

NATIONAL HIGHWAY AUTHORITY OF INDIA VS.
SAYEDABAD TEA ESTATE

COURT: The Supreme Court of India

CITATION: 2019 SCC ONLINE SC 1102

DECIDED ON: 27th August, 2019

BENCH: N.V. Ramana, Mohan M. Shantanagoudar,
Ajay Rastogi

LAW APPLIED

Arbitration and Conciliation Act, 1996 - Sec 11, 11(6)

National Highway Act, 1956 - 3(G), 3G(5), 3(D), 3H, 3J

INTRODUCTION

National Highway Authority of India v. Sayedabad Tea Estate¹ is a landmark case in the history of civil cases in India. Here the National Highway of India is Appellant and Sayedabad Tea Company LTD is Respondent. The appellant acquired some property but the respondent was not satisfied with the amount determined. That is why the Respondent applied for appointment of an arbitrator to re-determine the amount on 8th December 2006. Since the Central Government did not respond within 30 days, the Respondent applied to the Calcutta High Court to appoint an

¹ National Highway Authority of India v. Sayedabad Tea Estate, CIVIL APPEAL NO(s). 69586959 OF 2009

arbitrator on 7th March 2007. Meanwhile the Central Government appointed an arbitrator in the month of April. The case was tried by a bench trial.

FACT OF THE CASE

The Appellant acquired some property through section 3D of the National Highway Act, 1956. The Respondent was not satisfied with the determined amount, for this reason Respondent filed an application for appointment of an Arbitrator to re-determine the amount on 8th December, 2006. The Central Government didn't respond within 30 days under section 11(5) of Arbitration and Conciliation Act, 1996. In consequence the Respondent filed an application under Section 11(6) of Arbitration and Conciliation Act, 1996 to Calcutta High Court for appoint an Arbitrator on 7th March 2007. Meanwhile, the Central Government appointed a Arbitrator in April month.

The Calcutta High Court dismissed the appointment of Arbitrator by the Central Government. The Court held the right of Central Government to appoint an Arbitrator under the National Highway Act, 1956 is forfeited by the application of section 11(6) of the Arbitration and Conciliation Act, 1996.

The appellant filed a review petition in the High Court which is contending in the National Highway Act, 1956 is a special enactment laying down a procedure for Arbitrator's appointment. So, the application of Arbitration and Conciliation Act, 1996 cannot be allowed. The Court did not consider it as a valid ground for a review application.

Therefore, the Appellant feeling aggrieved an appeal to the supreme court of India. The appellant contended that the enactment is a code in itself providing not only for the procedure of acquisition but also for the determination of compensation and as a result, the Respondent could not take the help of Act, 1996.

The Respondent count on section 3G (6) of the National Highway Act, 1956. This section provides the subject to the provisions of the National Highway Act, 1956 shall apply to every arbitration carried out under the National Highway Act, 1956. Therefore the Respondent contended that they are empowered to take the help of Arbitration and Conciliation Act, 1996 when there is no any appointment was made by Central Government within 30 days from the filing of application. Hence, the Central Government forfeits its right of appointment when an

application under section 11(6) of the Arbitration and Conciliation Act, 1996 is made for appointment.

ISSUES RAISED

In this circumstances, one question is arises that is –

Is what remedy does a party have if the Central Government has the sole repository of power to appoint an Arbitrator and it mischievously lingers it for long?

ANSWER TO ISSUE –

On this above question, the Court held that the only remedy available would be to file a writ directing to Central Government to appoint an Arbitrator. However, it is pertinent to note that writs are costly and all may not afford it. This would lead to a travesty of justice as party would be left either with a costly remedy or none at all. Ergo, there is an only one solution that is the Central Government will change the Arbitrator after a while.

RULE APPLIED

The Court cited on the recent judgment of two judges Bench of this Court in general manager, National Highway and Infrastructure development corporation Ltd. vs. Prakash Chand Pradhan & Ors. Passed in civil appeal no 5250 of 2018 decided on 16th May, 2018 and taking assistance thereof submits that the order passed by the Calcutta High Court for the appointment of an Arbitrator under section 11(6) of Arbitration and Conciliation Act, 1996 is not legally sustainable and the High Court passed the both orders, one is 6th July of 2007 and another is 27th August of 2007 deserves to be quashed and set aside.

