed before the Hon'ble the Acting Chief Justice taking up contempt matters. Special Civil Application no.6027 of 2015 and other allied matters, were placed before the Division Bench. While taking note of the order dated 03.09.2015, on 20.10.2015, this Court passed an order, observing thus:-

> "2. The background of these matters, as could be gathered from the documents, averments and submissions of counsel appearing for the parties, indicate that the respondent no. 3 in the proceedings, has posed himself as legally appointed Arbitrator for embarking upon arbitration proceedings, as if he was fully clothed with the requisite appointment orders and sanctity and issued orders as if the order was that of legally appointed Arbitration Tribunal. The orders passed by this respondent are subject matter of challenge and scrutiny in this group of matters. During proceedings of aforesaid matters and present matters, it has transpired that respondent no. 3 is posing himself as an Arbitrator without their being any legal authority and induces the concerned in selling out money by way of fees, expenditures etc. and therefore, on 27.8.2015, there was a specific order by learned Single Judge of this Court specifically directing him to remain present before this Court on 3.9.2015 at 11-00 AM and when the said respondent no. 3 disobeyed the order, the Court was constrained to pass order on 3.9.2015, which is absolutely clear qua the respondent no. 3 dogging the Court proceedings and causing great consternation to the parties and Court and create obstruction in the process of justice. Therefore, taking these facts into consideration, we are of the prima-facie view that there exists a case for issuing notice under Contempt of Courts Act against respondent no. 3, as the facts which have come on record, are sufficient to indicate that respondent no. 3 is liable to answer for his conduct as it primafacie amounts to contempt as defined under Section 2(c) of the Contempt of Courts Act.
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> 3. Hence, let there be a notice under Contempt of Courts Act to respondent no. 3, whose name and addresses are as under:

Mr. Morris Samuel Christian,
Sole Arbiter,
Arbitration Tribunal,
Plot No. 206/2, Nr. Post Office,
Dist. Shopping Centre,
Sector-21, Gandhinagar.

AND

Mr. Morris Samuel Christian
Arbitration Tribunal
237, 248, Near New Gopal Dairy,
Sector -24, Kolavada Road,
Gandhinagar.

4. At this stage, it is required to be noted that substantive proceedings in the form of writ petitions mentioned hereinabove are pending before the Court and as per roster, they would be placed before the learned Single Judge, as on account of contempt proceedings, hearing and proceedings of those matters may not have been delayed, therefore, the office will have to take out copies of Special Civil Applications and annexures of all the matters and orders passed thereunder and that shall be treated as a separate proceedings under the Contempt of Courts Act as Suo-motu Contempt proceedings and be numbered accordingly and copy of this order be placed in that separate proceedings also, as otherwise, all the substantive petitions mentioned hereinabove will have to unnecessarily be delayed. Office may do the needful for placing these matters after obtaining orders of Hon'ble Acting Chief Justice for substantive hearing and contempt proceedings after being numbered, the notice be processed. Hence, after taking copies of the proceedings, one set be numbered as Suo-motu proceedings and copy be served upon the respondent no. 3. The said notice is made returnable on 3.11.2015. The respondent no. 3 shall personally remain present to answer the notice. In case if the respondent no. 3 fails in presenting himself before the Court on the returnable date, the Court will be constrained to issue even nonbailable warrant. The notice be served through the concerned police station of the area and report of service be placed on record."

This Court, noted that the respondent is posing himself as an arbitrator without there being any legal authority and induces the concerned in shelling out money by way of fees, expenditures etc. The presence of the respondent was directed but the respondent avoided the presence in the Court proceedings. This Court therefore,

observed that the respondent, has been dodging the Court proceedings, causing great consternation to the parties and the Court and creates obstruction in the process of justice. Taking the facts into consideration, the Court was of the *prima facie* view that there exists a case for issuance of the notice under the Act of 1971.

