

ITEM NO.1

COURT NO.1

SECTION X

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO(s). 232 OF 2005

M/S. KONE ELEVATOR INDIA PVT. LTD.

Petitioner(s)

VERSUS

STATE OF T.N. & ORS.

Respondent(s)

(With appln. for restoration)

WITH

SLP(C) NO. 14148-14153 of 2005
(With prayer for interim relief and office report)
SLP(C) NO. 14961-14967 of 2005
(With appln. for ex-parte stay and office report)
SLP(C) NO. 1745 of 2007
(With prayer for interim relief and office report)
SLP(C) NO. 17842-17847 of 2005
(With prayer for interim relief and office report)
SLP(C) NO. 19432-19434 of 2005
(With prayer for interim relief and office report)
W.P(C) NO. 298 of 2005
(With appln. for stay and office report)
SLP(C) NO. 462 of 2007
(With prayer for interim relief and office report)
W.P(C) NO. 487 of 2005
(With appln. for stay and office report)
W.P(C) NO. 511 of 2006
(With appln. for ex-parte stay and office report)
W.P(C) NO. 528 of 2005
(With appln. for stay and impleadment and office report)
SLP(C) NO. 5377 of 2006
(With prayer for interim relief and office report)
W.P(C) NO. 67 of 2006
(With appln. for stay and office report)
SLP(C) NO. 7037 of 2006
(With prayer for interim relief and office report)

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W.P(C) NO. 75 of 2007
(With appln. for stay and permission to file addl. documents)
SLP(C) NO. 7981 of 2006
(With prayer for interim relief and office report)

Date: 13/02/2008 These Petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE J.M. PANCHAL

For Petitioner(s) Mr. Harish N. Salve. Sr. Adv.
WP(C) 232/05 Mr. T.L.V. Iyer, Sr. Adv.
Mr. K.K. Mani, Adv.
Mr.C.K.R.Leninsekhar, Adv.
Mr.R.L. Ramani, Adv..

W.P.(C) 75/07 Mr.Chirag M.Shroff, Adv.
Mr.Dattatray Vyas, Adv.
Mrs. Mahima Shroff, Adv.

SLP(C) 1745/07 Mr. T.L.V. Iyer, Sr. Adv.
Dr. K.P.K. Pillay, Adv.
Mr. P.V. Lekshman, Adv.
Mr. M. Ayoobu Khan, Adv.
Mr. R.V. Kameshwaran, Adv.

For Respondent(s) Mr. Anoop G. Choudhary, Sr. Adv.
State of A.P. Mr. Manoj Saxena, Adv.
Mr. Rajnish Kr. Singh, Adv.
Mr. Rahul Shukla, Adv.
Mr. T.V. George, Adv.

State of M.P. Mr. B.S. Banthia ,Adv
Mr. Vikas Upadhyay, Adv.

Mr. V.N. Raghupathy ,Adv

WP(C) 232/05 Mr. Avijit Bhattacharjee ,Adv
Mr. Saumya Kundu, Adv.
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WP(C) 232/05 Mr. Gopal Singh ,Adv

State of Gujarat Mr. Ramesh Singh, Adv.
Ms. Jesal, Adv.
For Ms. Hemantika Wahi ,Adv.

U.T. Pudhucherry Mr. V.G. Pragasam ,Adv
Mr. S. Joseph Aristotle, Adv.
Mr. S. Prabu Ramasubramanian, Adv.

Mr. Sushil Kumar Jain ,Adv

For Sikkim Mr. A. Mariarputham, Adv.
Mrs. Aruna Mathur, Adv.
For M/S Arputham, Aruna & Co. ,Adv

WP(C) 232/05 Mrs. Kirti Renu Mishra ,Adv

State of Karnataka Mr. Arul Varma, Adv.
Mr. Vikrant Yadav, Adv.
For Mr. Sanjay R. Hegde ,Adv

State of U.P. Mr. Shail Kumar Dwivedi, AAG
Mr. Manoj Kr. Dwivedi, Adv.
Mr. G. Venkateswara Rao, Adv.
Mr. Kamlendra Mishra, Adv.

State of T.N. Mr. R. Nedumaran, Adv.

State of Kerala Mr. G. Prakash, Adv.

For NCT, UT of N. Ms. Neera Gupta, Adv.
Delhi & UOI For Mr. D.S. Mahra, Adv.
Mrs Anil Katiyar, Adv.

Mr. Ramesh Babu M.R., Adv.

Mr. R. Sathish, Adv.

WP(C) 232,298/05 Mr. A. Tarique, Adv.

The question raised for consideration in these petitions is whether manufacture, supply and installation of lifts are to be treated as 'sale' or 'works contract'. As the writ petitions filed by the petitioners have raised important questions of law, the matters have been directed to be placed before a three Judge Bench.

Heard Mr. Harish N. Salve, learned senior counsel for the petitioner and Mr. Anoop Choudhary, learned senior counsel for the State of Andhra Pradesh and learned counsel for the States of Gujarat, Uttar Pradesh and Tamil Nadu.

In State of Andhra Pradesh vs. M/s. Kone Elevator (India) Ltd. 2005(3) SCC 389, it was held that such a contract constituted a 'sale' and does not amount to 'works-contract' and the element of service provided by the vendor of the elevator was negligible. Learned senior counsel submitted that having regard to the nature of the contracts, the said view was not correct. Our attention was drawn to series of decisions rendered by this Court in State of Rajasthan & Anr. vs. Man Industrial Corporation Ltd. (24 S.T.C. 349), State of Rajasthan vs. Nenu Ram (26 S.T.C. 268) and Vanguard Rolling Shutters & Steel Works vs. Commissioner of Sales Tax, U.P. (39 S.T.C. 372), which take a contrary view. The said decisions have not been noticed in M/s. Kone Elevator India) Ltd.(supra).

Learned counsel appearing for the States of Gujarat, Uttar Pradesh, Andhra Pradesh and Tamil Nadu submitted that the decision in M/s. Kone Elevator India) Ltd.(supra) was correctly decided and placed reliance on Hindustan Shipyard Ltd. vs. State of A.P. 2000 (6) SCC 579. They also submitted that the petitions under

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Article 32 are not maintainable. The respondents would be at liberty to raise these contentions also when the matters are finally heard.

Having regard to the issues involved in these matters and apparent conflict in the views expressed by three Judge Benches of this Court, we refer these matters to a Constitution Bench. Registry will take further steps to post before the Constitution Bench.

(R.K. Dhawan)
Court Master

(Veera Verma)
Court Master