IN THE COURT OF SENIOR CIVIL JUDGE- 1
AIZAWL DISTRICT: AIZAWL

CIVIL MISC. APPLICATION NO. 19 OF 2012
[IN DECLARATORY SUIT NO. 02 OF 2012]

Petitioner:

The State of Mizoram
Represented by Secretary to the Govt. of Mizoram
Public Health Engineering

By Advocates : 1. Mr. R.C. Thanga, Govt. Adv.
2. Mr. Lalsawirema, Addl. Govt. Adv.

Versus

Respondents:

1. The Indian Council of Arbitration
   Represented by its Registrar
   Room 112, Federation House
   Tansen Marg
   New Delhi 110001

2. The Presiding Arbitrator of the constituted
   Arbitral Tribunal under Rule 22 (b) of the Rules
   Of Arbitration of Indian Council for Arbitration

3. Mr. Philip Vanlalmawia John
   S/o P.P John
   Zuangtui, Aizawl
   Proprietor
   Johnson Eastern Power (JEP)

By Advocates for respt. No. 3 : 1. Mr. J.C. Seth
2. Mr. Anil Seth
3. Mr. H. Laltanpuia
4. Miss Rashila Thapa
5. Miss H. Vanlalhumi

BEFORE

Dr. H.T.C. LALRINCHHANA, MJS
SENIOR CIVIL JUDGE-1

Date of hearing : 01-03-2012
Date of Order : 06-03-2012

ORDER

BRIEF FACTS

In the instant case, the petitioner/plaintiff and the defendant/respondent no. 3 entered into agreement on 23.11.1999 for construction of Greater Aizawl Water Supply Scheme, Phase-II (Hereinafter referred to as GAWSS-Ph-II) which was a single stage project for supply of water to Aizawl. When the Adviser, Central Public Health Engineering visited the spot during 2001, he advised to change the scheme to a double stage pumping scheme as the said construction was at the initial stage. As agreed by the plaintiff as changing double stage pumping scheme, the said agreement dt. 23.11.1999 would not have in force in the dispute. As the defendant no. 3 submitted a letter of his willingness dt. 22.3.2002 to carry on the work on double stage pumping scheme, he remain engaged with the work but no other agreement was written/executed in between the plaintiff and the defendant no. 3. As the defendant no. 3 had refused to execute agreement with the plaintiff for double stage pumping scheme, the said agreement dt. 23.11.1999 was terminated on 18th Nov., 2009. The plaintiff further submitted that the defendant No. 3, being dissatisfied with the termination order dt. 18th Nov 2009 issued by the plaintiff had instituted a writ petition before the Hon'ble Gauhati High Court (Principal Seat) which was registered as WP© No.5787 of 2009 and subsequently transferred to Gauhati High Court (Aizawl Bench) and re-registered as WP(C) 94 of 2010. After hearing the parties, the Hon'ble Gauhati High Court, Aizawl Bench was pleased to dismiss the writ petition. The defendant No. 3 had approached the ICA, the defendant No. 1 for redressal of his grievances by arbitration under the Rules of the defendant No. 1. The defendant No. 1, failed to take notice of the Order and observation of the Gauhati High Court Aizawl Bench in WPC No. WP (C) 94 of 2010 and admitted the entire claim application of the defendant No. 3. His claim includes work done by him for the double stage pumping scheme and executed by him in the absence of formal agreement between the parties being absolutely beyond the scope of agreement dated 23.11. 1999. That the said agreement dt. 23.11.1999 could not be carried out by the plaintiff and the defendant No. 3. It is also admitted/not disputed that there is no agreement between the said parties other than the agreement dt. 23.11.1999 which had already become inoperative. Therefore, the ICA has no jurisdiction to entertain the claim petitions of the defendant No. 3 in the absence of written agreement of both parties to come under the jurisdiction of arbitrators. The plaintiff will suffer irreparable loss and injury if not an order is passed declaring the defendant No.1 has no jurisdiction to arbitrate the matters between the plaintiff and the defendant no. 3. The balance of convenience is in favour of the Plaintiff and as such this is a fit case to be admitted and adjudicated in favour of the Plaintiff. The ICA's jurisdiction is limited to the extent that when the parties have agreed for arbitration by the Council or under the rules of arbitration of the Council. Or where the parties have agreed to have their dispute arbitrated under any other rules of arbitration or otherwise and have agreed

