

ITEM NO.9

COURT NO.2

SECTION IX

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

IA 2/2012 in
Petition(s) for Special Leave to Appeal (Civil) No(s).16349/2011

(From the judgement and order dated 13/06/2011 in ANL
No.361/2011,APL No.528/2011 of The HIGH COURT OF BOMBAY)

GM,BRIHANMUMBAI ELEC.SUP.& TRANP.UNDERTA

Petitioner(s)

VERSUS

M/S TOPWAY MULTITRADE

Respondent(s)

(for directions and office report))

Date: 02/04/2012

This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR
HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA

For Petitioner(s)

Mr. G.E. Vahanvati, A.G.I.
Mr. C.U. Singh, Sr. Adv.
Mr. Praveen Jain, Adv.
Mr. Akshat kulshrestha, Adv.
Ms. Pallavi Mohan, Adv.
for M/S. M.V. Kini & Associates,Advts.

For Respondent(s)
/applicant

Mr. Pradip Ghosh, Sr. Adv.
Mr. Subodh Kr. Pathak, Adv.
Mr. Dharmendra Kumar Sinha,AOR.

IA2/12 in SLP(C)16349/11

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

1. I.A.2/12, has been filed on behalf of the respondent/applicant, M/S TOPWAY MULTITRADE PVT.LTD., inter alia, praying for clarification of the order dated 14th October, 2011, regarding the alleged failure of petitioner/BEST to hand-over 100 A.C. Buses out of 270 buses, in a fit condition, for display of advertisements as per the agreement between the parties and pursuant to the order dated 14/10/2011, passed by this Court.

2. It has been alleged by Mr. Ghosh, learned senior counsel appearing for the respondent,

270 that despite payment of charges @ Rs.80,000/-
per bus per month, out of the promised
the buses, only 170 had been made over to
respondent/applicant and that the remaining 100
were not fit for being used for the purposes for
which the agreement had been entered into.

3. The learned Attorney General for India,
appearing for the petitioner, has submitted that
the agreement was not with regard to the 170
buses or 100 buses, as alleged, but for
an entire fleet, which was comprised of 270 buses
and that it was upto the respondent to arrange
for display of advertisements thereupon.

4. The dispute regarding the agreement
is already being considered by the learn
ed Arbitrator and it has been suggested by
Mr. Ghosh, that this dispute could also be made part
of the reference in the arbitral proceedings
IA2/12 in SLP(C)16349/11

3

before the Arbitrator. The learned Attorney
General for India, has no objection to the same.
Accordingly, we dispose of I.A.No.2, by
directing the learned Arbitrator, who is in
seisin of the matter and has already considered
some of the disputes, to also consider all the
disputes relating to the alleged non-
availability of the entire fleet of 270
A.C.buses, despite payment of charges in respect
thereof. While considering the disputes, the
learned Arbitrator should also take into
consideration the claim of the respondent that
the entire fleet of 270 buses had not been made
available from the very commencement of the
Agreement, despite payment of charges by the
respondent for 270 buses. The Learned
Arbitrator shall, thereafter, pass an
appropriate Award on the claims of the
respective parties.

(Sheetal Dhingra)
COURT MASTER

(Juginder Kaur)
Assistant Registrar