The counsel submits that under National Highway Act, 1956 has forfeited its right to appoint an Arbitrator after presentation of the application under the Arbitration and Conciliation Act, 1996 before the Calcutta High Court, and in this circumstances, there was no legal impediment before the High Court of Calcutta in appointment of an Arbitrator invoking sec 11(6) of the Arbitration and Conciliation Act, 1996 and in support of his submission placed reliance on judgment of this court in Deep Trading Company vs. Indian Oil Corporation and Others.¹

1. 2013(4)SCC 35

In earlier a question is arises before this court whether the application under sec 11(6) of the Arbitration and Conciliation Act, 1996 is maintained the view of statutory provisions of Electricity Act, 2003 adjudicating the dispute between licenees and generating companies of the special enactment and section 86(1) of the Electricity Act, 2003 in particular, this court in Gujarat Urja Vikash Nigam Ltd. vs. Essar power Limited.²

ANALYSIS OF JUDGEMENT

The judgment advanced mostly one issues . That is the Arbitrators; it is part of this judgment. The appellant moved immediately after passing of order dated 6th July ,2007,and applied for review and it was brought to notice of the High Court that the National Highway Act,1956 being a special enactment lying down a procedure for appointment of an Arbitrator where the power is being exclusively vested with the Central Government under section 3G(5) of the National Highway Act,1956. The application made under section 11(6) of the Arbitration and Conciliation Act,1996 is not maintainable but this was not considered by the High Court to be a valid reason for invoking review jurisdiction.

The appellant submits that the National Highway Act,1956 being a special enactment is a code in provide not only the procedure of acquisition also the mode of determining compensation by the competent authority and any person, if aggrieved by the compensation determined under sub section(1) or (2) of section 3(G) of the National Highway Act,1956.

After the submission of the appellant has placed on the recent judgment of two judges Bench of this Court in general manager, National Highway and Infrastructure development corporation Ltd. vs. Prakash Chand Pradhan & Ors. Passed in civil appeal no 5250 of 2018 decided on 16th May, 2018 and taking assistance thereof submits that the order passed by the Calcutta High Court for the appointment of an Arbitrator under section 11(6) of Arbitration and Conciliation Act, 1996 is not legally sustainable and the High Court passed the both orders, one is 6thJuly of 2007 and another is 27th August of 2007 deserves to be quashed and set aside.

Per contra, the counsel of respondents, while supporting order passed by the Calcutta High Court impugned in the instant proceedings submits the sub section (6) of section 3(G) of National Highway Act, 1956.

2.2008(4)SCC 755

Further the counsel of appellant submits that the under the National Highway Act, 1956 has forfeited its rights to appoint an Arbitrator after presentation of the application under the Arbitration and Conciliation Act, 1996 before the Calcutta High Court and in this circumstances, there was no legal impediment before the High Court of Calcutta in appointment of an Arbitrator invoking sec 11(6) of the Arbitration and Conciliation Act, 1996 and in support of his submission placed reliance on judgment of this court in Deep Trading Company vs. Indian Oil Corporation and Others.

The two bench of this court in the recent judgment in General Manage, National Highway and Infrastructure Development Corporation Ltd. case, dealing with the scope of sub sections (5) and (6) of section 3G of the National Highway Act, 1956 with reference to section 11 of the Arbitration and Conciliation Act, 1996 has held that the National Highway Act, 1956 being a special enactment and section 3G in Particular Provides an inbuilt mechanism for appointment of an Arbitrator by the Central Government.

In compliance of the mandate of section 3A to 3F of National Highway Act, 1956, after acquired the land some amount shall be paid as compensation which shall be determined by the competent authority under subsection (1) or (2) of section 3G of National Highway Act, 1956.

It is indeed true that the Arbitrator was appointed by the Central Government subsequent to the filing of an application under section 11 of Arbitration and Conciliation Act, 1996 in the month of April, 2007, but we get it appropriately to observe there is no need to file any application by respondent applicant and Central Government shall appoint an Arbitrator in term of Section 3G(5) of National Highway Act, 1956 within a period of 30days with prior intimation to the respondent.

This application accordingly succeeds and allowed. The Arbitrator may be appointed by appellant in terms indicated above.

CONCLUSION

This judgment created an attention to the appointment of the Arbitrator. It also creates an attention about the compensation which is determined by the competent authority. This is an essential case in the National Highway Act, 1956, and Arbitration and Conciliation Act, 1996.