to have such arbitration administered by the Council, wholly or in respect of some matters arising out of such arbitration, the defendant No. 1 would only then have jurisdiction. Hence, the ICA has no jurisdiction to arbitrate upon the disputes arising outside the scope of agreement dated 23.11.1999 between the plaintiff and the defendant No. 3. Under Clause 16 of the Commercial Terms of Agreement dt. 23/11/99, it says that "Any disputes or difference whatsoever between the parties out of or relating to the construction , meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration 1998". And as such the ICA has no jurisdiction to arbitrate with regard to the disputes which are not within the scope of the Contract executed between the Plaintiff and the defendant No.3 dt. 23/11/99. Mr. Lalsawirema, learned Additional Govt. Advocate concluded that in spite of several objections raised by the plaintiff to ICA pertaining to their jurisdiction the matter was admitted and accordingly Arbitrators appointed and 8th February 2012 is fixed for hearing of the matter. The plaintiff therefore having no other efficacious remedy has instituted this suit for the end and interest of justice. Irreparable monetary loss will have to be suffered by the Plaintiff/State Exchequer if an Order of temporary injunction is not passed against the Defendant No.1 from proceeding with the arbitration relating to works done by the defendant No. 3 beyond the scope of agreement dated 23.11.99. From the above stated facts a prima facie case is very well made out against the Defendant No.1 and balance of convenience also lies in favour of the Plaintiff.

On the other hand, the defendant no. 3 submitted that by virtue of Ss. 5, 8 and 16 of the Arbitration and Conciliation Act, 1996, there is no ground for intervention of civil courts like in the instant proceedings in the Arbitrator. More so, as enshrined under clause 16 of GCC, the matter lies in the Rules of Arbitration of the Indian Council of Arbitration, 1998. Thus, prayed to vacate the ad interim order dt. 1.2.2012 and direct the plaintiff to take up all issues before the Arbitral Tribunal and other order(s) as this court deems fit and proper.

TERMS OF RIVALRY

Mr. Lalsawirema, learned Additional Govt. Advocate for the plaintiff reiterated some factual matrix in the case and thereby submitted that the Arbitral Tribunal take up of the case where the subject matter is beyond the agreement. He fairly admitted that some claimed amount in the Arbitral Tribunal is within the ambit of the Agreement dt. 23/11/99 but most of the claimed amount in the Arbitral Tribunal is beyond the said Agreement dt. 23/11/99. He concluded that a prima facie case showing cause of action is well established to proceed the instant case as Declaratory suit.

On the other hand, learned counsel for the defendant/respondent no. 3 vehemently argued that it is not a case to entertain in the civil court. He submitted so many reliance as per their pleadings and also submitted that due to the lethargy of the plaintiff before the Arbitral Tribunal, it was pending for so long. He further contended that in paragraph 6 of the judgment & order passed by Hon'ble Gauhati High Court in WP (C) No. 94 of

2010 Dt. 7.4.2011, it can be seen that the plaintiff state of Mizoram submitted/admitted that as per clause 16 of the Contract Agreement, it would be evident to settle the dispute between the parties in accordance with the Rules of Arbitration of the Indian Council of Arbitration, 1998 and the award of any such arbitration proceedings shall bind the parties in the Agreement.

In a nutshell, there is no dispute on facts of the case that on 23.11.1999, the respondent/defendant no. 3 and the plaintiff entered into an agreement for construction of Greater Aizawl Water Supply Scheme, Phase-II which was a single stage project for supply of water to Aizawl but in practical hand, the work was converted into double stage pumping project beyond the said agreement and without executing any other agreement as the respondent/defendant no. 3 refused to re-enter into agreement.

