

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 379/2002 & I.As.2623/2007, 14350-14351/2009**

ALCARI S.A.

Through

..... Petitioner

Mr. Dharmendra Rautray
with Ms. Ankit Khushi,
Advocates

versus

M.M.T.C.

Through

..... Respondent

Mr. J.P. Sengh, Senior
Advocate with Ms. Padma
Priya, Mr. Sumit Gahlawat
and Ms. Meenakshi Sood,
Advocates

%

Date of Decision : JANUARY 22, 2010

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

- | | |
|--|------|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No. |
| 2. To be referred to the Reporter or not? | Yes. |
| 3. Whether the judgment should be reported in the Digest? | Yes. |

J U D G M E N T

MANMOHAN, J (ORAL)

I.A. 353/2003

1. By way of present application, objections under Sections 30 and 33 of Arbitration Act, 1940 (hereinafter referred to as “Act, 1940”) have been filed by the respondent-objector challenging the Award dated 17th February, 2000 passed by Mr. Justice (Retd.) H.L. Anand.

2. Briefly stated the facts relevant for this case are that the respondent-objector-MMTC issued a tender for purchase of 4,00,000

MT of Urea. This was under a World Bank loan. The contract contained an ICC arbitration clause. The petitioner-claimant made a bid for 45,000 MT of Urea.

3. On 30th June, 1992, petitioner-claimant's bid to the extent of 15,000 MT was accepted by the respondent-objector in principle but subject to clearance by the World Bank. The final acceptance of petitioner-claimant's offer came in the late afternoon of 7th July, 1992. The shipment date as per the contract was 10th July, 1992. Amongst the various terms of the contract, Clause 26 pertained to the age of the vessel, which stated that it should not be more than 15 years of age. However, in case of 'necessity', an older vessel could be booked with prior approval of the buyers. It is petitioner-claimant's case that due to the last minute acceptance of its tender, petitioner-claimant booked a vessel of more than 15 years of age and requested the respondent-objector for approval in terms of Clause 26 of the Contract. Clauses 9 and 26 of the Contract read as under:-

"9. The cargo shall be discharged at the average rate of 1250 metric tons for single decker vessel basis five or more available workable hatches and prorata for less number of the hatches per weather working day of 24 consecutive hours, Sundays and holidays excepted, even if used, provided vessel can receive and deliver at these rates. Time shall not count between noon on Saturday and 8 AM on Monday and not between 5 P.M. (noon if Saturday) on the last working day preceding a legal holiday and 8 A.M. on the first working day thereafter even if used unless the vessel is already on demurrage. Time shall begin to count from 24 running hours after vessel's arrival within port limits and notice of readiness tendered and accepted during official working hours at each discharging port reported in free pratique whether

in berth or not, but not between the hours of 5 P.M. and 8 A.M. on a week day or during any of the period above exempted even if used unless (at discharging port) the vessel on arrival already on demurrage. Charterers have the right of work during accepted periods, such time used not to count as lay time.”

xxxx

xxxx

xxxx

xxxx

26. Sellers are to ensure that liberties, victories and other war built vessels are avoided for the shipment of the cargo. They should also not book vessels of more than 15 years age. In case of necessity of booking vessels older than 15 years the Sellers shall take the prior approval of the Buyers.”

(emphasis supplied)

4. On 10th July, 1992, petitioner-claimant approached respondent-objector seeking approval for the vessel. On the same date Mr. P.C. Jaiswal (General Manager, MMTC) by a hand delivered message dated 10th July, 1992 informed the petitioner-claimant that the Department of Fertilizers (in short “DOF”) had not agreed to the nomination of the vessel. According to the Arbitrator, petitioner-claimant was asked to take up the matter with the DOF. Petitioner-claimant on the same date, i.e., 10th July, 1992 which was the date by which the vessel was to commence loading, informed the respondent-objector that the matter had been discussed with Mr. K. Parthasarathi, Deputy Commissioner, DOF who had informed the petitioner-claimant that the vessel would be acceptable if the petitioner-claimant could “*give a letter undertaking responsibility for shortfall in discharge rate below 1250 MT per day*” and that “*in any case discharge rate should not fall below 500 MT per day*”. Accordingly, petitioner-claimant vide letter dated 10th July, 1992

gave a written guarantee to the respondent-objector that the petitioner-claimant would “*assume any incidental costs that may arise as per our contract and tender conditions if the said discharge rate fell below 1250 MT / WWD*”. Petitioner-claimant also furnished a guarantee dated 10th July, 1992 to the respondent-objector as required stating that “*the discharge rate shall remain above 500 MT / WWD*”.

