

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11122 OF 2017

(Arising out of S.L.P. (C) No. 20724 of 2017)

NTPC LTD. KAHALGAON SUPER THERMAL POWER STATION Appellant (s)

VERSUS

HINDUSTAN STEEL WORKS CONSTRUCTION LTD.

Respondent(s)

O R D E R

1) Leave granted.

2) The facts in the present case would show that the arbitration clause contained in the Letter of Award dated 03.02.2004 would refer matters to the Permanent Machinery of Arbitration (hereinafter referred to as 'PMA') in case of disputes.

3) The matter otherwise has a chequered history in which two Awards dated 10.04.2012 and 10.05.2012 were made by the Joint Secretary and Sole Arbitrator in which certain claims of the respondent before us were allowed and counter claims by the appellant rejected. The Member Secretary, and Appellate Authority at that time, by his order dated 11.02.2015, set aside the two awards stating that the Sole Arbitrator appears to have mixed up the facts of the present case with that of some other case.

4) The respondent challenged the aforesaid order seeking

a review thereof, and by order dated 30.03.2016, the Appellate Authority dismissed the same. The respondent challenged the two Orders dated 11.02.2015 and 30.03.2016 passed by the Appellate Authority by filing a Writ Petition before the Delhi High Court.

5) The Delhi High Court, by order dated 30.05.2016, disposed of the Writ Petition by permitting the respondent to file appropriate proceedings under the Arbitration and Conciliation Act, 1996 (for short 'the Act'). As a result thereof, the respondent moved a petition under Section 34 of the Act before the Delhi High Court, wherein the learned Single Judge decided that the Chairman-cum-Managing Director of the NTPC was to decide as to whether the matter then should at all be sent to arbitration. The Chairman-cum-Managing Director, by letter dated 03.01.2017, thereafter, stated that arbitration was not acceptable to NTPC.

6) In an appeal filed against the order of the learned Single Judge, the Division Bench of the Delhi High Court, by impugned order dated 30.05.2017, modified the order of the learned Single Judge and then said that the NTPC appears, at least on three occasions, to have waived its rights so far as the non-applicability of the Arbitration Act is concerned, and then appointed Hon'ble Mr. Justice Vijender Jain (Retired Chief Justice, Punjab & Haryana High Court) as Sole Arbitrator to adjudicate the disputes between the parties.

7) Mr. Ranjit Kumar, learned Solicitor General, has argued before us that the judgment in Northern Coalfields Limited vs. Heavy Engineering Corporation Limited and Another, (2016) 8 SCC 685 referred to and relied upon in the High Court judgment requires to be re-visited. In that judgment, according to him, it is only the Court appointed resolution machinery decided by Oil and Natural Gas Commission vs. CCE, 1995 Supp. (4) SCC 541 which was later on dismantled by the judgment in Electronics Corporation of India vs. Union of India and Ors., (2011) 3 SCC 404, and not the PMA.

8) The Permanent Machinery of Arbitration (PMA) had been set in place earlier than the judgment in the ONGC case, as noticed in Northern Coalfields (supra) in March, 1989. Yet in the summary contained in para 23, this Court, instead of appreciating that the Committee on Disputes was set up judicially, and ran parallel to the Permanent Machinery of Arbitration, appears to have combined the two in requiring permission from the CoD to refer disputes already finally decided by the PMA to a litigative process while the CoD was in place, as was held in para 24 of the said judgment.

9) This being the case, it is clear that it requires to be determined by a Larger Bench as to whether a litigative process can yet be availed in situations like the present where, under the PMA, the Appellate order of the Secretary is final and binding on both parties.

10) For this reason, we refer the said judgment to a Bench of three learned Judges of this Court. Regard being had to the fact that the judgment delivered by the three-Judge Bench would have extremely large ramifications in that it would affect litigation between government bodies, we request the Hon'ble Chief Justice of India to constitute such a Bench at the earliest.

11) There shall be an interim stay of the arbitration proceedings before Hon'ble Mr. Vijender Jain (Retd. Chief Justice).

12) Without prejudice to the fact that the law requires to be settled, it was submitted by both the learned Solicitor General and Mr. P.S. Patwalia, learned Senior Counsel, that the present case could go for decision before the Cabinet Secretariat under the PMA in terms of the office Memorandum dated 07.12.2015. The parties will be at liberty to do so, and to place the decision arrived at before the three Judge Bench.

13) The appeal is disposed of accordingly.

..... J.
(ROHINTON FALI NARIMAN)

..... J.
(SANJAY KISHAN KAUL)

New Delhi;
August 28, 2017.

ITEM NO.28

COURT NO.12

SECTION XIV

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(s) for Special Leave to Appeal (C) No(s). 20724/2017

(Arising out of impugned final judgment and order dated 30-05-2017 in FAOOS No. 19/2017 passed by the High Court Of Delhi At New Delhi)

NTPC LTD., KAHALGAON SUPER THERMAL POWER STATION Petitioner(s)

VERSUS

HINDUSTAN STEEL WORKS CONSTRUCTION LTD. Respondent(s)

(FOR ADMISSION and I.R.)

Date : 28-08-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Petitioner(s) Mr. Ranjit Kumar, Solicitor General
 Mr. Inderbir Singh Alag, Sr. Adv.
 Ms. Kanchan Kaur Dhodi, AOR
 Mr. Jagdeep Lamba, Adv.

For Respondent(s) Mr. Paramjit Singh Patwalia, Sr. Adv.
 Mr. G. Umapathy, Adv.
 Mr. Rakesh K. Sharma, AOR
 Mr. Aleog Rozario, Adv.
 Mr. Aditya Singh, Adv.

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.

Pending applications, if any, stand disposed of.

(R. NATARAJAN)
COURT MASTER

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed order is placed on the file)