

CASE NO.:
Appeal (civil) 7063-7065 2000

PETITIONER:
M/S.NATIONAL HEAVY ENGINEERING COOPERATIVE LTD.

Vs.

RESPONDENT:
M/S.KING BUILDERS

DATE OF JUDGMENT: 04/12/2000

BENCH:
D.P.Mohapatro, Shivaraj Patil

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T...J

J U D G M E N T

D.P.MOHAPATRA, J.

Leave granted. All these appeals are inter-linked with each other. The parties are the same and common questions arising from the same set of facts are involved in all these cases which were disposed of by the High Court of Rajasthan by a common judgment. While SLP (C) Nos.10917-10918 of 1999 are directed against the judgment passed by the High Court in Miscellaneous Appeal

Nos.283 of 1992 and 825 of 1994 filed under Section 39 of the Arbitration Act, 1940, SLP (C) Nos.9170-9172 of 1999 are directed against Civil Review Petition Nos.117 of 1997 and 118 of 1997 arising from the judgment/order passed in the said two appeals and Civil Miscellaneous Appeal No.691 of 1997. In Civil Miscellaneous Appeal No.691 of 1997, the appellant- M/s.National Heavy Engineering Cooperative Ltd. (hereinafter referred to as the 'company') challenged the order passed by the District Judge, Jaipur City, appointing the arbitrator in compliance with the direction passed by the High Court in the appeals. In Civil Miscellaneous Appeal No.283/92, the order passed by the District Judge on 24.2.1992, allowing the application filed by M/s.King Builders (hereinafter referred to as the 'contractor') for appointment of an arbitrator and directing the company to take steps for appointment of an arbitrator in accordance with Clause 66 of the agreement within one month, was under challenge. Civil Miscellaneous Appeal No.825 of 1994 was filed by the contractor challenging the order dated 31.1.1994 dismissing the contractor's application under Section 8 of the Act. The High Court, on consideration of the matter, dismissed appeal No.283 of 1992 and confirmed the order dated 24.2.1992 passed by the Subordinate Judge and allowed the appeal No.825 of 1994 and set aside the order dated 31.1.1994 passed by the Subordinate Judge. The

High Court, while allowing the contractor's application filed under Section 8 of the Act, directed the District Judge, Jaipur city to appoint an arbitrator for adjudication of the dispute which has arisen between the parties within one month. In paragraph 6 of the counter affidavit filed by the contractor in this Court, it has been averred inter alia that the trial Court, in compliance of the judgment and order of the Additional Chief Engineer, High Court, appointed one Shri M.M.Singh, retired P.W.D. as the arbitrator. It is relevant to state here that the Tilam Sangh had suggested appointment of Sri K.C.Puri, a former Executive Engineer to act as the sole arbitrator. The question that arises for consideration is who is to act as arbitrator for adjudication of the disputes raised by the parties in the case; whether it is the former Additional Chief Engineer appointed by the Court or the former Executive Engineer as suggested by Tilam Sangh. The High Court has taken the view that the arbitrator appointed by the lower court, in compliance with the order of the High Court dated 19th May, 1997, should act as the arbitrator. We have heard learned counsel appearing for both the parties and perused the impugned order/judgment passed by the High Court.

The learned counsel for the appellant strenuously urged that only the arbitrator appointed by the Administrative Head of the Tilam Sangh is entitled to act as arbitrator since his appointment is in terms of Clause 66 of the Agreement between the parties. The learned counsel appearing for the respondent on the other hand contended that since the arbitrator appointed by the Court is a former Additional Chief Engineer who is more experienced than the former Executive Engineer appointed by the Administrative Head of Tilam Sangh, this Court should not interfere with the order passed by the High Court in which the appointment of the former has been confirmed. Alternatively he contended that if the appellant is agreeable, a retired High Court Judge may be appointed as arbitrator in the case. Considering the nature of the controversy raised in the case, we specifically asked the learned counsel for the appellant if the appellant has any serious objection against the continuance of the arbitrator appointed by the Court and if so, the basis for the same. We also put it to the learned counsel that whether the appellant is agreeable for appointment of a retired High Court Judge as arbitrator. To both these questions, the learned counsel could not offer any specific reply. As noted earlier, the District Judge appointed a former Addl. Chief Engineer as arbitrator in compliance with the direction in the order passed by the High Court. It is stated by learned counsel for the respondent that the said arbitrator has already entered upon the reference but the matter could not proceed further in view of the interim order passed by this Court on 30th July, 1999. Considering the facts and circumstances of the case and the submissions made by learned counsel for the parties, we are of the view that the order of the High Court confirming the appointment of arbitrator by the lower court warrants no interference in exercise of the jurisdiction under Article 136 of the Constitution. Accordingly, the Civil Appeals are dismissed. No costs.