5. On 17th July, 1992, the vessel sailed from Lord Port and arrived at Marmagoa Port (Goa). Unloading of the cargo was completed on 14th October, 1992. The Letter of Credit which was required to be opened by the respondent-objector vide Clause 8 of the Contract immediately after signing of the contract had not been opened before loading of the cargo.

6. The respondent-objector neither responded to petitioner-claimant's letter nor to the guarantee both dated 10th July, 1992. According to the respondent-objector's witness, in response to petitioner-claimant's shipping advice, respondent-objector informed the petitioner on 20th and 21st July, 1992 that Vessel was not acceptable as consignee did not accept it. Petitioner by its telex message of 21st July, 1992 again informed the respondent that the vessel had already sailed on 17th July, 1992 and that the Petitioner had noted that the vessel would be “*accepted by the Department of Fertilizers if discharge rate guaranteed is basis minimum 600 MT/WWD*”. On 23rd July, 1992 in an inter-departmental message, it was stated that the suppliers had agreed

to reduce the discharge rate of minimum 600 MT / WWD. This telex was not copied to the Petitioner. The inter-departmental telex message dated 24th July, 1992 sent by Mr. Parthasarathi of DOF to Mr. N.K. Kala of the respondent/MMTC reads as under:

TELEX

MR. N.K. KALA

C.G.M.

MMTC NDELHI.

*FROM : K. PARTHASARATHI, DY. COMMISSIONER
(PO&P)*

*NO.17-18/91____(.) KINDLY REF YR. TLX DTD 23.7.92 REG
FIXATION OF VSL MV SEA ESQUIRE FOR SHIPMENT OF
UREA FROM POLLAND ON C&F BASIS(.) AS PER THE
GUARANTEED DISCHARGED RATE OF 600 MT/WWD
AGREED TO BY THE SUPPLIERS, THIS DEPTT HAS NO
OBJECTION IN FIXATION OF THIS VSL C&F BASIS FOR
SHIPMENT OF UREA FROM POLLAND TO INDIA PROVIDED
THE VSL MATCHES THE FOLLOWING CONDITIONS:-*

<i>a)</i>	<i>SPECIFICATIONS FOR JN PT</i>	<i>MINIMUM</i>	<i>MAXIMUM</i>
	<i>BREADTH</i>	<i>19.00 MTRS</i>	<i>33.00 MTRS</i>
	<i>DEPTH</i>	<i>10.60 MTRS</i>	<i>19.43 MTRS</i>
	<i>DRAFT LOADED</i>	<i>7.70 MTRS</i>	<i>14.25 MTRS</i>
	<i>DRAFT WITH BLAST</i>	<i>2.60 MTRS</i>	<i>4.75 MTRS</i>
	<i>HATCH WIDTH</i>	<i>9.60 MTRS</i>	<i>14.75 MTRS</i>

*b) THE VSL IS AN OVERAGED VSL AND THEREFORE THE
OWNERS/SUPPLIERS SHOULD ENSURE THAT INSURANCE FOR
ALL LOSSES SUFFERED BY THE BUYERS IS PROVIDED(.) THE
ACCEPTANCE FOR THIS OVERAGE VSL IS PURELY A SPECIAL
CASE DUE TO ACCUTE PROBLEM IN AVAILABILITY OF UREA
FOR CONSUMPTION IN KHARIF 1992(.)*

*c) CLEARANCE MAY BY TAKEN FROM MINISTRY OF
SURFACE TRANSPORT FOR C&F FIXING*

*d) THE DISCHARGE RATE SHOULD BE 600MT PER DAY AS
AGREED TO BY THE SUPPLIERS*

e) *NORMAL CP CLAUSE FOLLOWED BY TRANSMART SHOULD BE FOLLOWED*

f) *DISCHARGE RANGE SHOULD BE FULL RANGE WCI/ECI*

g) *EFFORTS MAY BE MADE TO FIX BULK CARRIERS ONLY*

h) *THE ARRIVAL DRAFT SHOULD NOT EXCEED BETWEEN 30-32 FT SQ*

ONCE THE VSL SEA ESQUIRE IS FIXED KINDLY INDICATE THE COMPLETE FIXTURE DETAILS CONT NO., OFFICE, QUANTITY LOADED, SAILING ADVISE, CALLSION AND OTHER RELEVANT DETAILS FOR NOMINATION OF DISCHARGE PORT(.)