FINDINGS AND REASONS

As inevitably, I must look into the legal principles involve on temporary/interim injunction by taking resorts in **Midnapore Peoples' Co-op. Bank Ltd. & Ors. Vs. Chunilal Nanda & Ors.** in connection with Appeal (civil) 1727 of 2002 decided on 25/05/2006 reported in 2006 AIR 2190, 2006 (2) Suppl. SCR 986, 2006 (5) SCC 399, 2006 (6) SCALE 308, 2006 (11) JT 203, the Supreme Court has held that-

> "16. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:
> (i) Orders which finally decide a question or issue in controversy in the main case.
> (ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.
> (iii) Orders which finally decide a collateral issue or question which is not the subject matter of the main case.
> (iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.
> (v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties."

Also vide, **Premji Ratansey Vs. Union of India** decided on 22/07/1994 reported in 1994 (2) Suppl. SCR 117, 1994 (5) SCC 547, 1994 (3) SCALE 562, 1994 (6) JT 585: **Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd.** decided on 18/08/1999 reported in 1999 AIR 3105, 1999 (1) Suppl. SCR 560, 1999 (7) SCC 1, 1999 (5) SCALE 95, 1999 (6) JT 89: **Hindustan Petroleum Corporation Ltd. Vs. Sri. Sriman Narayan & Anr.** in connection with Appeal (civil) 3661-62 of 2002 decided on 09/07/2002 reported in 2002 AIR 2598, 2002 (5) SCC 760, 2002 (5) SCALE 132, 2002 (5) JT 335.

And in **Zenit Mataplast P. Ltd. Vs. State of Maharashtra and Ors.** decided on September 11, 2009 and reported in (2009) 10 SCC 388, the Apex Court further held that-

> "25. Grant of temporary injunction, is governed by three basic principles, i.e. prima facie case; balance of convenience; and irreparable injury, which are required to be considered in a proper perspective in the facts and circumstances of a particular case. But it may not be appropriate for any court to hold a mini trial at the stage of grant of temporary injunction (Vide S.M. Dyechem Ltd. Vs. M/s. Cadbury (India) Ltd., AIR 2000 SC 2114; and Anand Prasad Agarwalla (supra).
>
> ....32. Thus, the law on the issue emerges to the effect that interim injunction should be granted by the Court after considering all the pros and cons of the case in a given set of facts involved therein on the risk and responsibility of the party or, in case he looses the case, he cannot take any advantage of the same. The order can be passed on settled principles taking into account the three basic grounds i.e. *prima facie case, balance of convenience and irreparable loss*. The delay in approaching the Court is of course a good ground for refusal of interim relief, but in exceptional circumstances, where the case of a party is based on fundamental rights guaranteed under the Constitution and there is an apprehension that suit property may be developed in a manner that it acquires irretrievable situation, the Court may grant relief even at a belated stage provided the court is satisfied that the applicant has not been negligent in pursuing the case."

Thus, in the instant application, examination of the meritorious shall be made in terms of prima facie case, balance of convenience and irreparable injury.

Prima facie case

The very terminology of *prima facie* is already settled in **Deepali Designs & Exhibits Pvt. Ltd. vs Pico Deepali Overlays Consortium & Ors.** decided on 22 February, 2011 in connection with IA Nos.16915-16916/2010 & IA No.1218/2011 in CS (OS) No.2528/2010, Hon'ble Justice Gita Mittal for Delhi High Court termed that-

> "18. On a consideration of the ordinary meaning of the term 'prima facie' and the trend of judicial pronouncement it appears to me that "prima facie case" would mean a case which is not likely to fail on account of any technical defect and is based on some material which if accepted by the tribunal would enable the plaintiff to obtain the relief prayed for by him and would, therefore, justify an investigation."

