

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

**Arb. Petition No.79/2010**

Judgment pronounced on: 29.07.2011

AHLUWALIA CONTRACTS (INDIA) LTD. ....Petitioner

Through: Mr. Ashish Bhagat, Adv. with  
Mr. Abdhesh Chaudhary, Adv.

Versus

INDIRA GANDHI CENTRE FOR THE ARTS (IGNCA)

.....Respondent

Through: Mr. Naveen Sharma, Adv.

**CORAM:-**

**HON'BLE MR JUSTICE MANMOHAN SINGH**

1. Whether the Reporters of local papers may  
be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported Yes  
in the Digest?

**MANMOHAN SINGH, J**

1. The petitioner, an Engineering Constructions Company registered under the Companies Act, 1956 has filed the present petition under Section 11 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') for appointment of a substitute arbitrator so as to reconstitute the Arbitral Tribunal to adjudicate the

disputes between the parties.

2. The brief facts of the case are that the respondent is a trust for the promotion of art and culture under the patron of Ministry of Information and Broadcasting of the Government of India, having its registered office at Janpath, New Delhi.

3. A Contract No.012 dated 15.02.1999 was entered into between the parties for construction of Sutradhara & underground parking-B civil works at IGNCA, Janpath, New Delhi. The construction work was to be completed within the stipulated period of 30 months i.e. by 02.09.2001. The contract dated 15.02.1999 also contained the Arbitration clause at Point 3.25.0.

4. As per the petitioner, due to inordinate delay in releasing the funds for the project, a dispute arose between the parties because of which the execution of project work suffered and the Arbitration clause was invoked. Therefore, the petitioner, vide its letter No.ACIL/GNCA/2002/777 dated 23.09.2002, appointed Shri. H.C. Gupta, (Retd.) Chairman Sales Tax Appellate Tribunal, as the Arbitrator for and on their behalf and also called upon the respondent to appoint their arbitrator as per the terms of the arbitration clause of

the contract dated 15.02.1999. However, the respondent did not appoint any arbitrator, therefore, on 10.02.2005 the petitioner filed an Arbitration Application No.35 of 2005 under section 11(4)(a) of the Act and during the pendency of the said application, the respondent appointed Mr. B.S. Gupta, Engineer-in-Chief (Retd.) PWD as their arbitrator on 17.03.2005. Thereafter, the said application was disposed of by order dated 24.11.2005, wherein Justice M.L. Varma, a retired Judge of this High Court was appointed as the third Arbitrator.

5. During the course of the arbitration proceedings, the petitioner was directed to file the requisite documents along with the compilation of claim-VII pertaining to “De-watering” which was the subject matter of the arguments on the 32<sup>nd</sup> sitting of the arbitration proceedings held on 21.01.2010. Therefore, on the 33<sup>rd</sup> sitting when all the requisite documents had been filed by the petitioner, one of the Arbitrators Mr. B.S. Gupta pointed out that in compilation of papers filed by the petitioner, there was a remark on page 18 that “*de-watering stopped as per claimant’s letter as per the instructions of Mr. B.S. Gupta and Sarvate*” he stated that this is basically a letter from the manager (Projects) of the petitioner to Mr. H.K. Yadav,

Senior consultant of the respondent. Thereafter, Mr. B.S. Gupta stated that he would like to recuse from the matter and declined to hold the proceedings. Therefore, the matter was adjourned *sine die* on that day for the parties to take a call.

6. Vide letter dated 05.02.2010 addressed to all the concerned, the petitioner agreed to the recusal of Mr. B.S. Gupta from the arbitration proceedings stating that since de-watering was the most contentious issue between the parties and since Mr. B.S. Gupta had already expressed his views on the said issue, it would be just and expedient that the petitioner agrees to the recusal of Mr. B.S. Gupta. After the recusal of Mr. B.S. Gupta, the Presiding Arbitrator Mr. M.L. Varma directed the counsel for the respondent to nominate another person as an arbitrator so that the arbitration proceedings may continue.

7. It is submitted by the petitioner, that as per the terms of the agreement the respondent was bound to nominate another person as its Arbitrator after the recusal of Mr. B.S. Gupta from the arbitration proceedings. However, as the respondent failed to nominate its arbitrator, the petitioner filed the present application for appointment

of an arbitrator from the respondent's side so that the arbitration proceedings may be started without any further delay.

8. It has been submitted on behalf of the respondent, that Mr. B.S. Gupta, the co-arbitrator appointed by them has agreed to continue as the co-arbitrator in the Arbitral Tribunal and has given his consent afresh vide letter dated 24.02.2010. Therefore no grievance remains, and thus the Arbitral Tribunal may be directed to proceed further from the stage already left.

9. I have heard both the parties and have carefully and meticulously gone through the material placed on record.

10. It is not denied by the respondent that Sh. B.S. Gupta Co-Arbitrator who was appointed by the respondent as their nominee became upset from the proceeding of the Tribunal held on 22.01.2010 and expressed his intention to recuse from the matter. Thereafter, on 05.02.2010 the petitioner wrote a letter to Presiding Arbitrator appreciating the fairness of Mr. B.S. Gupta and requested that the respondent be asked to appoint another Arbitrator in his place. The presiding Arbitrator also wrote a letter dated 14.02.2010 to Mr. Gupta expressing his thanks for the contribution during the course of

proceedings. It was only after that the respondent wrote a letter dated 17.02.2010 informing the Co-Arbitrator the implication of his withdrawal as well as the inconvenience to be caused to the respondent because of his withdrawal.

11. Therefore, Mr. Gupta wrote a letter dated 24.02.2010 stating that no grievance survives and gave his consent as a Co-Arbitrator.

12. After having considered the facts and circumstances of the present case, this court is of the view that due to peculiar facts and circumstances of the matter, it would be appropriate to appoint a substitute Arbitrator in place of Mr. B.S. Gupta as the respondent has not appointed the Arbitrator on its behalf even after the expiry of a period of thirty days. The present petition is, therefore, allowed to the extent that in place of Mr. B.S. Gupta, a substitute Arbitrator be appointed by the Delhi High Court Arbitration & Conciliation Centre as per its rules. However, the prayer of the petitioner to reconstitute the Arbitral Tribunal cannot be allowed.

13. After appointment of another Arbitrator in place of Mr. B.S. Gupta, the Arbitral Tribunal shall give prior notice to the parties

before commencing the proceedings.

14. The petition is accordingly disposed of with these directions with no order as to costs.

15. A copy of the order be sent to Delhi High Court Arbitration Centre.

**MANMOHAN SINGH, J**

**JULY 29, 2011**  
**dp**