

ITEM NO.102

COURT NO.3

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 2972 OF 2007

MUNICIPAL CORPN. OF DELHI

Appellant (s)

VERSUS

J.P. SAINI

Respondent(s)

(With appln(s) for withdrawal and prayer for interim relief and office report)

WITH SLP(C) NO. 17964 of 2010
(With prayer for interim relief and office report)
SLP(C) NO. 18062 of 2010
(With prayer for interim relief and office report)
SLP(C) NO. 18063 of 2010
(With prayer for interim relief and office report)
SLP(C) NO. 18066 of 2010
(With prayer for interim relief and office report)
SLP(C) NO. 18145 of 2010
(With prayer for interim relief and office report)
SLP(C) NO. 18153 of 2010
(With prayer for interim relief and office report)
SLP(C) NO. 18183 of 2010
(With prayer for interim relief and office report)
SLP(C) NO. 18184 of 2010
(With prayer for interim relief and office report)
SLP(C) NO. 18185 of 2010
(With prayer for interim relief and office report)
SLP(C) NO. 18209 of 2010
(With prayer for interim relief and office report)
SLP(C) NO. 22512 of 2010
(With prayer for interim relief and office report)

Date: 24/08/2011 This Appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE A.K. PATNAIK

For Appellant(s) Mr. Ravi Shanker Prasad, Sr. Adv.
Mr. Sanjiv Sen, Adv.
Mr. Praveen Swarup, Adv.
Mr. P Parmeswaran, Adv.

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Mr. Ujjal Banerjee, Adv.

For Respondent(s) Mr. Jitendra Mohan Sharma, Adv.
Mr. Sandeep Singh, Adv.
Mr. Vibhour Vardhan, Adv.
Mr. Rajeev Singh Pilania, Adv.

Mr. Jasbir Singh Malik, Adv.
Mr. Milind Kumar, Adv.

Mr. Jasbir Singh Malik, Adv.
Ms. Kamakshi S. Mehlwal, Adv.

Respondent-In-Person

Mr. Jasbir Singh Malik, Adv.

Mr. S.K. Sabharwal, Adv.

Mr. Shiv Sagar Tiwari, Adv.

UPON hearing counsel the Court made the following

O R D E R

Mr. Ravi Shankar Prasad, learned senior counsel appearing for the MCD submitted that having regard to Clause 20 of the Agreement, if the contractor does not make any demand for appointment of arbitrator in respect of any claims in writing within 120 days of receiving the intimation from the Engineer in charge that the final bill is ready for payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the MCD shall be discharged and released of all liabilities under the contract in respect of their claims.

This contention has been negatived by the Arbitrator and by the High Court.

Learned counsel for the appellant, relying upon

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the judgment of this Court in Wild Life Institute of India, Dehradun Vs Vijay Kumar Garg, (1997) 10 SCC 528 and P. Manohar Reddy & Bros. Vs. Maharashtra Krishna Valley Dev. Corp. & Ors., (2009) 2 SCC 494, contends that the rejection of the contention is erroneous.

One of the contentions raised by the respondents is that Clause No.20 was not a part of their contract as the contracts were entered into 1999-2000 and this clause was introduced in the contract only in the year 2001. Another aspect that arises for consideration is whether the Engineer in charge had issued an intimation in writing that the final bill was ready for payment and, if so, the date of such intimation, as the period of 120 days commences from the date of intimation.

The appellant has not produced the relevant documents. In view of the above, the appellant-MCD is directed to produce the following documents in respect of each contract:

- (1) the contract;
- (2) the dates of the contracts and the date on which Clause 20 was added in the contract;
- (3) the date of intimation by the Engineer in charge to the contractor that the bill is ready for payment and the date of payment.

List on 1.9.2011 for further arguments.

(Ravi P. Verma)
AR-cum-PS

(M.S. Negi)
Court Master