

ITEM NO.24 Court 3 (Video Conferencing) SECTION XI

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 (C) No(s). 9920/2020

(Arising out of impugned final judgment and order dated 07-07-2020 in AACA No. 117/2019 passed by the High Court Of Judicature At Allahabad)

M/S D.P. CHOPRA & ANR.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.80686/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.80687/2020-EXEMPTION FROM FILING AFFIDAVIT , IA No. 80687/2020 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 80686/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 13-10-2020 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE NAVIN SINHA
HON'BLE MR. JUSTICE K.M. JOSEPH

For Petitioner(s)

Mr. Jatin Saigal, Adv.
Ms. Devna Soni, Adv.
Mr. Ashish, Adv.
Mr. Bhaskar Malakar, Adv.
Mr. Snehasish Mukherjee, AOR

For Respondent(s)

Mr. Balbir Singh, ASG
Nr. Bhuvan Mishra, Adv.
Mr. Nachiketa Joshi, Adv.
Mr. Raj Bahadur Yadav, AOR

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

Shri Jatin Saigal learned counsel for the petitioners states that respondent No.1 is the necessary party in this case, as a result of which it

is not necessary to continue with respondent Nos. 2 and 4, who are accordingly deleted from the array of parties.

The relevant clause with which we are directly concerned is clause 64(3)(a) (ii) which reads as follows :

"64.(3)(a)(ii) - In cases not covered by the clause 64(3) (a)(i), the Arbitral Tribunal shall consist of a Panel of three Gazetted Rly. Officers not below JA grade or 2 Railway Gazetted Officers not below JA Grade and a retired Railway Officer, retired not below the rank of SAG Officer, as the arbitrators. For this purpose, the Railway will send a panel of more than 3 names of Gazetted Rly. Officers of one or more departments of the Rly. Which may also include the name(s) of retired Railway officer(s) empanelled to work as Railway Arbitrator to the contractor within 60 days from the day when a written and valid demand for arbitration is received by the GM. Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. GM shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of contractor's nominees. While nominating the arbitrators it will be necessary to ensure that one of them is from the Accounts department. An

officer of Selection Grade of the accounts Department shall be considered of equal status to the officers in SA grade of other departments of the Railway for the purpose of appointment of arbitrator."

The relevant dates with which we are concerned are invocation of arbitration by a notice sent by the petitioners to the respondents on 4.9.2019, which is stated to have received by the respondents on 25.09.2019. Proposing the names as laid down in clause 64(3)(a)(ii) within sixty days was not done in time as the General Manager's letter proposing these names was sent to the petitioners on 6.12.2019. This being the case, it is clear that the arbitration clause cannot be operated in the facts of this case, as a result of which the dismissal of Section 11 petition filed in the High Court is incorrect. We, therefore set aside the order dated 07.07.2020 and appoint Shri Justice Aftab Alam (Retd Judge) Supreme Court of India as sole Arbitrator in these proceedings, who will fix the fees after consulting the parties.

The special leave petition is disposed of.

Pending applications stand disposed of.

(CHARANJEET KAUR)
ASTT. REGISTRAR-cum-PS

(NISHA TRIPATHI)
BRANCH OFFICER