KRISHAD

N.T.T.:

(K. PARTHASARTHI)
DEPUTY COMMISSIONER (PO&P)
DEPARTMENT OF FERTILIZERS
NDELHI

DATED : 24.7.92”

(emphasis supplied)

7. However, it is an admitted position that the telex message dated 24th July, 1992 being an inter-departmental communication between Mr. Parthasarathi of DOF and the respondent-objector, was never communicated to the petitioner-claimant. In fact Mr. Parthasarathy of DOF in his cross-examination stated that the approval may have been conveyed orally to the agent of the petitioner-claimant.

8. It may be mentioned that the vessel achieved a discharge rate of 1168 MT / WWD which was more than the contractual rate of 1000 MT / WWD, as the vessel had four hatches.

9. However, according to the petitioner-claimant, the vessel incurred demurrage on account of congestion at port and rain.

Accordingly, the petitioner-claimant made a demurrage claim of US \$ 142,447.90 calculating the discharge rate at the contractual rate of 1000 MT per day. Respondent-objector disputed this and said that the demurrage should be calculated on the reduced rate of 600 MT per day. After some delay, the respondent-objector paid US \$ 75,625, the undisputed amount of demurrage (i.e. on the assumption that the discharge rate was 600 MT).

10. Petitioner-claimant claimed an amount of US \$ 66,822.90 on account of balance demurrage payable to it (on the basis of discharge rate at 1000 MT per day). Respondent-objector on the other hand, made a counter claim of US \$ 75,625 with interest. The Arbitrator dismissed the counter claim of the Respondent. The learned Arbitrator held that the petitioner-claimant is entitled to the amount of US \$ 66,822.90 along with interest @18% per annum from one month after the date of receipt of the Award by the respondent-objector till the date of payment.

11. At the outset, Mr. J.P. Singh, learned senior counsel for respondent-objector submitted that his arguments in the present case were without prejudice to the rights and contentions of respondent-objector in appeal bearing FAO(OS) No. 261/2009. Mr. Singh contended that as the cargo had been transported in a vessel more than 15 years old in breach of Clause 26 of the Contract without taking their prior approval, respondent-objector was not liable to pay any amount

on account of demurrage to the petitioner-claimant. Assuming without admitting, that approval had been granted by the Department of Fertilizers, Mr. Sengh submitted that such approval was only ex post facto and not prior approval in accordance with Clause 26 of the Contract.

12. Mr. Sengh also submitted that the arbitrator had mis-conducted himself as the award was not only contrary to Clause 26 of the Contract but the arbitrator had also erred in accepting the petitioner-claimant's oral version of being "*minimum 600 MT per day*" as against the written telex of Mr. Parthasarathi dated 24th July, 1992 wherein it was stipulated that, "*(d) the discharge rate should be 600 MT per day as agreed to by the supplier.*"

13. Mr. Sengh lastly submitted that the arbitrator could not have proceeded on the assumption that MMTC being an instrumentality of State was under an obligation even in commercial matters to act fairly and reasonably. He submitted that the arbitrator being a creature of the agreement, could not act contrary to the contractual terms. He further stated that there was a contradiction in the impugned award as the arbitrator while deciding the issue whether there was any coercion, undue influence or duress exerted by MMTC on the petitioner, had himself held that the petitioner as a prudent exporter should have ensured availability of a ship of permissible age instead of waiting for World Bank confirmation.

