

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1374 OF 2017
(Arising out of SLP(C) No. 14778/2016)

M/s N.D.RADHA KISHEN AND CO. .. APPELLANT(S)

VERSUS

UNION OF INDIA .. RESPONDENT(S)

O R D E R

1. Leave granted.
2. We have heard learned counsel for the parties.
3. This appeal is directed against the judgment and order passed by the High Court of Jammu and Kashmir at Jammu in AA No. 31 of 2015 dated 07.05.2016 whereby the High Court had declined to refer the disputes between the parties to arbitration on the ground that the disputes are not arbitrable.
4. The dispute raised by the appellant before

us is that the appellant has a right to renew contract dated 02.04.1973 which had been denied to him. The respondent claims that the right to renewal of the contract is an unfettered right vide Clause 11.2 of the Agreement which reads as follows :

"The Railway Administration may in its sole and unfettered discretion, renew the contract for such as it may in its discretion fix, subject to such additions and alternations as the Railway Administration, may in its sole discretion deem necessary."

5. Having considered the matter, we are of the view that whether there is an unfettered discretion or not, or whether the discretion has been exercised in accordance with law is itself a dispute which can be arbitrated upon.

6. In the circumstances, we set aside the order of the High Court and direct that the dispute raised by the appellant vide notice of arbitration dated 14.06.2015 shall be referred

to an arbitration. Accordingly, we appoint Justice Shri Muzzafar Hussain Attar, former Judge, High Court of Jammu & Kashmir as an Arbitrator. Learned Arbitrator shall be at liberty to fix the remuneration in consultation with the parties.

7. The appeal is disposed of accordingly.

.....J.
[S.A. BOBDE]

.....J.
[L. NAGESWARA RAO]

NEW DELHI,
FEBRUARY 03, 2017.

ITEM NO.1

COURT NO.9

SECTION XVIA

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

Petition for Special Leave to Appeal (C) No. 14778/2016

(Arising out of impugned final judgment and order dated 07/05/2016 in AA No. 31/2015 passed by the High Court Of Jammu&kashmir At Srinagar)

M/S N.D. RADHA KISHEN AND CO. Petitioner(s)

VERSUS

UNION OF INDIA Respondent(s)

(With appln. (s) for permission to place addl. documents on record and interim relief and office report)

Date : 03/02/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE
HON'BLE MR. JUSTICE L. NAGESWARA RAO

For Petitioner(s) Mr. Gaurav Pachnanda, Sr. Adv.
Mr. Pranav Kohli, Adv.
Mr. Rahul Gupta, Adv.
Ms. Nidhi Agrawal, Adv.
Mr. Ashok Mathur, AOR

For Respondent(s) Ms. Nalin Kohli, Adv.
Ms. Alka Agarwal, Adv.
Mr. Ankit Roy, Adv.
Mr. Prabhas Bajaj, Adv.
Mr. Raj Bhadur Yadav, Adv.
Mr. Shreekant N. Terdal, AOR

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

Leave granted.

The appeal is disposed of in terms of the signed order.

[Charanjeet Kaur]
A.R.-cum-P.S.

[Indu Pokhriyal]
Court Master

[Signed order is placed on the file]