

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

% *Judgment delivered on: February 7, 2013*

+ **OMP No.357/2011**

National Highways Authority of India Petitioner
Through: Mr.Sudhir Nandrajog, Senior Advocate
with Ms.Padma Priya & Mr.Mukesh
Kumar Advocates.

Versus

M/s Oriental Structure Engineers Ltd.-
Gammon India Ltd. (JV) Respondent
Through : Mr.Amit George, Advocate with Mr. Abin
Mathew & Ms.Joy Sunil, Advocates

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. This petition has been filed by the applicant under Section 34 of the Arbitration and Conciliation Act, 1996 (herein after referred to as 'the Act') for setting aside the Award dated 30th October, 2010 passed by the Arbitral Tribunal against the applicant and in favour of the respondent.
2. The applicant is a statutory body constituted under Section 3 of the national Highways Authority of India Act, 1988 and its functions are to develop, maintain and manage the National Highways. The respondent, M/s OSE-GIL is a joint venture civil contractors consisting of M/s Oriental Structure Engineers Ltd. and Gammon India Ltd. (JV).

3. The respondent, M/s. Oriental Structural Engineers Ltd. - Gammon India Ltd. (JV), had entered into a contract with the petitioner, National Highways Authority of India, vide agreement dated 26th March, 2002, for the execution of the work of “Four Laning and strengthening of the existing two Lane section from km 199.66 to km 250.50 on NH- 2 in the state of U. P.” with an agreed contract price of Rs. 328,49,37,824/-.

4. Certain disputes had arisen between the parties during execution of the work and these disputes were referred to arbitration in separate references.

5. The reference in the present case, being reference No. 4, relates to two disputes regarding (1) Payment of variation item to median railing in flyovers and (2) Reimbursement under Sub-clause 70.8 of transit fee, at enhanced rates, paid to the forest department of the state of Uttar Pradesh.

6. In terms of the contract between the parties the aforesaid two disputes in the present case were referred to the arbitration of a three member Arbitral Tribunal comprised of technical experts in the field; namely Shri Surjeet Singh, Presiding Arbitrator (Former Secretary to the Government of Madhya Pradesh, Public Works Department), Shri S. Venkatesan, Co-Arbitrator (Retired Executive Director, RITES) and Shri Prem Nath, Co-Arbitrator (Retired Executive Director, Airports Authority of India) who have passed the unanimous impugned arbitral award dated 30th October, 2010 the Ld. Arbitral Tribunal partly allowed both claims of the respondent/Claimant.

7. The petitioner has thus preferred the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the arbitral award dated 30th October, 2010.

8. Along with the petition, the petitioner has also filed an application praying for condonation of delay of 63 days in re-filing the petition. The respondent has opposed both the petition on merits as well as on the ground of limitation by filing replies to both the petition under Section 34 as well as the application praying for condonation of delay.

9. As regards the challenge to the arbitral award on the merit is concerned, the respondent submits that the petitioner has not placed any material facts nor made out any grounds whatsoever that are relevant under the above Section for setting aside the Award as the arbitral award is a unanimous and well reasoned award which is in consonance with the contract between the parties and the law of the land.

10. Let me now first deal with the matter on merit.

CLAIM NO. 1

The first claim relates to payment of variation item of providing median railing in flyovers. The case of the respondent is that it submitted, as required in Sub clause 14.1 of the conditions of contract, the programme for construction of the flyovers at Rambagh, Tundla and Firozabad in full width i.e. simultaneous construction of both the left hand side and right hand side carriageways. This programme is the sacrosanct guide-book as per which the work was to be executed and also expressly approved by the Engineer with the consent of the Employer/NHAI before the start of the works. However, due to site constraints arising out of failure of the