14. On the other hand, Mr. Dharmendra Rautray, learned counsel for petitioner-claimant contended that the understanding of the condition of contract, i.e., minimum 600 MT/WWD was confirmed by the respondent-objector as would be evident from Ground XI of the present objection application filed by respondent-objector before this Court. In the said ground, respondent-objector had relied upon and referred to cross examination of Mr. Mr. K. Parthasarathi wherein he had stated that as *“on 23.07.1992 MMTC vide their Message no. 49 informed me that the suppliers had agreed to reduce the discharge rate of minimum 600 MT/WWD.”*

15. Mr. Rautray contended that in view of the aforesaid message, respondent-objector was fully aware that petitioner-claimant had “agreed” that it would achieve the discharge rate of “minimum” 600 MT/WWD. Mr. Rautray also referred to the interdepartmental telex message dated 24th July, 1992 wherein it was stated that the petitioner-claimant had “guaranteed” a minimum discharge rate of 600 MT/WWD and this is what had been agreed to by the suppliers as would be apparent from the message no. 49 of respondent-MMTC to DOF dated 23rd July, 1992.

16. In addition to aforesaid understanding, Mr. Rautray emphasised that copy of the telex message dated 24th July, 1992 was not marked to petitioner-claimant and respondent-objector did not at any stage convey

to petitioner-claimant as to what was the condition it imposed for allowing petitioner-claimant to use a vessel more than fifteen years old.

17. Mr. Rautray also referred to certain passages of the impugned Award which read as under :-

17. The correspondence, exchanged between the parties, commencing with the first letter of the Claimant to the Defendant of July 10, 1992, and culminating in the inter-Departmental Telex Message from the Department of Fertilizers to the Defendant on July 24, 1992, leaves absolutely no manner of doubt that the approval was sought, and it was granted,.....

18.....Be that as it may, there is positive evidence to establish that, whether or not the Fax of 10th of July, was presented personally, the representative of the Claimant was granted any interview in the Department of Fertilizers on or about the said date. There is no doubt divergence between the parties as to the main condition, sought to be imposed by the Department for the approval, but whatever be the true import of the condition, the approval must be treated as having been granted on or about the 10th of July itself..... it was not a request for “ex-post-facto approval”, since admittedly the cargo was being loaded at or about that time, but the ship nevertheless left the port of shipment only or about July 17, and the approval had been granted long before the said date. It is, therefore, futile for the Defendant to urge that there was no approval or that there was no prior approval, and that the approval, if at all, was ex-post-facto, which was not what was contemplated by the relevant term.....

xxxx xxxx xxxx xxxx

33. What is more, the ship in fact achieved performance, which was more than the contracted rate and the engagement of an overaged ship had no adverse impact either on the delivery schedule, or otherwise caused any possible damage to the material, or caused any adverse effect on any interest of the Department or the Defendant,.....”

18. Mr. Rautray submitted that the Supreme Court in **LIC Vs. Escorts Ltd.** reported in (1986) 1 SCC 264 at **para 62** had defined the meaning of ‘approval’ as under :-

“We will only refer to what Shah Sulaiman, CJ said in Shakir Hussain v. Chandoo Lal (AIR 1931 ALL 567) :

Ordinarily the difference between approval and permission is that in the first the act holds good until disapproved, while in the other case, it does not become effective until permission is obtained. But permission subsequently obtained may all the same validate the previous act.”

19. Having heard the parties at length and having perused the impugned Award, I am of the view that before I deal with the rival contentions, it would be appropriate to first outline the scope of interference by this Court with an arbitral award rendered under Act, 1940. The Supreme Court in **Arosan Enterprises Ltd. Vs. Union of India & Another** reported in (1999) 9 SCC 449 has clearly outlined the scope of interference by this Court in petitions filed under Sections 30 and 33 of the Act, 1940. The relevant observations of the Supreme in the said judgment Court are reproduced hereinbelow :-

“36. Be it noted that by reason of a long catena of cases, it is now a well-settled principle of law that reappraisal of evidence by the court is not permissible and as a matter of fact exercise of power by the court to reappraise the evidence is unknown to proceedings under Section 30 of the Arbitration Act. In the event of there being no reasons in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the court unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law. In the event however two views are possible on a question of law as well, the court would not be justified in interfering with the award.

37. The common phraseology “error apparent on the face of the record” does not itself, however, mean and imply closer scrutiny of the merits of documents and materials on record. The court as a matter of fact, cannot substitute its evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. If the view of the arbitrator is a possible view the award or the reasoning contained therein cannot be examined.

