

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.13 of 2014

M/s. Gulab Chand Jain, through its Proprietor namely Gulab Chand Jain, S/o Rani Dan Jain, aged about 60 years, R/o 31-32 Arihant Complex, Pachpedi Naka, Raipur, Tahsil, P.S. & Distt. Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Public Works Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, Distt. Raipur (C.G.)
2. Executive Engineer, Public Works Department, National Highway, Division-1, Raipur, Distt. Raipur (C.G.)

---- Respondents

Civil Revision No.14 of 2014

M/s. Deva Construction, through its Proprietor Mohammad Nasim Varsi, S/o Musa Bhai Warasi, aged about 44 years, R/o Near Sheetla Mandir, Gariyaband, Post Office, P.S. & Distt. Gariyaband (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Panchayat & R.E.S., Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, Distt. Raipur (C.G.)
2. The Executive Engineer, R.E.S. Division, Mahasamund, Distt. Mahasamund (C.G.)

---- Respondents

Civil Revision No.15 of 2014

M/s. Avinash Construction, Nalanda Jyoti Vidyalaya, Subhash Nagar, Telibandha, Post Office Ravigram, Raipur, through its Proprietor namely Ayodhya Singh, S/o Late Nagina Singh, aged about 65 years, present residence at Subhash Nagar, Telibandha, Post Office Ravigram, Raipur, PS and Distt. Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Managing Director, CIDC, LIC, Commercial Complex, Pandri, Raipur, Distt. Raipur (C.G.)
2. The Divisional Manager, CIDC, Transport Department, Bilaspur, Distt. Bilaspur (C.G.)

---- Respondents

Civil Revision No.16 of 2014

Mohammad Faruk Warasi, S/o Musa Bhai Warasi, aged about 50 years, Proprietor Arihant Complex, Pachpedi Naka, Raipur, Police Station, Tahsil & Distt. Raipur, present residence at Tagore Nagar, Raipur, Police Station & Distt. Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Public Works Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, Distt. Raipur (C.G.)
2. Executive Engineer, Public Works Department, National Highway, Division-1, Raipur, Distt. Raipur (C.G.)

---- Respondents

Civil Revision No.17 of 2014

Mohammad Faruk Warasi, S/o Musa Bhai Warasi, aged about 50 years, Proprietor Arihant Complex, Pachpedi Naka, Raipur, Police Station, Tahsil & Distt. Raipur; present residence at Tagore Nagar, Raipur, Police Station & Distt. Raipur (C.G.)

---- Petitioner

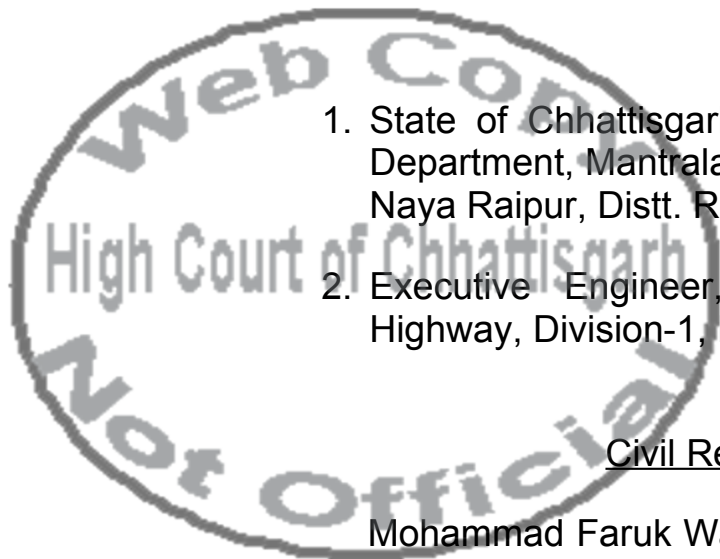
Versus

1. State of Chhattisgarh, through the Secretary, Public Works Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, Distt. Raipur (C.G.)
2. Executive Engineer, Public Works Department, National Highway, Division-1, Raipur, Distt. Raipur (C.G.)

---- Respondents

Civil Revision No.18 of 2014

Mohammad Faruk Warasi, S/o Musa Bhai Warasi, aged about 50 years, Proprietor Arihant Complex, Pachpedi Naka, Raipur, Police Station, Tahsil & Distt. Raipur, present residence at



Tagore Nagar, Raipur, Police Station & Distt. Raipur (C.G.)
---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Public Works Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, Distt. Raipur (C.G.)
2. Executive Engineer, Public Works Department, National Highway, Division-1, Raipur, Distt. Raipur (C.G.)
---- Respondents

