

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).8115/2006

(From the judgement and order dated 01/03/2006 in CWP No. 2766/2005
of The

HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

N.F.E. CO-OP. HOUSE BUILDING STY. LTD.

Petitioner(s)

VERSUS

M/S. AMAR CONSTRUCTION CO.

Respondent(s)

(With appln(s) for permission to place addl. documents on record and prayer for interim
relief and office report)

(For final disposal)

Date: 29/03/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE DALVEER BHANDARI

For Petitioner(s)

Mr. Manoj Swarup, Adv.

Mr. Ashish Mohan, Adv.

For Respondent(s)

Mr. S.B. Upadhyay, Sr. Adv.

Ms. Kumud Lata Das, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

Appeal stands disposed of with no order as to costs, in terms
of the signed
order.

(J.S. Rawat)

AR-cum-PS

(Kanwal Singh)

Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1683 OF 2007.

(Arising out of SLP(C) No. 8115 of 2006)

National Fertilizers Employees

Cooperative House Building Society Ltd.

Appellant(s)

Versus

M/s. Amar Construction Co.

Respondent(s)

O R D E R

Leave granted.

The National Fertilizers Employees Cooperative Housing
Building Society Ltd., the appellant herein, allotted work contract to

the respondent Company. The work contract provided redressal of disputes through arbitral proceedings. The relevant arbitral clause contained in the work contract is extracted below:

"All matters, questions or differences whatsoever which shall at any time arise between the parties hereto, touching the construction, meaning, operation or effect of the contract or out of the matters relating to the contract or breach thereof or the respective rights or liabilities of the parties whether during execution or after completion of the work or whether before or after termination, shall after written notice by either party to the contract be referred to the sole arbitration the General Manager, Panipat, who may himself enter into the reference as Arbitrator or appoint any other person to be the Arbitrator. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the rules made thereunder."

The respondent Company raised dispute without complying with the arbitral clause. The respondent filed application under Section 11(6)

of the Arbitration & Conciliation Act, 1996 (for short "the Act")

before the Designated Court, which appointed an Arbitrator other

than the one provided in the Agreement. The Designated Court held:

"...The Respondent by not appointing arbitrator have lost their right to appoint arbitrator and now the same is to be appointed by the Court itself..."

Accordingly, the Designated Court ordered that Shri M.K. Jain, a Retired Superintending Engineer as the Sole Arbitrator to arbitrate upon the dispute between the parties.

Aggrieved against the order passed by the Designated Court, the appellant filed a Writ Petition in the High Court. The High Court dismissed the Writ Petition being not maintainable in view of the sub- paras (x) and (xi) of para 46 of the decision of the Constitution Bench of this Court in M/s. SBP & Co. v. M/s. Patel Engineering & Anr. [(2005) 8 SCC 618].

Being aggrieved, the present appeal has been filed.

During the course of arguments on the previous date of hearing, i.e., on 22nd of March, 2007, counsel for the parties had agreed that the appellant would propose three names for being appointed as Arbitrators and the respondent would be at liberty to choose one of them. Accordingly, the case was adjourned for today.

Pursuant to the aforesaid agreement, the appellant has

proposed the following four names:

Mr. R.S. Rana, Chief Engineer (Retired) from P.W.D.(Building & Roads) Department, Haryana, Chandigarh [House No. 949, sector-17, Faridabad (Haryana)]

1

Mr. P.C. Sharma, Chief Engineer (Retired) from P.W.D. (Building & Roads) Department, Haryana, Chandigarh [House No. 1034, Sector-15, Faridabad (Haryana)]

2

Mr. R.K. Goyal, Superintending Engineer (Retired) from P.W.D. (Building & Roads) Department, Haryana, Chandigarh [House No. 83, Sector-31, Faridabad (Haryana)]

3

Mr. L.R. Dua, Superintending Engineer (Retired) from P.W.D. (Building & Roads) Department, Haryana, Chandigarh.

4 [House No. 1885, Sector-28, Faridabad (Haryana)]

out of which the respondent has chosen the name of Shri R.K. Goyal,

Superintending Engineer (Retired) from P.W.D. (Building & Roads)

Department, Haryana, Chandigarh, who is residing at House No. 83,

Sector-31, Faridabad (Haryana) for being appointed as the Sole

Arbitrator to settle the dispute between the parties.

In view of the settlement arrived at between the parties, in

place of Mr. M.K. Jain appointed by the Designated Court, we appoint

Shri R.K. Goyal (at serial no.3 above) to be the Sole Arbitrator to

enter upon the Reference and decide the dispute between the parties.

Since the matter is pending for the last four years, we would

request the Arbitrator to dispose of the matter within nine months

from the date of entering upon the Reference.

The appeal stands disposed of with no order as to costs.

.....J.

(ASHOK BHAN)

New Delhi;

.....J.

March 29, 2007.

(DALVEER BHANDARI)