(emphasis supplied)

20. The Supreme Court in ***Puri Construction (P) Ltd. v. Union of India***, reported in ***(1989) 1 SCC 411, para 14*** has further held that “*the court cannot sit in appeal over the views of the arbitrator by re-examining and re-assessing the materials.*”

21. From the arguments advanced before me, it is apparent that the controversy revolves around the fact as to whether any condition was imposed by the respondent-objector when it was informed that petitioner-claimant was shipping the consignment in a vessel which was more than 15 years old. According to the respondent-objector, the condition imposed by them at that stage was that the discharge rate stipulated under the contract for discharge of the cargo would stand reduced from 1000 MT to 600 MT per day; whereas according to the petitioner-claimant, the condition which they had agreed to was that the discharge rate would not fall below 600 MT / WWD.

22. The respondent-objector has not placed on record any contemporaneous written communication to the petitioner-claimant that it had granted its approval for consignment to be shipped in a vessel more than 15 years old on the condition that the discharge rate would

be 600 MT per day. The only document relied upon by the respondent-objector in support of its plea was a telex message dated 24th July, 1992. But, I find that this telex message is an interdepartmental communication between Mr. K. Parthasarathi of DOF and respondent-objector. In fact, the admitted position is that the said telex message was never communicated to petitioner-claimant. Consequently, the Arbitrator had to decide the aforesaid dispute keeping in view the two conflicting oral versions. Learned Arbitrator in para 30 of the impugned Award on the basis of oral evidence, contemporaneous documents and admission of respondent-objector's witnesses in their cross-examination has accepted the petitioner-claimant's oral version that the discharge rate was "*minimum 600 MT/WWD.*" Para 30 of the impugned Award reads as under :-

"30. Which of the two versions deserves to be accepted, having regard to various relevant factors, including the common course of events, is the next question that must be answered. Having regard to the objective assessment of the competing versions, in the context of the surrounding circumstances, including the unimpeachable evidence, provided by contemporaneous documents, I am inclined to accept the version of the Claimant, in preference to that of the Department of Fertilizers, and the Defendant, for a variety of reasons. In the first instance, Claimant had been consistent in giving its version, and in its pursuit through out, without any variation or contradiction. The Defendants version suffers from a number of internal contradictions, and has undergone a variety of variations, from time to time, for reasons which have remained inexplicable. I have clearly stated hereinbefore how the Claimant took a consistent position, and how the rival version suffered from contradictions, and variations and it is unnecessary to dilate on these details. Secondly, the Claimant's version was propounded right at the threshold, on the 10th of July 1992, after the admitted meeting that took place between the representative of the Claimant, and the Deputy Commissioner of the Department of Fertilizers. Thirdly, the version of the Claimant is contemporaneously recorded, on behalf of the Claimant, in a letter contemporaneously drawn and presented

to the Department of Fertilizers and/or to one or the other of the officers of the Defendant. Fourthly, neither the Department of Fertilizers nor the Defendant cared to join issue with the Claimant, on its version, in response to the Claimant's second letter of July 10, 1992, setting out the Claimant's version in its letter of that date. Fifthly, the Claimant clearly attributed to the Department or the Defendant statements and recorded the Claimant's impression on what had been conveyed by them to the representative of the Claimant. One would have expected both the Department, and the Defendant, to immediately point out the inaccuracy to set the record straight, particularly where the two versions were diametrically opposed to each other. It is important to bear in mind, in this context, that while the Claimant's version was intended to highlight the anxiety of the Department of Fertilizers that the discharge rate should not fall below what a Vessel of permissible age would have achieved, and consequential need for guaranteeing that the discharge would not be below the standard, laid down in the contract, as if to ensure that the output of the overaged Vessel would be no worse than that of a Vessel of requisite age, capable of normal performance, the rival version of the Department and the Defendant seemed to suggest as if the anxiety of the Department and the Defendant was to take advantage of the inability of the Claimant to procure a proper Vessel, and reduce the rate of discharge, as far as possible, so as to correspondingly increase the lay time, and consequently reduce the possibility of demurrage, which may have to be borne by the Defendant. Sixthly, the context in which the parties were discussing the question of approval and the condition or conditions, subject to which it may be granted, would believe the version that the parties were thinking in terms of anything other than the adverse effect that the overaged Vessel may have on the performance, pointing to the need to compensate the Defendant or the Consignee i.e. the Department of Fertilizers, and this is clearly borne out by the important admissions made by Mr. Parthasarthy, the Deputy Commissioner of Department of Fertilizers, that the Claimant was bound to insure that there would be no loss suffered by the Defendant or the Consignee for having permitted the shipment of the goods in a substandard Vessel, and this is confirmed by the use of the expression "not below" or "minimum", before the rate, on more than one occasion, by the Claimant. It is significant to mention in this context that the question that fell for consideration of the Department was if an overaged Vessel should be allowed or not, it was entitled, as indeed, bound to consider what, if any, could be the adverse consequences of such a measure, so that adequate safeguards are made and the Claimant, who was clearly at fault, was compelled to guarantee that the Defendant or the Consignee would not be put to any loss or inconvenience by the short fall. In this context, there was no occasion for any consideration as to the

