

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).10886/2009

(From the judgement and order dated 11/04/2008 in ARBP No. 27/2005
of The HIGH COURT OF ORISSA AT CUTTACK)

UNION OF INDIA & ORS. Petitioner(s)

VERSUS

M/S KHAZANA PROJECTS & INDUSTRIES Respondent(s)

(With appln(s) for c/delay in filing SLP,permission to file
additional documents and prayer for interim relief and office
report)

Date: 09/08/2010 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s) Mr. P.P. Malhotra, ASG
Mr. Shailendra Sharma, Adv.
Mr. J.K. Mishra, Adv.
Mr. A.K. Sharma, Adv.
Ms. Sushma Suri,Adv.

For Respondent(s) Mr. Sudhir Makkar, Adv.
Ms. Yasmin Tarapore, Adv.
for M/S. Janendra Lal & Co.,Adv.

UPON hearing counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

In terms of the signed order, we allow this appeal
and set aside the order of the High Court. To avoid any
delay, we hereby direct the Railways to make available
a fresh panel to the respondent within three weeks from
today and direct the respondent to make its nomination
from such panel within two weeks thereafter so that the

....2.

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ITEM NO.42 COURT NO.3 DATED 9.8.2010contd.

entire process of constitution of Arbitral Tribunal can
be completed within two months from today. To ensure
that the panel is constituted without any delay, list
this matter after two months on 18.10.2010 for reporting
compliance.

(Ravi P. Verma)
Court Master

(M.S. Negi)
Court Master

[Signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6410 OF 2010
[Arising out of SLP(C) No.10886 of 2009]

UNION OF INDIA & ORS.

.....APPELLANTS

Versus

M/S. KHAZANA PROJECTS AND
INDUSTRIES PVT. LTD.

.....RESPONDENT

O R D E R

Leave granted.

2. In regard to a contract between the appellants (Railway Administration) and respondent, the respondent raised some disputes and sought reference to arbitration. The arbitration agreement between the parties contained in Clause 64 of the General Conditions of Contract prescribed a specific procedure for appointment of Arbitrators. On receipt of a request for arbitration from the contractor, the General Manager of the Railways is required to furnish a panel of names to the contractor; the contractor is required to select names from the panel; and thereafter the Arbitral Tribunal has to be constituted by the General Manager in the manner stated in the arbitration clause.

3. The respondent sought arbitration by letter dated 28.3.2005. On the ground that there was no response, the respondent filed an application under Section 11 of the2.

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Arbitration and Conciliation Act, 1996 (for short, 'the Act') on 18.5.2005 for appointment of an Arbitrator. The Railways sent a panel in terms of the arbitration clause to the respondent on 20.6.2005.

4. The High Court allowed the petition under Section 11

of the Act by order dated 11.4.2008. It held that the steps taken by Railways for constitution of Arbitral Tribunal after the petition was filed has to be ignored. It, therefore, appointed a retired High Court Judge as Arbitrator. The Railway administration has challenged the said appointment in this appeal by special leave.

5. This Court in a series of decisions has held that the constitution of Arbitral Tribunal should be in accordance with the provisions of the Arbitration Agreement subject to requirements of independence and impartiality. (Northern Railway Administration Vs. Patel Engg. Co. Ltd. - (2008) 10 SCC 240 and Indian Oil Corporation Ltd. Vs. Raja Transport (P) Ltd. - (2009) 8 SCC 520). Therefore, there was no justification for the High Court to ignore the provisions of the Arbitration Agreement contained in Clause 64 and appoint a retired Judge as the Sole Arbitrator.
.....3.

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6. We, therefore, allow this appeal and set aside the order of the High Court. To avoid any delay, we hereby direct the Railways to make available a fresh panel to the respondent within three weeks from today and direct the respondent to make its nomination from such panel within two weeks thereafter so that the entire process of constitution of Arbitral Tribunal can be completed within two months from today. To ensure that the panel is constituted without any delay, list this matter after two months on 18.10.2010 for reporting compliance.

.....J.
(R.V. RAVEENDRAN)

New Delhi;
August 09, 2010.

.....J.
(H.L. GOKHALE)