petitioner/NHAI to make available required land as promised, this simultaneous construction of both side carriageways was not possible and the only way left was to construct one side carriageway of the flyover at first, divert the traffic on the newly constructed portion of the flyover and then construct the second carriageway of the flyover thereafter. Had the work been executed as per the programme submitted by the contractor, and as originally envisaged, there would have been no necessity for providing a median railing, which though was a temporary measure to guide traffic safely till the completion of the other side of the carriageway. After certain correspondence between the respondent and the Engineer, Variation Statement No. 44 for the varied item of railing for Rambagh and Tundle flyovers was sent by the Engineer to the Employer for approval, vide his letter dated 16th May 2005. A substantial amount of payments were also made for the varied median railing by the Employer/NHAI but the said payments were recovered in the subsequent IPCs as the variation was disallowed by the Employer. The case of the respondent is that it is breach of contract by the Employer in not paying for a varied item certified by the Engineer.

11. Finding of the Arbitral Tribunal : The findings of Arbitral Tribunal are mentioned in paragraphs 10 and 11 of the arbitral award, which reads as follow :

“10. To examine the matter in depth, it would be necessary to consider the circumstances under which the median railing in the flyovers were provided for which the claimant has demanded payment from the Respondent NHAI. The claimant contractor had submitted, as per Sub Clause 14.1 of the conditions of contract, a programme for construction of works wherein it envisaged construction of flyovers in full width i.e.

both carriageways being built simultaneously. However, due to obstructions at site both above ground and underground, there was no land/space available for diversion of traffic. Accordingly, simultaneous construction of both carriageways was not possible and the carriageways had to be constructed one, at a time, thereby allowing diversion of the traffic on the one carriageway constructed at first. In such a case of safety railing in dispute had to be provided on the proposed median side of the flyover. Had the work been executed as per the programme submitted by the contractor, and as originally envisaged, there would have been no necessity for providing a median railing, which though was a temporary measure to guide traffic safely till the completion of the other side of the carriageway. It is this change in sequence and methodology of work that resulted in extra cost of railing to the claimant. The proposal of railing and its design in the case of Rambagh and Tundla flyovers was discussed with the Project Director (also referred to as “PD”) NHAI and the Team Leader of the Supervision Consultant and accordingly it was so provided. Since the provision of safety railing was necessitated due to changed method of construction different from the one envisaged and programmed by the claimant, the additional cost involved must be a charge on the Respondent NHAI.

11. The fact that the provision of median railing on part of the flyover constituted a ‘variation’ has been acknowledged by the Engineer/Team Leader of the Supervision consultant. The Engineer also went ahead to prepare a variation Statement, which would have eventually become a Variation Order, and had sent it for approval of the Employer. The Project Director who is the Employer’s representative at site, had directed (CD 01/page10) that the proposal for providing crash barrier (which was however subsequently changed to railing) as per BOQ item 7.06(b) be initiated. This leads us to believe that the Contract as understood by the Engineer and the Engineer’s Representative at site, did not cast an obligation on the Claimant under the Contract to provide this railing gratis or as incidental to work but it was meant to be paid additionally. The contention of the

Employer that the item of median railing on the flyover is covered under contractor's responsibilities as per Section-112.4 of Technical Specification of the contract is not tenable, as this median railing was necessitated due to change in the specified sequence and methodology of construction of the flyovers. Furthermore section-112 of specifications would not cover the construction of one side carriageway of a flyover, as in the present case. During arguments, it was mentioned by the claimant that there was separate provision for traffic control measures for the entire length (50 km) of road and this was fully claimed and was paid by the Employer. Accordingly, the question of traffic control being incidental to the work and not required to be paid is not tenable. The Employer, it was pointed out during the proceedings, had accepted the provision of a reinforced earth structure in the middle of the two carriageways as an addition due to change in methodology of construction, and had paid for it. If the item of reinforced earth structure also necessitated because of the change in methodology of construction, was a non-incidental item, we do not see how the median railing, erected to allow traffic on one carriageway, contrary to the original scheme in the contract, would not be payable. We therefore hold that the median railing erected on the Ram Bagh and Tundia flyovers are payable separately, and the payment to the claimant cannot be denied simply because the respondent thought otherwise and did not approve the variation order."