Civil Revision No.19 of 2014

Mohammad Faruk Warasi, S/o Musa Bhai Warasi, aged about 50 years, Proprietor Arihant Complex, Pachpedi Naka, Raipur, Police Station, Tahsil & Distt. Raipur, present residence at Tagore Nagar, Raipur, Police Station & Distt. Raipur (C.G.)
---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Public Works Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, Distt. Raipur (C.G.)
2. Executive Engineer, Public Works Department, National Highway, Division-1, Dhamtari, Distt. Dhamtari (C.G.)
---- Respondents

AND

Civil Revision No.20 of 2014

Mohammad Faruk Warasi, S/o Musa Bhai Warasi, aged about 50 years, Proprietor Arihant Complex, Pachpedi Naka, Raipur, Police Station, Tahsil and Distt. Raipur; present residence at Tagore Nagar, Raipur, Police Station & Distt. Raipur (C.G.)
---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Public Works Department, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, Distt. Raipur (C.G.)
2. Executive Engineer, Public Works Department, Division-3, Raipur, Distt. Raipur (C.G.)
---- Respondents

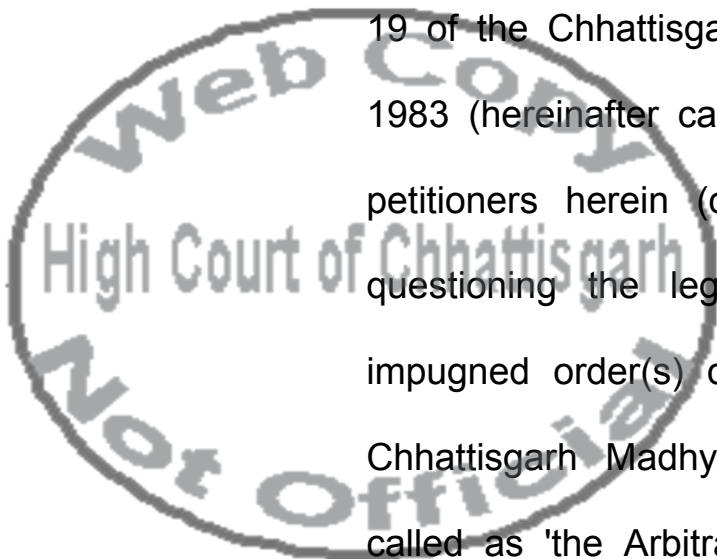
For Petitioners:	Mr. V.K. Pandey, Advocate.
For State:	Mr. Neeraj Jain, Govt. Advocate.
For Respondent No.2 in Civil Revision No.15/2014:	Mr. Anup Majumdar, Advocate.
<i>Amicus Curiae</i> :	Mr. Anurag Dayal Shrivastava, Adv.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

08/07/2016

1. Invoking the revisional jurisdiction of this Court under Section 19 of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter called as 'the Act of 1983' for short), the petitioners herein (contractors) have filed these revisions questioning the legality, validity and correctness of the impugned order(s) dated 7-5-2013 passed by the learned Chhattisgarh Madhyastham Adhikaran, Raipur (hereinafter called as 'the Arbitration Tribunal' for short), whereby their applications filed under Section 17-A of the Act of 1983 for recalling the order dated 13-1-2012 and restoration of reference petitions filed, were dismissed on the ground of lack of jurisdiction / non-maintainability by the Arbitration Tribunal constituted under the Act of 1983.
2. Aforesaid applications were dismissed by the learned Arbitration Tribunal on the following factual background: –
3. The petitioner(s) herein filed reference petitions under Section 7 of the Act of 1983 by raising dispute regarding non-payment



of dues towards the work contract with the respondent State.

4. The above-stated applications were rejected by the learned Arbitration Tribunal by order dated 13-1-2012. The learned Arbitration Tribunal considered the said reference on the issue of maintainability / jurisdiction of the Tribunal and without entering into the merits of the claim reached to the conclusion that the agreement which was executed between the parties contains arbitration clause as clause 29 which provides for forum to the parties to place their disputes. It was further considered and held that as per the said arbitration clause, the dispute firstly was required to be referred to the Superintending Engineer in writing for his decision and the decision thereof is amenable to the Chief Engineer. The person aggrieved by the decision of the Chief Engineer can refer the dispute to the Arbitration Board to be constituted by the State Government consisting of three members and the constitution of the said Tribunal is different from constitution of the Tribunal as constituted under Section 3 of the Act of 1983 and as such, the disputes need to be referred to the final authority and thereafter to the Arbitration Tribunal as mentioned in the agreement, not to this Tribunal and thereafter placing reliance on the decision of the Supreme Court in the matter of **VA Tech Escher Wyass Flovel Limited v. Madhya Pradesh State Electricity Board and another**¹ and further