Firstly, I could not eschew on the reliance taken by learned counsel for the respondent no. 3 in respect of prima facie case/cause of action in

the instant case in this court. In **Hindustan Petroleum Corpn. Ltd. vs Pinkcity Midway Petroleums** decided on 23 July, 2003 reported in AIR 2003 SC 2881, 2003 (5) ALD 26 SC, wherein, the Supreme Court has held that-

> "15. ..... Therefore, it is clear that if, as contended by a party in an agreement between the parties before the Civil Court, there is a clause for arbitration, it is mandatory for the Civil Court to refer the dispute to an arbitrator. In the instant case the existence of an arbitral clause in the agreement is accepted by both the parties as also by the courts below but the applicability thereof is disputed by the respondent and the said dispute is accepted by the courts below. Be that as it may, at the cost of repetition, we may again state that the existence of the arbitration clause is admitted. If that be so, in view of the mandatory language of Section 8 of the Act, the courts below ought to have referred the dispute to arbitration."

The above decision was arrived on original civil suit but bound by arbitral agreement. It was therefore opined to refer the matter to the Arbitral Tribunal as per section 8 of the Arbitration and Conciliation Act, 1996. It therefore reads for ready reference as

> "8. **Power to refer parties to arbitration where there is an arbitration agreement**:-
>
> (1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.
>
> (2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.
>
> (3) Notwithstanding that an application has been made under sub- section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

In the instant case being declaratory suit in respect of the subject matter is within the jurisdiction of Arbitral Tribunal or not, section 8 of the said Act should not have relevance. Furthermore, In **Corporation Ltd. v. Rani Construction Pvt. Ltd**., AIR 2002 SC 778, it was held that if there is any objection as to the applicability of the arbitration clause to the facts of the case, the same will have to be raised before the concerned arbitral tribunal and, therefore, the Courts below ought not to have proceeded to examine the applicability of the arbitration clause to the facts of the case in hand but ought to have left that issue to be determined by that arbitral tribunal. Referring to its earlier decision in the case of **P. Anand Gajapathi Raju v. P.V.G. Raju, (2000) 4 SCC 539**, the Supreme Court was of the view

that in cases where there is an arbitration clause in the agreement, it is obligatory for the Court to refer the parties to arbitration in terms of their arbitration agreement and nothing remains to be decided in the original action after such an application is made except to refer the dispute to an arbitrator. The Supreme Court was of the view that once the arbitration clause was admitted, considering the mandatory language of Section 8 of the Arbitration Act, the Court below ought to have referred the dispute to arbitration.

As observed by Supreme Court in **P. Anand Gajapathi Raju And Others vs. P.V.G. Raju (Dead) And Others**, (2000) 4 SCC 539, the language of Section 8 of Arbitration & Conciliation Act is preemptory and, therefore, it is obligatory for the Court to refer the parties to arbitration in terms of their arbitration agreement and in such a case, nothing remains to be decided in the original action. Similar view was taken by the Supreme Court in **Branch Manager, Magma Leasing and Finance Ltd. and another v. Potluri Madhavilata and another**, (2009) 10 SCC 103.

In **Secur Industries Ltd vs M/S Godrej & Boyce Mfg. Co. Ltd. & Anr.** decided on 26 February, 2004 in connection with Appeal (civil) 1417 of 2004 reported in (2004) 3 SCC 447, the Supreme Court has held that-

> "On 12th February 2002 the respondent No. 1 filed a suit in the City Civil Court at Bombay against the appellant who was named as the defendant No. 1 and the Council which was named as the defendant No. 2. The prayers in the plaint are, inter-alia, for a declaration that the claim petition filed by the appellant before the Council was ultra-vires the provisions of the Act and, therefore, illegal, null and void. A permanent order of injunction was also asked for restraining further proceedings before the Council. An application was filed in the suit for interim relief by the respondent No. 1. By an order dated 5th February 2002 the City Civil Court granted an ad- interim injunction staying the proceedings under the Act. The application for interim relief was, however, ultimately dismissed by the City Civil Court on 28th November 2002 principally on the ground that the claim had been filed by the appellant under Section 6(2) read with Section 8(1) of the Arbitration and Conciliation Act, 1996 (which we will refer to as the 1996 Act) and in view of Section 5 of the 1996 Act no Court could intervene in arbitration proceedings except to the extent prescribed under the 1996 Act. According to the City Civil Court, the reliefs claimed for the respondent No. 1 in its suit did not fall within the ambit of those situations where interference by Court was permissible and consequently the Court had no jurisdiction to stay the proceedings before the Council.
>
> The respondent No. 1 preferred an appeal from the decision of the City Civil Court before the High Court. The appeal is pending. On an application for interim relief filed by the respondent No. 1 pending the appeal, the High Court by its