12. The objections of the petitioner to the aforesaid findings are stated in the grounds, are two-fold:

- (i) The final power to approve or turn down a variation vests with the petitioner/NHAI.
- (ii) The varied work undertaken by the respondent was actually incidental to the work.

13. The submissions of the respondent are that from a reading of the findings in the arbitral award the objections of the petitioner are self-

serving and without any merit for the following reasons:

(A) As regards the first objection, as the Arbitral Tribunal is empowered under the contract to review any decision of the petitioner/NHAI and the Engineer. Therefore the decision of the petitioner to turn down the variation is not of any binding value on the Arbitral Tribunal which is empowered to examine the same. It is not in dispute that substantial payments were made by the Employer in the present case towards and pursuant to the certification of the variation by the Engineer and therefore the circuit stood completed and the Employer could not now take an about turn and ask for rejection of the recommendation by alleging that the same was without its consent. Even as per Sub-clause 2.1(d) (ii) of the Conditions of Particular Application (COPA) of the contract, the Engineer was authorized to issue variation orders. The said power is reiterated in clauses clause 51 and clause 52 of the contract.

(B) As regards to second objection, it is clear that due to sufficient land not being available for simultaneous construction of both carriageways, the respondent/contractor had no option but to change its method of working resulting in provision of the median railing. Had the work been executed as per the programme submitted by the respondent as originally envisaged, there would have been no necessity for providing a median railing. Therefore there is no question of the varied work being incidental to the work or part of the original scope of the work.

There is a finding of fact by the Ld. Arbitral Tribunal to this effect. Further, the contract expressly empowers the Engineer under

clause 51 of the contract to issue variation orders in such circumstances and further clause 52 also specifically provides that the Engineer has to work out the financial cost of such variations and pay the same to the contractor. The relevant portion of Clause 51 of the Contract is as under:

“51.1 Variations

The Engineer shall make any variation of the form, quality or quantity of the works or any part thereof, that may, in his opinion be necessary and for that purpose, or if any other reason it shall, in his opinion, be appropriate, he shall have the authority to instruct the Contractor to do and the Contractor shall do any of the following:

(a)

(b) ...

(c) Change the character or quality or kind of any such work,

(d) ...

(e) execute additional work of any kind necessary for the completion of the Works

(f) change any specified sequence or timing of construction of any part of the Works.

No such variation shall in any way vitiate or invalidate the Contract, but the effect, if any, of all such variations shall be valued in accordance with Clause 52.”

The relevant portion of Clause 52 of the Contract is as under:

“52.1 Valuation of Variations

All variations referred to in Clause 51 and any additions to the Contract Price which are required to be determined in accordance with Clause 52 (for the purpose of this Clause referred to as “varied work”) shall be valued at the rates and prices set out in the Contract, if in the opinion of the Engineer, the same

shall be applicable. If the Contract does not contain any rates or prices applicable to the varied work, the rates and prices in the contract shall be used as the basis for valuation so far as may be reasonable, failing which, after due consultation by the Engineer with the Employer and the Contractor, suitable rates or prices shall be agreed upon between the Engineer and the Contractor.”

The Engineer has admittedly certified the variation and recommended appropriate payment for the same to be made to the respondent. Further, it is not in dispute that the petitioner has enjoyed and benefitted from the work executed through the provision of the median railing which was executed contrary to the original scheme in the contract as envisaged in the programme for construction.

The respondent argues that the findings of the Arbitral Tribunal under claim no.1 are findings of fact that are perfectly in consonance with the contract between the parties as also the law of the land. The objections of the petitioner are thus without any merit and deserve to be dismissed. Therefore the fact of a variation in the work as also the provision in the contract for payment of the consequent cost incurred for the same stands established.

14. The respondent also submits that the subject Award resulted from the resolution of a dispute/claim in terms of the conditions of contract agreed to between the parties. The Arbitral Tribunal has considered all the relevant clauses of the contract and interpreted them while giving detailed reasons for the same. The case of the petitioner, at the very best, is thus that there is an error in the interpretation of the clauses of the contract by the Arbitral

Tribunal.