lay time, or the need for slower discharge of the cargo, which in the ordinary course of events, would have been against the interest of, both the parties, particularly of the Department of Fertilizers, which admittedly was in urgent need of the material, because of the shortage of it, in the country. Lastly, parties were at no point of time considering a modification of the Contract, with regard to the manner in which demurrage was to be computed, and could not, therefore, have been thinking in those terms at all, even though there are through out references to the “discharge rate” the “average rate”, provided in the Contract etc. etc.”

23. In my opinion, the Arbitrator is the sole judge of quality as well as quantity of the evidence. In fact, in a catena of cases it has been held by the Apex Court that appraisal of evidence will not be interfered with by a Court under Section 30 of Act, 1940. Two such cases where the aforesaid proposition has been upheld are as under:

A) ***Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar***

reported in ***(1987) 4 SCC 497*** wherein it has been held as under :-

“4. Appraisement of evidence by the arbitrator is ordinarily never a matter which the court questions and considers. The parties have selected their own forum and the deciding forum must be conceded the power of appraisement of the evidence. In the instant case, there was no evidence of violation of any principle of natural justice. The arbitrator in our opinion is the sole judge of the quality as well as quantity of evidence and it will not be for this Court to take upon itself the task of being a judge of the evidence before the arbitrator. It may be possible that on the same evidence the court might have arrived at a different conclusion than the one arrived at by the arbitrator but that by itself is no ground in our view for setting aside the award of an arbitrator.”

B) ***Sudarsan Trading Co. v. Govt. of Kerala*** reported in ***(1989) 2***

SCC 38 wherein it has been held as under:-

29..... Appraisement of evidence by the arbitrator is never a matter which the court questions and considers. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisement of the evidence.....”

24. I am further of the opinion that the plea of respondent-objector that discharge rate was reduced from 1000 MT to 600 MT/WWD is untenable as by virtue of Clause 16 of the contract, no condition could have been amended either orally or unilaterally. The said Clause 16 of the contract reads as under :-

“no variation or modification of the contract shall be made except by written amendment signed by parties.”

25. I am further of the opinion that, the respondent-objector is estopped from raising any ground alleging breach of Clause 26 of the contract as it accepted the petitioner-claimant's consignment without demur. Consequently, in my view, respondent-objector having waived its right is estopped from raising this plea.

26. Even though I am in agreement with Mr. Sengh's argument that in a commercial contract where the contracting parties are businessmen the question of application of Article 14 of the Constitution would not arise, this in my opinion, would not lead to setting aside the Award as this is one of the several reasons given by the Arbitrator to decide the matter against respondent-objector. In my view, this portion of the Award is clearly severable and would not invalidate the Award.

27. In view of aforesaid, I am of the opinion that objections of respondent-objector are devoid of merits and are accordingly dismissed but with no order as to costs.

28. With the aforesaid observations, the impugned Award dated 17th February, 2000 is made rule of the Court and Registry is directed to prepare a decree sheet in terms thereof. Accordingly, present petition and pending applications stand disposed of.

MANMOHAN, J.

JANUARY 22, 2010
js/rn