12. The aforesaid order dated 20.10.2015 passed by the Division Bench, was subject matter of challenge before the Apex Court and the Apex Court, while dismissing the Special Leave to Petition, required the respondent no.1 to continuously appear before the High Court in the contempt petitions personally on every date of hearing and to abide by the directions which are or may further be issued by the High Court. The said contempt proceedings, came to be dropped accepting the apology tendered for not having appeared on the date he was directed to appear. Paragraph 4, 5 and 6 of the order dated 08.12.2021 passed by the Division Bench, read thus:

> "4. As such the present proceedings are pending against contemnor. Today the learned counsel appearing for the contemnor has filed affidavits in all the four cases stating thereunder that he was present in the Court personally on 03.09.2015 and had informed his Advocate to inform the Court that he intended to engage another Lawyer and the other Lawyer who he proposed to engage namely Shri G.M. Amin was on a sick leave and therefore, he did not have information as to what transpired on 27.08.2015 and as such he pleads that he was not having knowledge about the direction issued by this Court till 03.09.2015. In other words he pleads ignorance of having not appeared before the Court prior to 03.09.2015 due to lack of knowledge. It would be apt and appropriate to note at this juncture that Coordinate Bench taking cognizance of the contempt, as noticed hereinabove, had passed the order on 20.10.2015 which came to be challenged before the Hon'ble Apex Court in Special Leave Petition (Civil) Diary No. 16139/2021 which was rejected on 03.12.2021 on the ground of delay by observing :
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> "xxxxxxx While dismissing this petition on the ground of delay with the observations foregoing, we further make it clear that it shall be required of the petitioner to continuously appear before the High Court in the said contempt petition personally on

every date of hearing and to abide by the directions which are or may further be issued by the High Court."

5. In the affidavit, which has been filed today, the contemnor has expressed remorse and has tendered apology for having not appeared on the date he was directed to appear and has given an undertaking that he would continuously remain present henceforth in the proceedings pending before the Court. He has also deposed that he would be careful in future and as such he has prayed for dropping the proceedings initiated under the Contempt of Courts Act.

6. In the light of contemnor having expressed remorse, having tendered apology and having undertaken to appear before the Court in Special Civil Application No. 6027 of 2015, 6029 of 2015, 8052 of 2015 and 13283 of 2015 and on query by this Court, the contemnor who is present and who is identified by the learned counsel Mr. Girish M. Das, which is to the effect that contemnor would appear before the learned Single Judge on all the dates of hearing without waiting for any specific order or direction or issuance of notice from the Court and having regard to the fact that matter came to be referred for initiating contempt on account of the contemnor having failed to appear before the Court, we accept the affidavits and drop the contempt proceedings subject to the condition that contemnor shall appear before the learned Single Judge in Special Civil Application Nos. 6027 of 2015, 6029 of 2015, 8052 of 2015 and 13283 of 2015 on all the dates of hearing without fail as undertaken by him before this Court and in the event of the contemnor's failure to appear before the learned Single Judge or unless exempted, this order dropping of contempt proceedings would stand recalled and the contempt proceedings shall stand automatically revived without reference to the Bench."

This Court, dropped the contempt proceedings accepting the apology; however, warned the respondent no.1 that he shall remain present before this High Court on all the dates of hearing without waiting for any specific order or direction or issuance of the notice from the Court.

13. Yet in another proceedings being Special Civil Application no.15701 of 2015, this Court, considering the conduct, has noted that the facts are not only shocking, but goes to the root of the very existence of the legal system in the State. Unnumbered paragraph 3

of the order dated 27.10.2015, reads thus:

> "The facts narrated in this petition are not only shocking, but it goes to the root of very existence of the legal system in this State. It appears that respondent No.2 has assumed jurisdiction under the provisions of the Arbitration and Conciliation Act, 1996 and has the audacity to pass the order as if he is parallel to the Court. In addition to that, what is more shocking is that in his correspondences and orders, he has mentioned patron Chief Justice of India. Rule of law prevails in this country. *Prima facie,* allotment is in the name of the petitioner is indicative from the allotment letter, which is annexed as Annexure-B (colly). The very jurisdiction which respondent No.2 has assumed is without jurisdiction and mala fide exercise of powers and jurisdiction which respondent No.2 does not possess in the eye of law. Hence, the matter requires consideration."