15. It is settled law that finality is attached with the decision of the Arbitral Tribunal which is the final judge of both the questions of fact and law referred to it. The petitioner has no such case that the Arbitral Tribunal has no jurisdiction to adjudicate the disputes referred to the Arbitral Tribunal. When the petitioner has no such contention that the Arbitral Tribunal has no jurisdiction to decide the claim, the merit of the decision of the Arbitral Tribunal cannot be challenged by a party to the contract merely because the interpretation given by the Arbitral Tribunal to the contract terms is not to its liking. In this regard, the Supreme Court has held in the case of *Maharashtra State Electricity Board Vs. Sterilite Industries (India) & Anr.* (2001) 8 SCC 482, in paragraph 9 of the said judgment, as under:

“9. ...the arbitrator's award both on facts and law is final; that there is no appeal from this verdict; that the court cannot review his award and correct any mistake in his adjudication, unless the objection to the legality of the award is apparent on the face of it.”

Thus, I agree with the finding arrived at by the Arbitrator Tribunal. Under the scope of Section 34 of the Act, the objections raised by the petitioner are not tenable in view of settled law on this aspect.

CLAIM NO. 2

16. During the course of execution of the works, there occurred a change in the state statute of the state of Uttar Pradesh subsequent to submission of tenders in respect of enhancement of Transit Fee payable to the Forest Department of Uttar Pradesh on stone aggregates and this resulted in increased cost to the respondent. The respondent accordingly sought

payment of additional cost due to it because of this change in legislation. The claim of the respondent was premised on clause 70.8 of the contract between the parties which is reproduced hereunder:

“If after the date 28 days prior to the latest date for submission of tenders for contract there occur in the country in which the works are being or are to be executed changes to any National or State Statute, ordinance, decree or other Law or any regulation or bye-law which causes additional or reduced cost to the contractor, other than under the preceding sub clauses of this clause, in the execution of the contract, such additional or reduced cost shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be added to or deducted from the contract price and the Engineer shall notify the Contractor accordingly, with a copy to the Employer. Notwithstanding the foregoing such additional or reduced cost shall not be separately paid or credited if the same shall already have taken into account in the indexing of any inputs to the price adjustment formulae in accordance with the provision of Sub Clause 70.1 to 70.7”.

17. The finding of the Arbitral Tribunal in this regard, as contained in paragraphs 20 and 22 of the arbitral award, is as follows:

“20. We now take up the second issue of (b) above of stone aggregate being liable to this levy. There is no doubt that the claimant has paid this additional transit fee to the state of Uttar Pradesh. The Indian Forest Act 1927, in 4(b) (iv) specifies the surface soil, rock and minerals (including lime stone, laterite..... and all products of mines and quarries) as “forest produce” if found in, or brought from a forest. The Hon’ble Allahabad High Court has held in Kumar Stone Works & Others V. State of UP (Ex.CD/05) that “if a forest produce is being brought from a forest while in transit, the fee is payable, as it is regulatory in nature”. It had even further held that “So far as the coal which is being imported from outside the State of U.P., or being transported within the State of U.P. is concerned, it may be mentioned here that during transportation, it does pass

through the forest in Sonebhadra. Thus the transit fee is leviable". There is no dispute as to the Notification dated 14th June 2004 amounts to a 'change in legislation', whereby the rate of transit fee was raised from Rs.5/- MT to Rs. 38/- MT. Accordingly, the stone aggregate was liable to the incidence of transit fee paid by the claimant.