> order dated 21st January 2003 stayed the proceedings before the Council only on the ground that no notice had been served by the appellant on the respondent No. 1 under Section 21 of the 1996 Act. The High Court rejected the appellant's application for expediting the appeal on 2nd May 2003. Both these orders of the High Court are questioned before us in these appeals.
>
> ... To sum up: The High Court erred in staying proceedings before the Council. It had no jurisdiction to do so. Having regard to our conclusion, and as has been agreed by the parties, the appeal before the High Court has really become infructuous. We, therefore, set aside the decision of the High Court and treat the appeal of respondent No. 1 before the High Court as having been decided by this order. The decision of the City Civil Court is confirmed and the appeal is allowed with costs."

On meticulously look into the above, reliance produced/taken by learned counsel for the defendant/respondent no. 3 fails to ricochet the journey of the lis.

Howsoever, in **H.G. Oomor Sait And Another vs O. Aslam Sait** decided on 28 June, 2001 reported in (2001) 2 MLJ 672, Hon'ble Madras High Court has held that-

> "28. It is true that the discretion of the Civil Court to proceed with the suit is narrowed down, but I am unable read to anything from the Act which would place a total embargo on the Civil Court to continue the proceedings before it only on the mere existence of an arbitration clause. A combined reading of all the provisions of the 1996 Act as well as section 8 discloses that the time-tested reasons which were behind the several judgments of the various Courts as well as the English Courts holding that Civil Court can refuse to stay the suit and can proceed with the suit under certain circumstances continue to hold good even now. The short-comings and deficiencies of the enquiry before an arbitrator are well known. The nature of the enquiry before an arbitrator is summary and Rules of procedure and evidence are not binding. The Arbitrator need not be even a law-knowing person. That is the reason why over a century, Courts have repeatedly held that in cases where substantial questions of law arise for consideration or issues which require serious consideration of evidence relating to fraud and misrepresentation etc. are involved, such cases are best left to the civil court and that the Arbitrator will not be competent to go into the said issues.
>
> ... 39. Considering the nature of the disputes in the present case, it is not necessary for me to proceed further in a comparative study of the jurisdiction and powers of the Civil Court under the old Act and the new Act. The following four

> circumstances in the present case, would be sufficient to hold that the ultimate conclusion of the Court below in refusing to refer the dispute to the Arbitrator is quite justified."

And in the case of **Associated Engineering Co. v. Government of A.P**. reported in 1991 (4) SCC 93, the Supreme Court observed:

> "24. The arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract. His sole function is to arbitrate in terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled outside the bounds of the contract, he has acted without jurisdiction. ..."

Also in **Sadhu Singh Ghuman v. Food Corporation of India & Ors**. (1990) 2 SCC 68, wherein, the Apex Court opined that-

> "The right to have the dispute settled by arbitration has been conferred by agreement of parties and that right should not be deprived of by technical pleas. The court must go into the circumstances and intention of the party in the step taken."

Further in **Rashtriya Ispat Nigam Limited & Anr. Vs. M/s Verma Transport Company** decided on 08/08/2006 in connection with Appeal (civil) 3420 of 2006 reported in 2006 AIR 2800, 2006 (4) Suppl. SCR 332, 2006 (7) SCC 275, 2006 (7) SCALE 565, 2006 (7) JT 404, it was held that-

> "In the instant case, the existence of a valid agreement stands admitted. There cannot also be any dispute that the matter relating to termination of the contract would be a dispute arising out of a contract and, thus, the arbitration agreement contained in clause 44 of the contract would be squarely attracted. Once the conditions precedent contained in the said proceedings are satisfied, the judicial authority is statutorily mandated to refer the matter to arbitration. <u>What is necessary to be looked into therefor, inter alia, would be as to whether the subject-matter of the dispute is covered by the arbitration agreement or not</u>."