The co-ordinate bench has noted that the respondent has an audacity to pass an order as if he is parallel to the Court. This Court has also pointed out that the jurisdiction which the respondent has assumed is without jurisdiction and the mala fide exercise of powers which he does not possess in the eyes of law. Similar other such criminal proceedings, are set out in the tabulated form (page no.84); however, the same are not referred to in detail as the aforesaid proceedings, are sufficient to set out the conduct of the respondent no.1 to be atrocious, mala fide and making the mockery of the legal system.

14. At this stage, a warning issued by the International Centre for Alternative Dispute Resolution (ICADR) is also worth referring to. It has clarified that no person can pose himself as a sole arbitrator or conduct any arbitration proceedings without consent of both the parties. It has also been recorded that the respondent, has been indulging in malpractices, that is, misrepresenting the institutions which enrolled him as a member in good faith and poses himself as an arbitrator of the concerned institution. The notice reads thus:

> "TO WHOMSOEVER IT MAY CONCERN
>
> Mr. Morris Samuel, Advocate, Gujarat, became Annual Member of ICADR on 17th November, 2014. No Member can represent ICADR as an Arbitrator. **It is clarified for the information of all the Parties that no person can impose himself as a Sole Arbitrator or conduct any Arbitration Proceeding without the consent of both the parties.** Mr. Samuel's Annual Membership will cease shortly because he has been indulging in many malpractices e.g., misrepresenting the Institution which enrolled him as Member in good faith and posing as an Authorised Arbitrator of the concerned Institutions – **a totally false claim in so far as ICADR is concerned.** Such malpractices have been bought to our notice by various parties. Thus anybody/person dealing with Mr and Mr. Morris Samuel Christian as Arbitrator, etc., will be doing so as his own risk."

15. Therefore, the respondent no.1, appears to be in habit of impersonating himself as an arbitrator without there being any order of the competent Court or agreement by both the parties appointing him as an arbitrator for conduct of the arbitration proceedings. Perceptibly, the respondent, portrays himself as an arbitrator, calls the parties and conducts the arbitration proceedings as if he is a duly appointed arbitrator under the provisions of the Act of 1996. It is surprising to note that though he claims to be an arbitrator, it is difficult to fathom the authority under which the respondent no.1 is capable of acting as an arbitrator. Besides, the tone and tenor of the orders passed by the arbitrator, in the language, which contains not only grammatical mistakes but even spelling mistakes. This is not to suggest that such mistakes, would make the order illegal; however, what the Court is trying to suggest is that the mode of appointment, conduct of the arbitration proceedings and the nature of the orders passed, are not in conformity with the proceedings envisaged under the law, and clearly, mala fide. Various proceedings have been initiated against

the respondent no.1 and various orders have been passed, deprecating the conduct of the respondent no.1; however, the respondent no.1, is unable to put any self restraint and has continued passing further awards, conducting arbitration proceedings without any authority of law. Such a conduct on the part of the respondent no.1, is malicious attempt befooling the public at large and fraud on society.

16. In the instant case, the facts are such that the work orders were issued by the petitioner in favour of the respondent no.2 in the year 2006-07 for the sale of non-plant grade Bauxite from the Meswana mines operated by the petitioner. The contractual relationship between the petitioner and the respondent no.2 came to an end in the year 2008 and after more than seven years, in the year 2015, a communication was received by the petitioner, requiring the petitioner to remain present on the date specified, which was duly replied to by the petitioner on 10.04.2015, *inter alia*, expressing reservation that the petitioner has not agreed to the respondent no.1 for being appointed as an arbitrator and that there is no arbitration clause between the parties as per the contract. What came, was the so called 'Interim Measure Awarding' dated 15.04.2015 whereby, the claim amount of Rs.5,00,97,343/- together with interest came to be awarded in favour of the petitioner.

