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C.A.No. 1556 OF 1999

ITEM No.102

Court No. 1

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 1556 of 1999

State of West BengalAppellant (s)

VERSUS

M/s. G.C. GhoshRespondent (s)

(With office report)

Date : 11-03-2004 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE S.H. KAPADIA

For Appellant (s)Mr. Tapas Ray, Sr. Adv.
Mr. T.C. Sharma, Adv.
for Mr. S.K. Nandy,Adv.

For Respondent (s)

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

The appeal is allowed. There shall be no order as to costs.

[Alka Dudeja] [Janki Bhatia]
Court Master Court Master

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

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1556 OF 1999

State of West Bengal...Appellant (s)

Versus

M/s. G.C. Ghosh ...Respondent(s)

O R D E R

Under an agreement, the respondent herein undertook to construct buildings at Burdwan. Certain disputes arose between the parties and the same were referred to the sole Arbitrator, named in the agreement. Subsequently, the Arbitrator died. An application under Section 8 of the Arbitration Act, 1940 was filed before the High Court at Calcutta for appointment of a new Arbitrator in place of H.K. Bose, who had expired. The learned Single Judge of the High Court instead of appointing an Arbitrator named in the agreement, appointed one Dilip Surana, Advocate.

It is against the said judgment, the appellant is in appeal before us. Shri Tapas Ray, learned senior counsel, appearing for the appellant, urged that in view of the designated Arbitrator named in the agreement, no other person could be appointed as an Arbitrator. We find merit in the contention. In Civil Appeal No. 2053 of 1999, titled Union of India and Anr. Vs. M.P. Gupta, decided on 5th February, 2004, it was held that where a gazetted officer has been named as an Arbitrator, no other person could be appointed as an Arbitrator.

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Following that decision, we set aside the judgment under challenge. However, it will be open to the Chief Engineer, Public Works Department to nominate any other person to act as an Arbitrator within a period of three months from today and give notice to the respondent of such appointment of Arbitrator. The appeal is allowed. Since no one appears on behalf of the respondent, there shall be no order as to costs.

.....CJI.

.....J.

(S.H. Kapadia)

New Delhi,
March 11, 2004.