¹ (2011) 13 SCC 261

placing reliance on the decision of Ravikant Bansal v. Madhya Pradesh Rural Road Development Authority and another² the Arbitration Tribunal dismissed the reference petitions holding that in view of the decision of the Supreme Court, the matter is beyond the jurisdiction of this Tribunal. Thereafter, on 17-5-2012, the petitioners herein filed an application under Section 17-A of the Act of 1983 for recalling of orders and restoration of reference petition stating inter alia that the judgments of the Supreme Court in VA Tech (supra) and Ravikant Bansal (supra) have been rendered *per incuriam* by the Supreme Court in the matter of Madhya Pradesh Rural Road Development Authority and another v. L.G. Chaudhary Engineers and Contractors³ decided on 24-1-2012, therefore, the order dismissing the reference petition for want of jurisdiction / non-maintainability be recalled and the reference petition be restored to its original file for hearing and disposal in accordance with law. Learned Arbitration Tribunal by its impugned order rejected the said application holding that in view of the second proviso to Section 17-A of the Act of 1983, the Tribunal has no power to review its own award and further held that the reference petition filed by the petitioner was rejected on 13-1-2012 relying upon the decision of the Supreme Court in VA Tech

2 (2012) 3 SCC 513

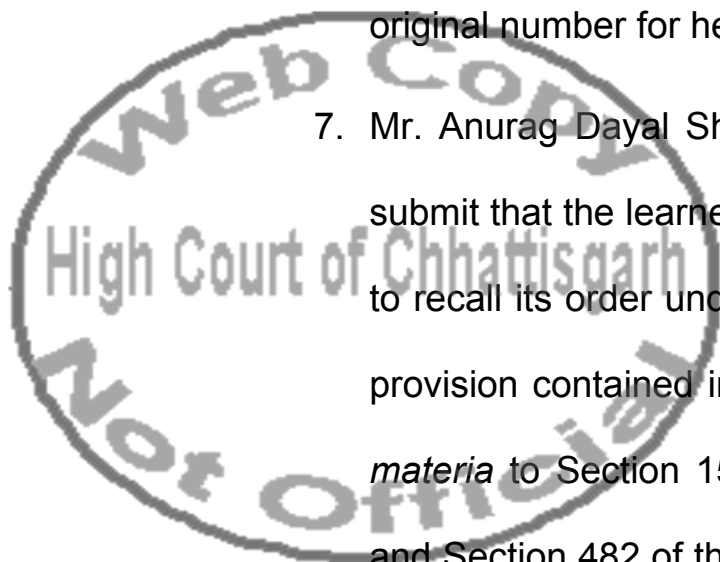
3 (2012) 3 SCC 495

(supra), as the law operative on the date of decision by this Tribunal and further held that the subsequent decision rendered by the Supreme Court in **L.G. Chaudhary's** case (supra) on 24-1-2012 will not give ground to the petitioner to seek recall or review of its order passed by the Tribunal on 13-1-2012 and the petitioner is free to file a revision under Section 19 of the Act of 1983 challenging the order of the Tribunal dismissing the reference petition on the ground of want of jurisdiction. Feeling aggrieved against the order rejecting his application for recalling the earlier order and restoration of reference petition, these revision petitions have been filed by the petitioners under Section 19 of the Act of 1983.

5. Since the question involved in other civil revisions namely Civil Revision Nos.14/2014, 15/2014, 16/2014, 17/2014, 18/2014, 19/2014 and 20/2014 are identical in nature, all the eight civil revisions are being disposed of by this common order. However, facts of C.R.No.13/2014 are taken as a lead case to determine the issue.
6. Mr. V.K. Pandey, learned counsel appearing for the petitioners, would submit that the Arbitration Tribunal is absolutely unjustified in dismissing the application for recall and restoration of reference petition mainly on the ground that the Tribunal has no power to review its own order and the view

of the Tribunal that it cannot recall its order dismissing reference petition is clearly contrary to the express provision contained in Section 17-A of the Act of 1983 which in no uncertain terms confers inherent power to the Arbitration Tribunal to recall its own order passed on the basis of law which had subsequently been held not to be a good law for the ends of justice and therefore the impugned orders deserve to be set aside and all the reference petitions be restored to their original number for hearing in accordance with law, on merits.

7. Mr. Anurag Dayal Shrivastava, learned amicus curiae, would submit that the learned Arbitration Tribunal has inherent power to recall its order under Section 17-A of the Act of 1983. The provision contained in Section 17-A of the Act of 1983 is *pari materia* to Section 151 of the Code of Civil Procedure, 1908 and Section 482 of the Code of Criminal Procedure, 1973. He would further submit that Section 17-A of the Act of 1983 is a non obstante clause and is a overriding provision and it can be exercised to secure the ends of justice and to prevent abuse of the process of the Tribunal. He would also submit that the Tribunal has inherent power to restore the review petition as the Tribunal had decided its own jurisdiction in negative and subsequently on changed circumstances, if it found that it has jurisdiction on the matter to hear and dispose-of it on merits then under the power inherently vested on it under Section 17-