In **Union Of India vs M/S.Krafters Engineering & Leasing (P) Ltd.** decided on 12 July, 2011 in connection with Civil Appeal No. 2005 of 2007, the Supreme Court has held that-

> "(iii) An arbitrator is the creature of an agreement. It is open to the parties to confer upon him such powers and prescribe such procedure for him to follow, as they think fit, so long as they are not opposed to law. (The proviso to Section 41 and Section 3 of Arbitration Act illustrate this point). All the same, the agreement must be in conformity with law. The arbitrator must also act and make his award in accordance with the general law of the land and the agreement."

Lastly in **Food Corporation Of India & Anr vs Yadav Engineer & Contractor** decided on 6 August, 1982 reported in 1982 AIR 1302, 1983 SCR (1) 95, it was held that-

> "Arbitration Act carves out an exception to the general rule that the forum for resolution of civil disputes is the civil court having jurisdiction to deal with the same by providing that the parties to a dispute by agreement unto themselves may choose a forum of their choice for settlement of disputes between them in preference to the State Courts. Undoubtedly, for making these agreements enforceable sanction of law is necessary. That is the object underlying the Act. Industrial revolution bringing into existence international commercial transactions led to a search for finding a forum outside the municipal law courts involving protracted and dilatory legal process for simple, uninhibited by intricate rules of evidence and legal grammar. This explains resort to forums for arbitration at international level. No two contracting parties are under any legal obligation to provide for an arbitration agreement. If the parties enter into an arbitration agreement implying that they would like that the disputes covered by the agreement will be resolved by a forum of their choice, the approach of the court must be that parties to the contract are held to their bargain. If in breach or derogation of a solemn contract a party to an arbitration agreement approaches the court and if the other side expeditiously approaches the court invoking the court's jurisdiction to stay the proceedings so that by this negative process the court forces the parties to abide by the bargain, ordinarily the court's approach should be and has been to enforce agreements rather than to find loopholes therein. More often it is found that solemn contracts are entered into on the clearest understanding that any dispute arising out of the contract and covered by the contract shall be referred to arbitration. It may be that one or the other party may not have entered into the contract in the absence of an arbitration agreement. Therefore when in breach of an arbitration agreement a party to the agreement rushes to the court, unless a clear case to the contrary is made out the approach of the court should be to hold parties to their bargain provided necessary conditions for invoking s. 34 are satisfied.
>
> ...Arbitration agreement generally provides for resolution of disputes either present or future by a forum of the choice of the parties. Ordinarily, arbitration agreement finds its place in contracts. Apprehending that while performing contract some disputes may arise, care is taken to incorporate an arbitration agreement in the contract itself prescribing the forum for resolution of such disputes."

In this catena, Clause 16 of the Commercial Terms of Agreement dt. 23/11/99 requires to inspect which embodied that

> "Any disputes or difference whatsoever between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration 1998 amended thereof and the award made in pursuance thereof shall be binding on the parties"

At the time of hearing, parties are at rivalry on the provisions of Rules of Arbitration of the Indian Council of Arbitration 1998, learned counsel for the defendant no. 3 contended that it is the authority of the Arbitral Tribunal to take evidence and to examine the case on merit whether the matter is within the ambit of the agreement or not. On the other hand, Mr. Lalsawirema submitted that as per the said Rules of Arbitration of the Indian Council of Arbitration 1998, being aggrieved in the decisions of the Registrar of ICA, resort is permissible to approach the civil courts in respect of the subject matter jurisdiction. In the envisaged of **Associated Engineering Co. v. Government of A.P**. (supra.), I find that this is a fit case to further investigate of the matter under the so called substantive due process towards the purpose of public interest as the instant crux is touching the small economy of the state of Mizoram. In otherwords, I find a prima facie case as observed in **Deepali Designs & Exhibits Pvt. Ltd. vs Pico Deepali Overlays Consortium & Ors. (supra.)**.

