

ITEM NO.103

COURT NO.5

SECTION III

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

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 427 OF 2001

COMMNR. OF CENTRAL EXCISE, JAMSHEDPUR

Appellant (s)

VERSUS

M/S. STEEL AUTHORITY OF INDIA LTD.

Respondent(s)

(With office report )

WITH Civil Appeal NO. 676-677 of 2001

(With appln.(s) for stay and office report)

Date: 21/03/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s)

Mr. K. Radhakrishnan, Sr. Adv.

Mr. T.S. Murthy, Adv.

Mr. P. Parmeswaran, Adv.

For Respondent(s)

Mr. Alok Madav, Adv.

Mr. Karan Talwar, Adv.

Mr. Prabhjit Jauhar, Adv.

Mr. A.K. Shahi, Adv.

Mr. J. Sharma, Adv.

Mr. S.S. Jauhar, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeals are disposed of in terms of the signed order.

( RAVI P. VERMA )

( KANWAL SINGH )

H )

Court Master

Court Master

aster

[Signed order is placed on the file]

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 427 OF 2001

Commissioner of Central Excise,  
Jamshedpur

Appellants

Versus

M/s. Steel Authority of India Ltd.

Respondents

WITH

CIVIL APPEAL NOS. 676-677/2001

O R D E R

The dispute is between the Revenue Department and the Public Sector Undertaking. The course to be followed with parties of litigation of this kind has been indicated by this Court in Oil and Natural Gas Commission Vs. Collector of Central Excise, 1992 (61) ELT 3(SC), for short 'ONGC-I'. Pursuant to the direction issued by this Court, the Cabinet Secretary took a decision that the dispute between the Government Department and the Public Sector Undertaking of the Union of India would be referred to a High Power Committee of Secretaries and resolved amicably by mutual consultation or through good offices of empowered agencies of the Government or through arbitration to avoid recourse to litigation. The Cabinet Secretary in his report had stated:

"I would also like to state that the Government respects the views expressed by this Honourable Court and has accepted them that public undertakings of Central

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Government and the Union of India should not fight their litigation in Court by spending money on fees on counsel, court fees, procedural expenses and wasting the public time. It is in this context that the Cabinet Secretariat has issued instructions from time to time to

all Departments of the Government of India as well as to public undertakings of the Central Government to the effect that all disputes, regardless of the type, should be resolved amicably by mutual consultation or through the good offices of empowered agencies of the Government or through arbitration and recourse to litigation should be eliminated."

In view of this statement made by the Cabinet Secretary, this Court directed that the Government of India shall set up a Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India, Ministry and Public Sector Undertaking of the Government of India and Public Sector Undertakings in between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation.

Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior Officers only should be nominated so that the Committee would function with status, control and discipline.

The order passed in ONGC-I (supra) was clarified in the subsequent

order passed in Oil and Natural Gas Commission Vs. Collector of Central Excise,  
1994 (70) ELT 45(SC), for short 'ONGC-II'. In paras 6 & 7, it was held:

"6. Wherever appeals, petitions etc. are filed without the clearance of the High Power Committee, so as to save limitation, the appellant or the petitioner as the case may be, shall within a month from such filing, refer the matter to the High Power Committee with prior notice to the Designated Authority in Cabinet Secretariat

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of Government of India authorised to receive notices in that behalf. Sri K.T.S. Tulsi, learned Additional Solicitor General, stated that in order to coordinate these references of the High Power Committee the Government proposes to nominate the Under Secretary (Coordination) in the Cabinet Secretariat as the nodal authority to coordinate these references. The reference shall be deemed to have been made and become effective only after a notice of the reference is lodged with the said nodal authority. The reference shall be deemed to be valid if made in the case of the Union of India by its Secretary, Ministry of Finance Department of Revenue, and in the case of Public Sector Undertakings by its

Chairman, Managing Director or Chief Executive, as the case may be. It is only after such reference to the High Power Committee is made in the manner indicated that the operation of the order or proceedings under challenge shall be suspended till the High Power Committee resolves the dispute or gives clearance to the litigation. If the High Power Committee is unable to resolve the matter for reasons to be recorded by it, it shall grant clearance for the litigation.

7. The High Power Committee shall submit a half yearly report - instead of quarterly report as earlier indicated - to this Court as to the number of matters referred to it and the manner in which they were dealt with and disposed of. The report for the half-year ended 31st December, 1993 shall be lodged before 31st January, 1994 and for every half year thereafter within one month of the expiry of the half year."

In the present case, in view of these judgments, on the previous date of

hearing counsel for the appellant sought time from us to seek instructions

whether clearance has been obtained from the High Power Committee or not

After taking instructions, learned senior counsel appearing for the appellant

states that no such clearance has been taken. As indicated by this Court in

ONGC-II, appeal could be filed to save limitation but the appellant or the

petitioner, as the case may be, were required to refer the matter to a High Power

Committee with prior notice to the Designated Authority in the Cabinet

Secretariat of the Government of India authorised to receive notices in that

behalf within a month. Such a recourse having not been adopted, these appeals

cannot proceed further and are accordingly disposed of leaving the question of

law open.

It is reiterated that the Government of India and the Public Sector

Undertakings should strictly follow the instructions issued by this Court in Oil and

Natural Gas Commission Vs. Collector of Central Excise, 1992 (61) ELT 3(SC) and

Oil and Natural Gas Commission Vs. Collector of Central Excise, 1994 (70) ELT 45

(SC).

.....J.

( ASHOK BHAN )

New Delhi;

.....J.

March 21, 2006.

( LOKESHWAR SINGH PANTA )