A of the Act of 1983, the earlier order by which the Tribunal had ruled out its jurisdiction in negative can be revoked and recalled by considering that the jurisdiction is vested in it to decide it finally. It neither comes under the purview of review of award nor review of its earlier order, it is only a question of ruling of jurisdiction by the authority itself which has ample power to do so. He would contend that there is difference between 'review' and 'recall'. He brought to the notice of this Court the decision of the Supreme Court in the matter of Grindlays Bank Ltd. v. The Central Government Industrial Tribunal and others⁴ to point out the difference between 'procedural review' and 'review on merits'. He would also bring to the notice of the Court the purpose of enacting the Act of 1983 by stating that it is a special Act providing special statutory forum for the Arbitration relating to 'works-contract' as defined in Section 2(1)(i) of the Act of 1983. He would further contend that this is an appropriate case where in view of the law laid down by the Supreme Court in L.G. Chaudhary's case (supra), the matter deserves to be remitted to the Arbitration Tribunal for hearing the reference petitions strictly on merits, in accordance with law.

8. Mr. Nereraj Jain, learned Government Advocate appearing on behalf of the State of Chhattisgarh, would support the impugned order and would submit that learned Arbitration

⁴ AIR 1981 SC 606

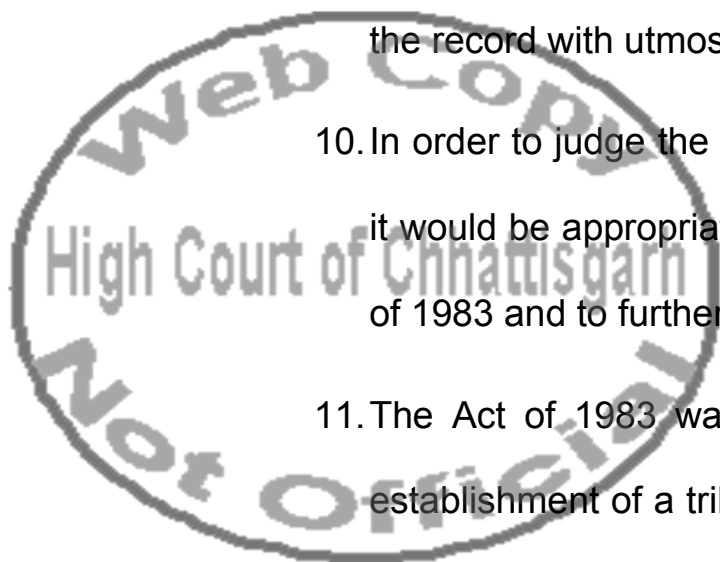
Tribunal is absolutely justified in rejecting the applications for recall of earlier order and restoration of reference petitions as such, it would amount to review of the award which is expressly barred by the first proviso to Section 17-A of the Act of 1983 and therefore the impugned orders warrant no interference and the civil revisions deserve to be dismissed.

9. I have heard learned counsel for the parties and considered the rival submissions made by them and also gone through the record with utmost circumspection.

10. In order to judge the correctness of the plea raised at the Bar, it would be appropriate to notice the object of enacting the Act of 1983 and to further notice the relevant statutory provisions.

11. The Act of 1983 was enacted as an Act to provide for the establishment of a tribunal to arbitrate in disputes to which the State Government or a Public Undertaking wholly or substantially owned or controlled by the State Government, is a party, and for matters incidental thereto or connected therewith.

12. The word 'Tribunal' has been defined as the Tribunal constituted under Section 3 of the Act of 1983 and includes a Bench thereof constituted under Section 9 of the said Act. Sub-section (2) of Section 2 of the Act of 1983 provides that words and expressions used but not defined in this Act, but defined in the Arbitration Act shall have the meanings



assigned to them in the Arbitration Act.

13. Section 3 of the Act of 1983 provides for Constitution of Tribunal by a notification issued by the State Government. Section 7 states about Reference to Tribunal. Section 17 states about Finality of award. Section 17-A provides for Inherent Powers. It is appropriate to notice Inherent Powers of the Tribunal which have been envisaged in Section 17-A of the Act of 1983 and which reads as follows:-

“17-A. Inherent Powers.—Nothing in this Act shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such order as may be necessary for the ends of justice or to prevent abuse of the process of the Tribunal :

Provided that no interim order by way of injunction, stay or attachment before award shall be granted:

Provided further that the Tribunal shall have no power to review the award including the interim award.”

14. A careful perusal of the above-stated provisions would show that Section 17-A of the Act of 1983 contains a non obstante clause as it begins with the words “nothing in this Act” which mean that this provision is an overriding provision. This provision leaves no manner of doubt that none of the provisions of the Act of 1983 limits or restricts the exercise of inherent power by the Tribunal which is necessary for ends of justice or to prevent abuse of the process of the Tribunal. However, the second proviso to Section 17-A only states that

the Tribunal shall have no power to review the award including the interim award. The word 'award' or 'interim award' has not been defined in the Act of 1983.