22. The wholesale price index is an index that reflects the whole sale prices of materials based on an arbitrary but representative basket of commodities chosen by the designated authority of the Government of India to represent the price in general prevailing at a time. In the case of minerals, pit mouth value (PMV) i.e., sale value of a mineral at pit mouth is used for compilation of WPI (CD/01- Page 29). In the case of manufactured materials like cement, wholesale ex-factory prices, (exclusive of local taxes such as octroi, entry tax etc.), are used to work out the WPI (CD/01-page 30). Thus the WPI does not take into account local taxes/fee charges en-route. Apart from the fact that the minor minerals like stone aggregate and sand are not included in the basket of commodities for working out the whole sale price index, the transit fee charged in the present case is not an incidence of fee levied throughout the country or in all the states of the country or even throughout the country or in all the states of the country or even throughout in a particular state. It definitely is an area specific levy and its cost, by no stretch of imagination can be considered to have been taken into account in the indexing of any inputs to the price adjustment formulae. Accordingly, the price adjustment formula in Sub-clause 70.3 does not cater to the additional cost on account of 'change in legislation' effective in a particular area. The bidders are specifically asked to quote their rates taking into account the taxes and levies prevailing on a date 28 days prior to the last date for submission of bids and the contract explicitly casts liability on the employer to reimburse in full the additional cost because of any change in legislation during the period of the contract, subject, of course, to the proviso in the sub-clause 70.8. And we must hold that the additional cost because of the enhancement of the rate of transit

fee has definitely not gone into indexing of any inputs to the price adjustment formulae in accordance with the provisions of sub-clause 70.1 to 70.7.”

18. The objections of the petitioner are again two-fold:

(A) The material transported does not come within the definition of ‘timber and other forest produce’ for which the notification is applicable and further as per Clause 42.3 of the General Conditions of Contract (GCC) the petitioner was responsible for whatever route it sought to take.

(B) The claim is in respect of stone aggregate which falls under other materials covered under Sub clause 70.3 (vii) of COPA for price adjustment and accordingly, reimbursement of additional cost under Sub-clause 70.8 would amount to double benefit.

19. It is submitted by the respondent that from a reading of the findings in the arbitral award the objections of the petitioner are without any merit for the following reasons:

(i) With regard the first objection, it is an admitted position that the enhanced transit fee has in fact been paid to the state of Uttar Pradesh by the respondent. The Ld. Arbitral Tribunal has come to the reasoned conclusion that the enhanced transit fee is leviable on the stone aggregate transported through the forest. As noted by the Ld. Arbitral Tribunal, the High Court of Allahabad in the judgment titled ***Kumar Stone Works & Others V. State of U.P.*** (CM Writ Petition No. 975 of 2004) has arrived at an identical conclusion. Clause 70.8 of the contract, as reproduced above under the head ‘Facts’, clearly provides that if any such enhanced fee arising out of amendment in a

statute causes additional expenditure to the contractor, the same shall be reimbursed to the contractor by addition in the contract price. Clause 70.8 is intended as a beneficial clause for both parties as the Employer/NHAI is assured that the consequence of levy/fee/tax arising out of legislation at any time 28 days prior to the date of the bid becomes the exclusive responsibility of the contractor and the contractor is also assured that it would be indemnified against any additional expenditure caused due to any future change in legislation. Therefore when the rate of transit fee was raised from Rs.5/- MT to Rs. 38/- MT, the consequential extra expenditure incurred by the respondent was rightly allowed by the Ld. Arbitral Tribunal in consonance with clause 70.8 of the contract between the parties. Further, clause 42.3 of the GCC refers to the access to the site for the purpose of carrying out the work and it has no relation whatsoever with the additional cost incurred on account of enhanced transit fee imposed on the stone aggregate procured by the respondent.

(ii) As regards the second objection, an area specific levy and its cost, by no stretch of imagination can be taken into account in the indexing of any inputs to the price adjustment formulae. The contention of the petitioner is entirely on the basis of wholesale price index (WPI) including in its ambit even the ramification of increase in the transit fee, however the petitioner did not adduce any evidence before the Ld. Arbitral Tribunal to substantiate its allegations. In view thereof, I agree with the submission of the learned counsel appearing on behalf of respondent. Further, as has been rightly held by the Ld. Arbitral Tribunal, the WPI does not take into account local taxes/fee charges

en-route and which is exactly the issue in the present case.

