

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

I.A. NO. 7 OF 2010  
IN  
CIVIL APPEAL NO. 7864 OF 1996

Rohtak & Hissar Distrct Elect.Co.Ltd. ...Appellant  
Versus  
U.P. Power Corporation Ltd. ...Respondent

O R D E R

I.A. No.7 of 2010, has been filed in Civil Appeal No.7864 of 1996, by the appellant, the Rohtak & Hissar District Electricity Supply Company Private Limited, for a decision in the matter on merits in this Court itself, or in the alternative to appoint an Umpire to decide the dispute between the parties.

On 31st May, 1965, the appellant and the respondent, the Uttar Pradesh State Electricity Board had entered into an Agreement, wherein Clause 24 provided for settlement of disputes by arbitration. In terms of the said Agreement, the disputes could be resolved, if either of the parties agreed upon one or two arbitrators, one to be appointed by the licensee and one by the supplier, who would also be entitled to appoint an Umpire before proceeding with the reference and it was further indicated that the decision of the arbitrator or the arbitrators or the Umpire, as the case may be, would be final and binding on the parties.

Pursuant thereto, one Mr. B.P.S. Seth and one Mr. 2

H.S. Gupta, were appointed as Arbitrators by the respective parties. They were later replaced by two others, who appointed one, Shri Gangeshwar Prasad as Umpire, but before such decision could be given, Shri Prasad died. After the death of Shri Gangeshwar Prasad, since there was no unanimity between the Arbitrators with regard to the appointment of an Umpire, the appellant filed Suit No.354 of 1982, under Sections 8 and 20 of the Arbitration Act, 1940 (for short, 'the Act'), for appointment of an Umpire. Since no objection was filed on behalf of the respondent, U.P. State Electricity Board, the petitions were allowed and the learned Additional Civil Judge, Allahabad, appointed one Shri Madhav Prasad Tripathi, a retired District Judge, as the Umpire.

Subsequently, on 5th July, 1985, the U.P. State Electricity Board, moved an application before the two Arbitrators, indicating that they wish to move an appeal to the High Court against the order passed by the learned Civil Judge, Allahabad in Misc. Case No.52 of 1984 and Misc. Case No.53 of 1984. The matter was, accordingly, adjourned and

on 19th July, 1985, the period of extension for making the award by the Arbitrators also expired. No further date was fixed by the Arbitrators for hearing, after the expiry of the said period and, accordingly, the appellant wrote to the Umpire requesting him to proceed with the matter, as contemplated under the relevant provisions of the Act. The learned Umpire, Shri Tripathi, thereupon called upon the parties to appear before him, but since the respondent chose not to appear, the Umpire signed and delivered his award on 12th October, 1985. Against the said award, the respondent filed objections before the Additional Civil Judge, Allahabad, under Sections 30 and 33 of the Act. The learned Additional District Judge rejected the objections filed by the respondent and made the award of the Umpire a Rule of

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Court and passed a decree in terms of the award.

Aggrieved by the passing of the decree on the said award, the matter was taken to the Division Bench in appeal from Order No.275 of 1988, which was allowed and the matter was remitted back to the Umpire for fresh decision.

Against the said judgment and order of the Division Bench dated 2nd March, 1995, Civil Appeal No.7864 of 1996, was filed by the appellant, which was disposed of by this Court on 6th September, 1996, by appointing Justice R.M. Sahai (Retired) as Umpire to decide the disputes between the parties. The Umpire entered into reference, but the hearing could not take place on account of the expiry of the period for making the award. An application was moved before this Court for extension of time and the period was extended by one year. The period was again extended till 10th November, 2009, before which period, the Umpire expired.

It is in these circumstances, that the present application has been made for the reliefs prayed for, as indicated herein-above.

When this application came up for hearing before us on 24th January, 2011, we had adjourned the matter to enable the parties to jointly suggest the name of a person, who could be appointed as an Umpire. A suggestion was also made that instead of being appointed as an Umpire, he could also be appointed as a Sole Arbitrator, in order to avoid further disputes. In this regard, the name of Justice A.P. Misra, a retired Judge of this Court, now residing at 27, Park Road, Allahabad in Uttar Pradesh, was suggested. We are informed that Justice Misra has agreed to act as either the Umpire or the Sole Arbitrator.

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In these circumstances, we dispose of this application by appointing Justice A.P. Misra, as the Sole Arbitrator, to arbitrate on the disputes between the parties and to publish his award within four months from the date on which he enters upon the reference, having regard to the provisions of the Act. In the event, the award cannot be made within the said period, the parties would be at liberty to seek extension of time for making and publishing the award.

Let the records relating to the arbitration proceedings, placed before Justice R.M. Sahai (since

deceased), which had been sent to this Court, be sent to Justice Misra for the purpose of the arbitration, along with a copy of this order. The learned Arbitrator will be at liberty to fix his fees and the terms on which the arbitration is to proceed. The aforesaid amount is to be shared equally by both the parties.

.....J.  
(Altamas Kabir)

New Delhi,  
February 10, 2011

.....J.  
(Cyriac Joseph)

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ITEM NO.1

COURT NO.2

SECTION XII

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

I.A.7/2010 in CIVIL APPEAL NO. 7864 OF 1996

ROHTAK & HISSAR DISTRICT ELECT. CO.LTD.

Appellant (s)

VERSUS

THE U.P. POWER CORPORATION LTD.

Respondent(s)

(With appln(s) for directions)

Date: 10/02/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR

HON'BLE MR. JUSTICE CYRIAC JOSEPH

For Appellant(s)

Ms. Sandhya Goswami, Adv.

For Respondent(s)

Mr. Pradeep Misra, Adv.

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

I.A. No.7 of 2010, is disposed of in terms of the signed order.

(Chetan Kumar)  
Court Master

(Juginder Kaur)  
Court Master

(Signed order is placed on the file)