15. It is also pertinent to note that Section 17-A of the Act of 1983 is a *pari materia* provision to Section 482 of the CrPC and Section 151 of the CPC. For the sake of convenience, Section 482 of the CrPC and Section 151 of the CPC are reproduced herein-below: -

Section 482 of the CrPC

“482. Saving of inherent powers of High Court.—Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

Section 151 of the CPC

“151. Saving of inherent powers of Court.— Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

16. It is well settled that now, all the Courts, whether civil or criminal, including the Tribunals possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principles *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non protest* (when the law gives a person anything it

gives him that without which it cannot exist). The Tribunal, therefore, has inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. Section 17-A of the Act of 1983 envisages two circumstances under which the inherent jurisdiction may be exercised namely to secure the ends of justice and to prevent abuse of the process of Tribunal. This Section only recognises and preserves inherent power to the Tribunal. This inherent power is meant to act *ex debito justitiae* to do real and substantial justice for administration of which alone it exists.

17. The Supreme Court in the matter of **Gian Singh v. State of Punjab and another**⁵ observed in paragraphs 20 and 55 of its judgment regarding inherent power as under: -

“20. More than 65 years back, in *King Emperor v. Khwaja Nazir Ahmad*⁶, it was observed by the Privy Council that Section 561-A (corresponding to Section 482 of the Code) had not given increased powers to the Court which it did not possess before that section was enacted. It was observed:

“The section gives no new powers, it only provides that those which the court already inherently possess shall be preserved and is inserted lest, as Their Lordships think, it should be considered that the only powers possessed by the court are those expressly conferred by the Criminal Procedure Code and that no inherent power had survived the passing of the Code.”

5 (2012) 10 SCC 303

6 (1943-44) 71 IA 203 : (1945) 47 Bom LR 245

55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non protest*. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.”

18. Likewise, the power vested with the civil Court under Section 151 of the CPC has been considered by the Supreme Court in the matter of K.K. Velusamy v. N. Palanisamy⁷ and it has been observed in paragraph 12 as under: -

“12. The scope of Section 151 has been explained by this Court in several decisions [see *Padam Sen v. State of U.P.*⁸, *Manohar Lal Chopra v. Seth Hiralal*⁹, *Arjun Singh v. Mohindra Kumar*¹⁰, *Ram Chand and Sons Sugar Mills (P) Ltd. v. Kanhayalal Bhargava*¹¹, *Nain Singh v. Koonwarjee*¹², *Newabganj Sugar Mills Co. Ltd. v. Union of India*¹³, *Jaipur Mineral Development Syndicate v. CIT*¹⁴, *National Institute of Mental Health & Neuro Sciences v. C. Parameshwara*¹⁵

7 (2011) 11 SCC 275

8 AIR 1961 SC 218 : (1961) 1 Cri LJ 322

9 AIR 1962 SC 527

10 AIR 1964 SC 993

11 AIR 1966 SC 1899

12 (1970) 1 SCC 732

13 (1976) 1 SCC 120 : AIR 1976 SC 1152

14 (1977) 1 SCC 508 : 1977 SCC (Tax) 208 : AIR 1977 SC 1348

15 (2005) 2 SCC 256

and Vinod Seth v. Devinder Bajaj¹⁶]. We may summarise them as follows:

(a) Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognises the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is “right” and undo what is “wrong”, that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, Section 151 recognises and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is coextensive with the need to exercise such power on the facts and circumstances.

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*** *** ***”

19. Thus, on the basis of aforesaid discussion, it is quite vivid that Section 17-A of the Act of 1983 confers an inherent power upon the Tribunal which can be exercised by the Tribunal in the facts and circumstances of the case to secure the ends of justice and to prevent the abuse of the process of the Tribunal. By the second proviso to Section 17-A, only the power to review the award including the interim award has been barred. There is a noticeable difference between “review” and “recall”. The power of recall is different than the power of altering or reviewing the judgment. The difference between review and recall has been considered by the Supreme Court in the

16 (2010) 8 SCC 1 : (2010) 3 SCC (Civ) 212

matter of **Vishnu Agarwal v. State of U.P. & Anr.**¹⁷ by holding in paragraph 9 as under: -

"9. Apart from the above, we are of the opinion that the application filed by the respondent was an application for recall of the Order dated 2.9.2003 and not for review. In *Asit Kumar v. State of West Bengal and Ors.*, 2009 (1) SCR 469 : (AIR 2009 SC (Supp) 282), this Court made a distinction between recall and review which is as under:-

"There is a distinction between a review petition and a recall petition. While in a review petition, the Court considers on merits whether there is an error apparent on the face of the record, in a recall petition the Court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing to an affected party. We are treating this petition under [Article 32](#) as a recall petition because the order passed in the decision in *All Bengal Licensees Association v. Raghendra Singh & Ors.* [2007 (11) SCC 374] : (AIR 2007 SC 1386) cancelling certain licences was passed without giving opportunity of hearing to the persons who had been granted licences."