17. The petitioner, immediately rushed before this Court by filing Special Civil Application no.13283 of 2015. This Court, initially issued notice and stayed the interim order in Arbitration Case no.21 of 2015 and thereafter, another order dated 03.09.2015, came to be passed observing in paragraphs 3 to 6 thus:-

> "3. It was pointed out by learned counsel for the parties including Mr.Chunara that respondent No.3 was personally present in the Court premises and the Court was informed that he wanted to engage some lawyer.

> 4. By earlier order, the original record in all these petitions were called for, especially in order to examine that under which authority or under which provisions of the Arbitration Act, 1996, respondent No.3 has functioned as Sole Arbitrator in all these matters. Learned counsel for the petitioners in each of the petitions have categorically stated that no orders for appointment of respondent No.3 have been passed by any competent authority under the provisions of the Arbitration Act, 1996. The matter being serious, this Court had passed an order for calling for the original record.
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> 5. Ms.Manisha L. Shah, learned Government Pleader has expressed her inability to get the record except in one matter as respondent No.3 is not available at the given/known addresses.
>
> 6. In opinion of this Court, respondent No.3 is avoiding the Court proceedings and has deliberately flouted the orders of this Court. Therefore, appropriate actions are required to be taken against respondent No.3 under the provisions of the Contempt Act, 1971 and under Article 215 of the Constitution of India."

18. Therefore, from the aforesaid order, it is clear that the proceedings before the respondent no.1, has been stayed. Disregarding the said proceedings and in a high-handed manner, the respondent no.1, has passed the order 'Final Awarding' dated 23.10.2020, allowing the arbitration case. It can be culled out from the said order that award has been passed against the petitioner and in favour of the respondent no.2. It has been directed to pay Rs.11,25,29,524/- to the respondent no.2 within 10 days, which has led to the filing of the captioned writ petition. Despite there being stay order granted, and various other orders passed, the respondent no.1 had an audacity to once again pass the 'Final Awarding' dated 23.10.2020. The said 'Final Awarding', is nothing but an abuse of process of Court arbitrary and perverse exercise by the respondent. By no stretch of imagination, it can be said that the said order, carries any legality in the eyes of law.

19. Despite various orders having been passed castigating the

conduct of the respondent no.1, submissions are made on behalf of the respondent no.1 opposing the petition, without pointing out the authority in his favour to conduct the arbitration proceedings. It was expected of the respondent no.1 to have shown its authority. Nothing has been placed on record to buttress the appointment of the respondent no.1 under the provisions of the Act of 1996 or otherwise for resolution of the disputes between the parties. In absence of any authority, conduct of the respondent no.1, to say the least, is nothing, but making mockery of legal system.

20. At this stage, let me also deal with the arbitration clause. it is required to be noted that self-same arbitration clause was subject matter of issue before this Hon'ble Court in the case of petition under the Arbitration Act no.101 of 2012 and other allied matters. This Court, after hearing at length and discussing various judgments, has observed thus:-