Balance of convenience

Pertinently, being elixir of live, portable drinking water is now incorporated as a part of fundamental rights Vide, **Narmada Bachao Andolan vs Union Of India And Others** decided on 18 October, 2000 reported in 2000 AIR 3751, 2000 (4) Suppl. SCR 94, 2000 (10) SCC 664, 2000 (7) SCALE 34, 2000 (2) Suppl. JT 6: **Voice of India (Through its Chairman) Vs. Union of India & Ors.** in connection with Writ Petition (Civil) No. 263 of 2010 decided on 20/09/2010. If we talk about balance of convenience is in favour of the petitioner/plaintiff, it will meant that balance of convenience is in favour of the riff raff including the pavement dwellers in this emerging Aizawl city. Attending/appearing of big officials of the petitioner before Arbitral Tribunal stationed at Delhi from the isolated landlock hilly terrain like Mizoram will certainly ravage the vulnerable state economy during pendency of the main suit while cause of action is found in the light of the observation in **M/s. Kusum Ingots & Alloys Ltd. Vs. Union of India and Anr**. decided on 28/04/2004 in connection with Appeal (civil) 9159 of 2003 reported in 2004 AIR 2321, 2004 (1) Suppl. SCR 841, 2004 (6) SCC 254, 2004 (5) SCALE 304, 2004 (1) Suppl. JT 475. In another horizon, till this era of globalization, the occupiers of Aizawl city remains in scarcity of drinking water which the petitioner/plaintiff owed to fill up of such lacunae as held in **Narmada Bachao Andolan vs Union Of India And Others (supra.)**. In short, without granting of temporary injunction, huge amount of money to be incurred on the Travelling and Daily Allowances of big officials of the plaintiff/petitioner to ply to Delhi and vice versa will ruin and pause the gearing up of development where augmentation of revenue is

far behind due to backward region in all respect. I therefore find that balance of convenience is in favour of the petitioner/plaintiff.

Irreparable injury

As the matter is purely public interest and no reasons is found to vitiate safety measures for the instant policy as suggested by experts, irreparable injury which can harm public interest will be caused without passing interim injunction. Otherwise, how to re-invest the waste of public money for responding the *lis* in the Arbitral Tribunal during pendency of the main suit is the moot point, cogently answered as negative.

ORDER

So is the factual matrix and legal principles, without taking prudence for interim measures during pendency of the main case, the main suit will be futile and incapable to adjudicate whether in favour of the plaintiff's or not but except to delay for few times.

By recognizing the hindrances which may cause by this injunction, it is the pleasure and willingness of this court for speedy trial and disposal of the main suit if parties positively and constructively cooperate the proceedings.

Thus, the defendants/respondents No. 1 and 2 are directed not to continue/proceed ahead ICA Case No. 1758 and be kept in abeyance unless and until disposal of Declaratory Suit No. 2 of 2012 pending in this court.

Give this order copy to all concerned.

With this order, the instant petition shall stand disposed of

Given under my hand and seal of this court on this 6th March, 2012 Anno Domini within the premises and during the working hours of this court and is pronounced in an open court.

Dr. H.T.C. LALRINCHHANA
Senior Civil Judge- 1
Aizawl District: Aizawl

Memo No. Misc. C/19/2012, Sr. CJ (A)/ Dated Aizawl, the 6th March, 2012

Copy to:

1. The State of Mizoram Represented by Secretary to the Govt. of Mizoram, Public Health Engineering through Mr. Lalsawirema, Addl. Govt. Adv.

2. The Indian Council of Arbitration Represented by its Registrar, Room 112, Federation House, Tansen Marg, New Delhi 110001 through Mr. Lalsawirema, Addl. Govt. Adv.
3. The Presiding Arbitrator of the constituted Arbitral Tribunal under Rule 22 (b) of the Rules of Arbitration of Indian Council for Arbitration through Mr. Lalsawirema, Addl. Govt. Adv.
4. Mr. Philip Vanlalmawia John S/o P.P John, Zuangtui, Aizawl, Proprietor, Johnson Eastern Power (JEP) through Mr. H. Laltanpuia, Adv.
5. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District, Aizawl
6. Case record.

PESKAR