20. The Supreme Court in the matter of **Union of India and another v. Paras Laminates (P) Ltd.**¹⁸ has held that where the Tribunal functions as a Court within the limits of jurisdiction, it has all the powers conferred expressly by the statute. Paragraph 8 of the report states as under: -

"8. There is no doubt that the Tribunal functions as a Court within the limits of its jurisdiction, it has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. Certain

17 AIR 2011 SC 1232

18 (1990) 4 SCC 453

powers are recognised as incidental and ancillary, not because they are inherent in the Tribunal, nor because its jurisdiction is plenary, but because it is the legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised. The powers of the Tribunal are no doubt limited. Its area of jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the powers expressly and impliedly granted. The implied grant is, of course, limited by the express grant and, therefore, it can only be such powers as are truly incidental and ancillary for doing all such acts or employing all such means as are reasonably necessary to make the grant effective. As stated in Maxwell on Interpretation of Statutes, (11th Edn.) "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution."

21. The Madhya Pradesh High Court in the matter of **M/s. Saluja Constructions v. State of M.P. and another**¹⁹ while considering as to whether the power of restitution can be exercised by the Arbitration Tribunal under Section 17-A of the Act of 1983 and answering the issue in affirmity held in paragraph 12 as under: -

"12. In view of the aforesaid law laid down by the Apex Court and considering the total scheme of the Act and specially in view of Section 17-A of the Act, I have no hesitation in holding that the Tribunal has power of restitution."

22. In view of the aforesaid discussion, it can be held that the Tribunal has the inherent jurisdiction by virtue of the provisions contained in Section 17-A of the Act of 1983 to recall its own order in the facts of a particular case to meet the ends of

19 2002(3) M.P.H.T. 553

justice or to prevent the abuse of the process of the Tribunal.

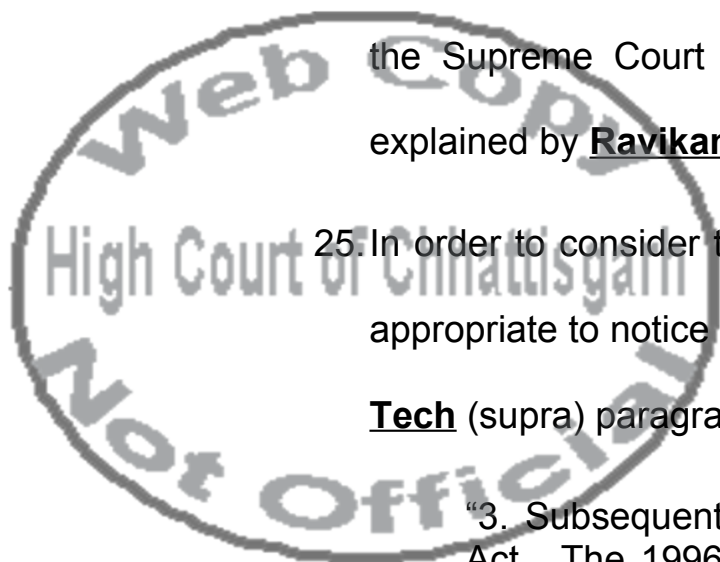
23. Aforesaid determination would take me to the next question as to whether the Tribunal is justified in refusing to recall its own order and restore the reference petitions in the facts and circumstances of the present case.

24. In this case, as noticed earlier, the Tribunal has dismissed the reference petitions only on the ground of availability of arbitration clause and resting its decision on the judgment of the Supreme Court in VA Tech (supra) which was further explained by Ravikant Bansal (supra).

25. In order to consider the dispute raised at the Bar, it would be appropriate to notice the judgment of the Supreme Court in VA Tech (supra) paragraph 3 of which reads as follows: -

“3. Subsequently, Parliament enacted the 1996 Act. The 1996 Act only applies where there is an arbitration clause but it does not apply where there is none. The 1996 Act covers all kinds of disputes including the dispute relating to work contracts. In our opinion, the 1983 Act and the 1996 Act can be harmonised by holding that the 1983 Act only applies where there is no arbitration clause but it stands impliedly repealed by the 1996 Act where there is an arbitration clause. We hold accordingly. Hence, the impugned judgment cannot be sustained and we hold that the application under Section 9 of the 1996 Act was maintainable.”

