

ITEM NO.301 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

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.&amp; TRANP.UNDERTA Petitioner(s)

VERSUS

M/S TOPWAY MULTITRADE Respondent(s)

(With prayer for interim relief and office report)  
(For final disposal)

Date: 14/10/2011 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ALTAMAS KABIR  
HON'BLE MR. JUSTICE H.L. GOKHALEFor Petitioner(s) Mr. G.E. Vahanvati, A.G.  
Mr. Chander Udai Singh, Sr. Adv.  
Mr. Praveen Jain, Adv.  
Mr. H. Toor, Adv.  
Mr. Ravi Kini, Adv.  
Mr. T.S. Sidhu, Adv.  
Mr. Mukesh Kumar, Adv.  
Mr. Akshat Kulshatha, Adv.  
for M/S. M.V. Kini & AssociatesFor Respondent(s) Mr. Pradeep Ghosh, Sr. Adv.  
Mr. Dharmendra Kumar Sinha, AOR  
Mr. Subodh K. Pathak, Adv.  
Ms. Baraali Basak, Adv.UPON hearing counsel the Court made the following  
O R D E R

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General Manager, Brihanmumbai Electricity Supply  
and Transport Undertaking (BEST) against the order  
dated 13th June, 2011, passed by the Division Bench of the Bombay  
High Court in Appeal (Lodging) No.361 of 2011. The orde  
r  
under appeal is of an interim nature passed on  
an application filed under Section 9 of the Arbitration and  
Conciliation Act, 1996, by the respondent herein,  
for interim orders to preserve the properties in questi  
on

pending arbitration proceedings.

9 By virtue of the said order, the Section application was dismissed and, thereupon, the appeal came to be filed and is still pending decision before the Bombay High Court.

The respondent had been allotted 270 air-conditioned buses for the purpose of applying an outer coating of film to strengthen the glass windows and for being used as a running display board for purposes of advertisement.

The said allotment was terminated for violation of Rule 100(2) of the Central Motor Vehicles Rules, 1989, as the film used on the sides of the buses obscured the vision from outside the bus which was required to be maintained at 50% visibility.

the By virtue of the interim directions given, Division Bench of the Bombay High Court, while laying down certain conditions for allowing the respondent to continue their operations in respect of the 270 air-conditioned buses, which had been allotted to them, also directed that subject to compliance with the terms and conditions indicated, the respondent would be allowed to displ

ay advertisements on the said buses.

Aggrieved by the said

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direction, the petitioner has filed this special leave petition.

The subject matter of controversy is the allotment which had been made in favour of the respondent by the petitioner for being permitted to use a new technological procedure, by which a coating of film could be attached to both the side panels of a bus to protect the glass windows as well as to provide a means of advertising on the film by which the bus was to be wrapped on all sides.

As indicated hereinabove, the respondent's allotment was terminated giving rise to the litigation.

During the hearing of this special leave petition, certain suggestions were made on behalf of the respondent, which have been accepted on behalf of the petitioner, as an interim arrangement pending the final award that may be passed in arbitration. These suggestions have been made on account of the fact that an application under Section 11(6) read with Sections 13 and 14 of the aforesaid Act is pending before the Bombay High Court. In fact, the said suggestions would have the effect of disposing of the said pending application. It has also been submitted on behalf of the parties that the application under Section 11(6) may also be disposed of by this Court by appointing an Arbitrator in the proceedings.

We may state at this stage that a sum of Rs.81 lacs

towards the interim arrangement, had been handed over to the petitioner on 20th June, 2011, by a Demand Draft/Pay Order issued by the Bank of Baroda. It has been submitted that the said amount, which has still not been appropriated by

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the petitioner, could be adjusted against the amounts that will be payable in terms of the order which we now propose to pass at the invitation of the parties.

We dispose of the special leave petition by directing that without prejudice to the rights and contentions of the parties, the respondent shall pay to the petitioner a sum of Rs.80,000/- per bus per month for the display of advertisements on 270 air-conditioned buses, which had been allotted to the respondent earlier, till the disposal of arbitration proceedings and subject to the result thereof. After the appropriation of the aforesaid sum of Rs.81 lacs, the balance amount is to be paid within a period of three weeks from date. The same will also be subject to the respondent complying with all the norms as required under Rule 100(2) of the Central Motor Vehicles Rules, 1989, and other requirements under the Motor Vehicles Act and Rules.

Apart from the above, in view of the joint submission made on behalf of the parties, we appoint Justice P.S. Patankar, a retired Judge of the Bombay High Court, as the learned Arbitrator, on the basis of the application under Section 11(6) of the above Act pending before the Bombay High Court. The learned Arbitrator will be at liberty to fix his own fees and the manner in which the proceedings are to be conducted and concluded by him. The parties will be entitled to file their Statement of Claims before the learned Arbitrator within four weeks from the date on which the learned Arbitrator enters upon the reference. We also request the learned Arbitrator to dispose of the matter and make his Award, as quickly as possible.

We also make it clear that observations made in this

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order or by the learned Single Judge, as well as the Division Bench of the High Court, will not influence the outcome of the arbitration proceedings.

This order disposes of the application under Section 11 read with Sections 13 and 14, as well as Section 9 of the Arbitration and Conciliation Act, 1996. Consequently, the appeal, being Appeal (Lodging) No.361 of 2011, which is pending before the Division Bench, also stands disposed of.

In default of payments, as indicated hereinabove, the interim arrangement, as far as the display of advertisement by the respondent is concerned, shall remain suspended and the petitioner will be at liberty to take appropriate steps in accordance with law.

(Chetan Kumar)  
Court Master

(Juginder Kaur)  
Assistant Registrar