> "Having thus heard the learned counsel for the parties, if we revert back to the work order, the same makes detailed provisions governing the rights and liabilities of the parties. Para 12 thereof though titled as arbitration only provides that any dispute arising out of the contract shall be subject to jurisdiction of the Ahmedabad court only. There is no reference to any intention of the parties to resort to arbitration as the only option to resolve the disputes. In fact, it does not even refer to arbitration even as an optional remedy. Other than the title to para 12, the entire agreement makes no reference to arbitration. The question is would the title to para 12 without any further condition of compulsory arbitrability of the dispute give rise to a valid arbitration agreement? The answer obviously has to be in the negative. The entire agreement, read as a whole, with special focus on para 12 thereof leaves no manner of doubt that the parties never envisaged arbitration as a compulsory remedy. Different clauses provide for detailed working out of the works order and take care of the rights and liabilities of the parties in different situations. Nowhere in the entire agreement, there is any reference to dispute resolution mechanism through arbitration or otherwise. In plain terms, thus, the parties never intended to resort to compulsory arbitration in case disputes arose. Had there been some

intention emerging from the contract and there was some ambiguity in discerning the clear intention of the parties, the argument raised by the learned counsel for the petitioner on the basis of so called conduct between the parties would have given rise to an interesting question. In the present petition, I need not go into that direction plainly because, to my mind, there is no ambiguity in the contract with respect to non-existence of the arbitration agreement. In case of Watcham (supra) also it was observed as under:

> "In all these cases the ambiguity, such as it was, was patent not latent. They in no way conflict with the decision in *Clifton v. Walmesley* to the effect that where a convenant in a lease is clear and unambiguous the parties whatever their intention, in fact, may have been on entering into it are bound by its terms and extraneous evidence cannot be received in explanation of it. To the same effect are the judgments of Lords Blackburn and Watson in the Trustees of the *Clide Nevigation v. Laird.* The case of *Cooke v. Booth* to the contrary effect has been discredited and cannot now be regarded as well decided: *Baynham v. Guy s Hospital*.

Parameters of a valid arbitration agreement are discussed by the Supreme Court in number of decisions. As rightly pointed out by the counsel for the respondents, in the case of K.M.Modi (supra), the Supreme Court in this context observed as under :

17. Among the attributes which must be present for an agreement to be considered as an arbitration agreement are :

(1) The arbitration agreement must contemplate that the decision of the tribunal will be binding on the parties to the agreement,

(2) That the jurisdiction of the tribunals to decide the rights of parties must derive either from the consent of the parties or from an order of the Court or from a statute, the terms of which make it clear that the process is to be an arbitration,

(3) The agreement must contemplate that substantive rights of parties will be determined by the agreed tribunal,

(4) That the tribunal will determine the rights of the parties in an impartial and judicial manner with the tribunal owing an equal obligation of fairness towards both sides,

(5) That the agreement of the parties to refer their disputes to the decision of the tribunal must be intended to be enforceable in law and lastly,

(6) The agreement must contemplate that the tribunal will

> make a decision upon a dispute which is already formulated at the time when a reference is made to the tribunal.
>
> This position was followed in subsequent decisions including in the case of Jagdish Chander (supra). In the said case before Supreme Court, the parties had agreed that if during the continuance of the partnership or at any time afterwards any dispute touching the partnership arises between the parties, the same shall be mutually decided by the partners or shall be referred for arbitration if the parties so determine . In such context the Supreme Court held that the contract did not constitute an arbitration agreement.
>
> In the result, I do not find any case for appointment of an arbitration in the present case. One may recall that the additional factor of the parties allegedly having resorted to arbitration on previous occasion is present only in Arbitration Petition No.101/12 and in other two petitions, even this argument is not available to the petitioner."

21. While rejecting an application under sub-section (6) of Section 11, this Court, did not direct the appointment of the arbitrator holding that though the clause, is titled as 'arbitration', it only provides that any dispute arising out of the contract shall be subject to the jurisdiction of the Ahmedabad Court only. It has been pointed out that there is no reference to intention of the parties to resort to arbitration as the only option to resolve the disputes and that it does not even refer to arbitration even as an optional remedy. This Court, noted that entire agreement, read as a whole, with special focus on paragraph 12 thereof leaves no manner of doubt that the parties never envisaged arbitration as a compulsory remedy. This Court, also noted that the different clauses provide for detailed working out of the works order and take care of the rights and liabilities of the parties in different situation. No where in the entire agreement there is any reference to the dispute resolution mechanism through arbitration or otherwise. As aforestated, the petitions were dismissed seeking appointment of the arbitrator under the provisions of the Act of 1996.