26. The decision rendered by the Supreme Court in VA Tech (supra) was further explained / distinguished in Ravikant Bansal (supra) by the Supreme Court by holding as under in



paragraph 3 of the judgment: -

“3. We are of the opinion that the aforesaid decision is distinguishable because in the present case the arbitration clause itself mentions that the arbitration will be by the Madhya Pradesh Arbitration Tribunal. Hence, in this case arbitration has to be done by the Tribunal.”

27. Thereafter, the Supreme Court in **L.G. Chaudhary's** case (supra) decided on 24-1-2012 relying upon its earlier decision in the matter of **State of M.P. v. Anshuman Shukla**²⁰ held that the decision of the Supreme Court in **VA Tech** (supra) was rendered *per incuriam* and it has held in paragraphs 26, 41 and 42 as under: -

“26. It is clear, therefore, that in view of the aforesaid finding of a coordinate Bench of this Court on the distinct features of an Arbitral Tribunal under the said **M.P. Act** in Ashuman Shukla case (supra) the provisions of the **M.P. Act** are saved under **Section 2(4)** of AC Act, 1996. This Court while rendering the decision in Va Tech (supra) has not either noticed the previous decision of the coordinate Bench of this Court in Anshuman Shukla (supra) or the provisions of **Section 2(4)** of AC Act, 1996. Therefore, we are constrained to hold that the decision of this Court in Va Tech (supra) was rendered *per incuriam*.

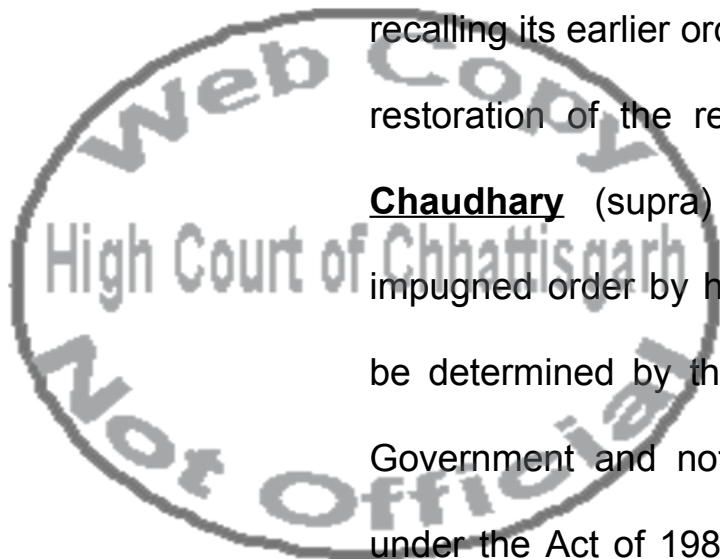
41. It is clear from the aforesaid observations that in instant case the latter Act made by the Parliament i.e. the **AC Act**, 1996 clearly showed an intention to the effect that the State law of arbitration i.e. the **M.P. Act** should operate in the State of Madhya Pradesh in respect of certain specified types of arbitrations which are under the **M.P. Act**, 1983. This is clear from **Sections 2(4)** and **2(5)** of AC Act, 1996. Therefore, there is no substance in the argument of repugnancy

and is accordingly rejected.

42. Therefore, the appeal is allowed and the judgment of the High Court which is based on the reasoning of Va Tech (supra) is set aside. This Court holds that the decision in Va Tech (supra) has been rendered in per incuriam. In that view of the matter the arbitration proceeding may proceed under the [M.P. Act](#) of 1983 and not under [AC Act](#), 1996.”

28. The petitioners after having come to the knowledge of the decision rendered by the Supreme Court in **L.G. Chaudhary** (supra), made an application before the Arbitration Tribunal for recalling its earlier order dismissing the reference petitions and restoration of the reference petitions on the basis of **L.G. Chaudhary** (supra) which came to be rejected by the impugned order by holding availability of arbitration clause to be determined by the Arbitration Tribunal constituted by the Government and not by the Arbitration Tribunal constituted under the Act of 1983 and it would amount to review its own order. The fact remains that the earlier reference petitions were dismissed for want of jurisdiction. Distinction between “recall of order” and “review of order” has earlier been considered and it has been held that recall of order is different from review of order and as such, review of order is expressly barred by the proviso to Section 17-A of the Act of 1983.

