

In the Court of Appeal of the Democratic Socialist
Republic of Sri Lanka

In the matter of an application for Revision
under and in terms of Article 138 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

China Harbour Engineering Company
Limited
No.09 Chunxiu Road, Dongzhimenwai,
Beijing, 100027, China

CA (PHC) APN: 94/2013
Case No: H.C (ARB) 63/2013
Arbitration No. SLNAC/35-06-2012

Having their local office
32nd Floor, East Tower,
World Trade Centre,
Echelon Square, Colombo 1

CLAIMANT

-Vs-

Road Development Authority
Sethsiripaya, Battaramulla,
Sri Lanka

RESPONDENT

China Harbour Engineering Company
Limited
No.09 Chunxiu Road, Dongzhimenwai,
Beijing, 100027, China

Having their local office at,
32nd Floor, East Tower,
World Trade Centre,
Echelon Square,
Colombo - 01

CLAIMANT - PETITIONER

Road Development Authority
Sethsiripaya, Battaramulla,
Sri Lanka

RESPONDENT - RESPONDENT

D.J.D.S. Balapatabendi (Hon. Arbitrator)
No.173/14C, Mihindu Mawatha, Dehiwela

RESPONDENT

AND NOW BETWEEN

Road Development Authority
Sethsiripaya, Battaramulla,
Sri Lanka

RESPONDENT - RESPONDENT - PETITIONER

-Vs-

China Harbour Engineering Company Limited No.
Chunxiu Road, Dongzhimenwai, Beijing, 100027,
China

Having their local office at,
32nd Floor, East Tower,
World Trade Centre,
Echelon Square, Colombo - 01

CLAIMANT - PETITIONER - RESPONDENT

D.J.D.S. Balapatabendi (Hon. Arbitrator)
No.173/14C, Mihindu Mawatha, Dehiwela

RESPONDENT - RESPONDENT

Before: A W A Salam, J and Sunil Rajapaksha, J
Counsel: Shavindra Fernando DSG with Nerin Pulle SSC and
Chaya Sri Nammuni for the Respondent-Respondent-
Petitioner and Dr. Asanga Gunawardhana with Dilshan

Jayasuriya and Hiran Jayasuriya for the Claimant-Petitioner-Respondent.

Decision on the application for leave to appeal entered on: 05.12.2013

A W A Salam, J

The Respondent - Respondent - Petitioner (hereinafter referred to as the "petitioner") filed application invoking the revisionary jurisdiction of this Court, seeking an order revising and setting aside the order of the learned judge dated 19 June 2013. The reliefs sought arose mainly on the order of the High Court dismissing certain preliminary objections raised as to the maintainability of the action filed by the claimant-petitioner-respondent (hereinafter referred to in the rest of this judgment for purposes of convenience as the "claimant") in the High Court.

After the application for revision was supported and the claimant heard in opposition this court by judgement dated 14 November 2013 held *inter alia* that the Petitioner cannot be permitted to invoke the revisionary jurisdiction of this court, when in fact, Section 37 of the Arbitration Act excludes such a right to make a revision application. As a result, the application filed in revision by the petitioner was refused be entertained.

Against such refusal, petitioner has sought the leave of this court to appeal to the Supreme Court in terms of Article 128

(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with the Supreme Court Rules of 1990.

The learned Deputy Solicitor General has submitted that the question whether revisionary jurisdiction of this court lies where there has been a statutory ouster, as it has occurred in this case, is a matter yet to be settled by the Supreme Court and as such the issue still remains unsettled. Having considered the submissions made by the petitioner, we are of the opinion that leave should be granted to appeal to the Supreme Court on the following issues.

1. Is the revisionary jurisdiction under Article 138 of the Constitution conferred on the Court of Appeal ousted by Section 37(2) of the Arbitration Act No 11 of 1995 only when the Provincial High Court has acted within their jurisdiction?
2. In the circumstances where the Provincial High Court has failed to appreciate its lack of jurisdiction in view of the Provisions of Section 11(2) of the Arbitration Act No 11 of 1995, is the Court of Appeal precluded from considering an application under Article 138 of the Constitution?
3. In the distinct circumstances of this case, (i.e, the patent lack of jurisdiction of the High Court under Section 11(2) of the Arbitration Act No 11 of 1995) is the Court of Appeal bound by the Supreme Court judgment of Wakachiku Construction Company Ltd vs. Road Development Authority-SC Misc 01/2011decided on 06.02.2013?

Accordingly, we grant leave to appeal on the above questions.

JUDGE OF THE COURT OF APPEAL.

Sunil Rajapaksha, J.

JUDGE OF THE COURT OF APPEAL.

NR/-