22. Therefore, clause 09 in the work order, did not envisage arbitration as a compulsory remedy. Such clause, would not construe to mean that it is an arbitration clause for resolution of the disputes between the parties. In absence of any authority and the clause having been interpreted and construed to be not an arbitration clause, the proceedings before the respondent no.1, were nothing but a farce.

23. Adverting to the aspect of maintainability of the captioned writ petition, it is by now well settled that the arbitral tribunal is a tribunal against which a petition under Article 226/227 of the Constitution of India, would be maintainable. In the case of *M/s. Deep Industries Limited v. Oil and Natural Gas Corporation Limited*, the Apex Court, has held and observed that if the petitions were to be filed under Article 226/227 of the Constitution of India against the orders passed in appeals under section 37, the entire arbitral process would be derailed and would not come to fruition for many years. It has also been held and observed that at the same time, Article 227 is a constitutional provision which remains untouched by the non-obstante clause of Section 5 of the Act. Though petitions can be filed under Article 227 against the judgments allowing or dismissing the first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction. It is true that High Court, would be extremely circumspect in interfering with any orders that may be passed during the arbitration proceedings; however, if it is pointed out that the order suffers from perversity and is patently lacking in inherent jurisdiction, the exercise of the powers under Article 226/227 of the Constitution of India, are not restricted and interference is

permissible.

24. Paragraph 24 of judgment of the High Court of Delhi in the case of *Surendra Kumar Singhal vs. Arun Kumar Bhalotia* rendered in CM(M) 1272/2019 & CM APPLs 38560/2019, 38561/2019, 41024/2019, is worth referring to.

> "24. A perusal of the above-mentioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Article 226/227 in challenges to orders by an arbitral tribunal including orders passed under Section 16 of the Act.
>
> (i) An arbitral tribunal is a tribunal against which a petition under Article 226/227 would be maintainable;
>
> (ii) The non-obstante clause in section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a Constitutional provision;
>
> (iii) For interference under Article 226/227, there have to be `exceptional circumstances';
>
> (iv) Though interference is permissible, unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere;
>
> (v) Interference is permissible only if the order is completely perverse i.e., that the perversity must stare in the face;
>
> (vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process;
>
> (vii) Excessive judicial interference in the arbitral process is not encouraged;
>
> (viii) It is prudent not to exercise jurisdiction under Article 226/227;
>
> (ix) The power should be exercised in `exceptional rarity' or if there is `bad faith' which is shown;
>
> (x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided."

25. In view of the above discussion, the petition would be very much maintainable. In the present case, perversity is writ large so

also lack of inherent jurisdiction in the respondent no.1. Therefore, on all counts, the 'Interim Measure Awarding' dated 13.04.2015 so also 'Final Awarding' dated 23.10.2020, deserve to be quashed and set aside and are hereby quashed and set aside.

26. In view of the above-mentioned discussion, the conduct on the part of the respondent no.1, is required to be deprecated. Let the respondent no.1, not befool the innocent people, invite them for conducting the arbitration proceedings and require parties to participate without any agreement between the parties appointing him as an arbitrator, and pass award without any authority. While concluding, let me place on record a word of caution to the respondent no.1 that, he shall not further indulge into the act of impersonating himself as an arbitrator and conduct arbitration proceedings at his whims and fancies.

27. Thus, the petition, succeeds and is accordingly allowed. Rule is made absolute. No order as to costs.

28. In view of disposal of the main writ petition, the Civil Application (for direction) no.1 of 2021, so also Civil Application (for direction) no.1 of 2022 , do not survive and the same are disposed of accordingly.

(SANGEETA K. VISHEN,J)

RAVI PATEL/BINOY B PILLAI