29. The short question for consideration is whether the learned Arbitration Tribunal in view of the fact that having the inherent power to restore the reference petitions dismissed the same



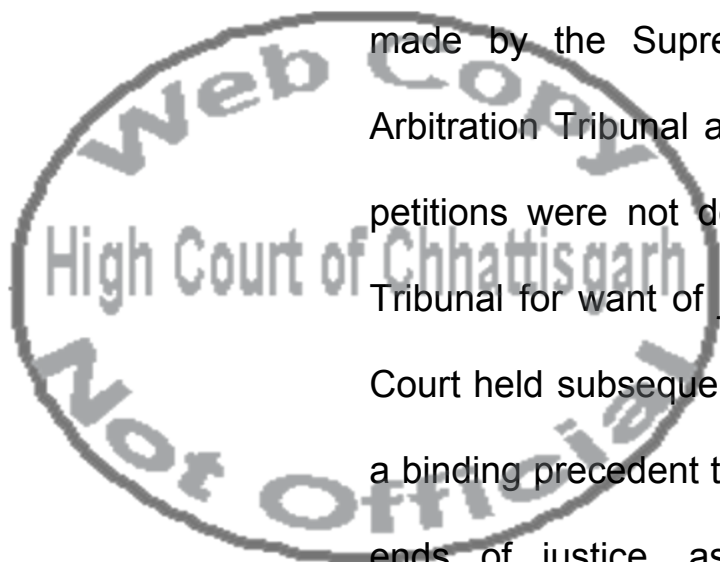
for want of jurisdiction is justified in refusing to entertain on the ground that the law of land as on the date of order was followed by the Tribunal and subsequent change in law, if any, will not make the order bad and as such, the power of review cannot be exercised to restore the reference petitions.

30. While dismissing the reference on 13-1-2012, the Tribunal has ruled its own jurisdiction in negative by holding that the Tribunal has no jurisdiction in light of **VA Tech** (supra) and **Ravikant Bansal** (supra), but subsequently, on change of law, in view of the law laid down by the Supreme Court in **L.G. Chaudhary** (supra), the Tribunal has held that the petitioners have to invoke the revisional jurisdiction of this Court under Section 19 of the Act of 1983 and it is not proper to exercise the jurisdiction of review / recall, as the order passed earlier rejecting the reference petition for want of jurisdiction has become final.

31. The Tribunal is right in holding that the law of land on the date of order has to be followed while deciding a reference petition and rightly decided the same relying upon **VA Tech** (supra) and **Ravikant Bansal** (supra), but it has to be kept in view that the reference petitions were not decided on merits and were dismissed on the ground of want of jurisdiction, and when **L.G. Chaudhary's** case (supra) was pronounced after the decision of the Tribunal in which it has been held that if the nature of

dispute is such which falls within the definition of “works contract” under Section 2(1)(i) of the Act of 1983 and one of the contracting parties to the agreement is the State of Madhya Pradesh, then irrespective of an arbitration agreement the dispute will necessarily have to be referred to the Arbitration Tribunal in terms of Section 7 of the Act of 1983 for adjudication in accordance with the Act.

32. Thus, in light of authoritative pronouncement subsequently made by the Supreme Court qua the jurisdiction of the Arbitration Tribunal and in view of the fact that the reference petitions were not decided on merits and dismissed by the Tribunal for want of jurisdiction, the decision of the Supreme Court held subsequently in **L.G. Chaudhary's** case (supra) is a binding precedent that must be given effect to, to secure the ends of justice, as the reference petitions which were dismissed earlier on the ground of want of jurisdiction, are to be decided on merits so that the dispute between the parties should come to an end giving quietus to *lis* rather than relegating the petitioners to file revision petitions under Section 19 of the Act of 1983 which is also inconsistent with the legislature which has enacted Section 16(2) of the Act directing the Tribunal as far as possible to make its award within four months from the date of service of notice of reference on Opposite Party.



33. On the basis of aforesaid discussion, I am unhesitatingly and unreservedly of the view that the learned Arbitration Tribunal is absolutely unjustified in rejecting the application for recall of its earlier order and restoration of reference petitions in exercise of its inherent powers under Section 17-A of the Act of 1983. The applications for recall its order and restoration of reference petitions ought to have been allowed in the ends of justice and in the interest of justice. Consequently, the impugned orders in all the civil revisions are hereby set aside and all the reference petitions are restored to their original numbers for hearing and disposal, in accordance with law, keeping in view the legislative mandate contained in Section 16(2) of the Act of 1983. The Arbitration Tribunal is directed to decide the reference petitions on merits within four months from the date of receipt / production of a copy of this order.

34. The civil revisions are allowed to the extent indicated herein-above. No order as to costs.

35. While parting with records, I must place on record the appreciation for assistance rendered by Mr. Anurag Dayal Shrivastava, learned *amicus curiae*, who not only argued the case at length at short notice but also prepared and submitted excellent written submission.

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.13 of 2014

M/s. Gulab Chand Jain

Versus

State of Chhattisgarh and another
and seven other connected matters

HEAD NOTE

The Chhattisgarh Madhyastham Adhikaran has inherent power under Section 17-A of the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 to restore reference petition for hearing on merits.

छत्तीसगढ माध्यस्थम अधिकरण अधिनियम 1983 की धारा 17-अ के अधीन छत्तीसगढ माध्यस्थम अधिकरण में गुणागुण पर सुनवाई हेतु निर्देश याचिका के प्रत्यार्पण की शक्ति अंतर्निहित है।