20. The case of the petitioner is that instead of the interpretation placed on the contract terms by the Arbitral Tribunal, another interpretation of the contract terms is possible. The respondent's case is that there was only one interpretation possible and the same was resorted to by the Arbitral Tribunal in the arbitral award. However even if it were to be assumed, without admitting, that an alternative interpretation is possible it is submitted by the respondent that the Supreme Court has repeatedly held that even if two interpretations are possible, if the interpretation given by the Arbitral Tribunal is a possible view, even though the Court may have a different view, the Award will not be interfered with by the Court under Section 34 of the Act. The Supreme Court in the case of *M/s. Arosan Enterprises Ltd. Vs. Union of India*, (1999) 9 SCC 449, in paragraph 39 of the said judgment, has held as under:

“39. 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.”

21. The Arbitral Tribunal is the final arbiter of the disputes between the parties referred to it. In the present case the parties by themselves have agreed in the contract to accept the Award as final and conclusive. The Supreme Court has expounded on the principle as to the sanctity of the decision of the arbitrator in the case of *Markfed Vanaspati and Allied Industries Vs Union of India*, (2007) 7 SCC 679, where in paragraph 17 of the said judgment it was observed as under:

“17. Arbitration is a mechanism or a method of resolution of disputes that unlike court takes place in private, pursuant to agreement between the parties. The parties agree to be bound by the decision rendered by a chosen arbitrator after giving hearing. The endeavor of the court should be to honor and support the award as far as possible”.

22. After having considered the rival submissions of the parties, I agree with the arguments of the respondent.

SCOPE OF SECTION 34

23. The scope of section 34 of the Arbitration and Conciliation Act, 1996 is limited to the stipulations contained in Section 34(2) of the Act. The jurisdiction of the Court to interfere with an Award of the Arbitrator is always statutory. Section 34 is of mandatory nature, and an Award can be set aside only on the Court finding the existence of the grounds enumerated therein and in no other way. The words in Section 34(2) that “*An Arbitral Award may be set aside by the Court only if*” are imperative and take away the jurisdiction of the Court to set aside an Award on any ground other than those specified in the Section. The Court is not expected to sit in appeal over the findings of the Arbitral Tribunal or to re-appreciate evidence as an appellate court. A recent observation of the Supreme Court in the case of ***P.R. Shah, Shares and Stock Brokers Private Limited Vs B.H.H. Securities Private Limited And Others*, (2012) 1 SCC 594** is apposite in this regard and the relevant portion, contained in paragraph 21 of the said judgment is, reproduced as under:

“21. A Court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or re-appreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34 (2) of the Act. Therefore, in the

absence of any ground under section 34 (2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at”.

24. The petitioner has challenged the arbitral award in the grounds as set out in the petition and there is not even a whisper in the said grounds as to how they fall under the limited and narrow mandate of Section 34 of the Arbitration and Conciliation Act, 1996. Even if the additional grounds under Section 34, as laid down by the Supreme Court in the case of **ONGC Vs. Saw Pipes Ltd., AIR 2003 SC 2629** are considered, which are patent illegality arising from statutory provisions or contract provisions or that the Award shocks the conscience of the Court, no such facts are narrated in the Petition. The endeavor of the petitioner is thus to convert the challenge to the arbitral award into an appellate proceeding involving a total re-hearing of the matter and re-appreciation of evidence, and which endeavor as per the consistent dicta of the Supreme Court is impermissible in law.

25. It is settled law that the Award is not open to challenge on the ground that the Arbitral Tribunal has reached a wrong conclusion or that the interpretation given by the Arbitral Tribunal to the provisions of the contract is not correct. The entire objections of the petitioner, as contained in the grounds, are contrary to the scheme of Section 34 of the Arbitration and Conciliation Act, 1996. There is no averment in the petition as to the existence of any illegality that is apparent on the face of the arbitral award.

26. In the present case there is no error in the interpretation of the contract clauses by the Arbitral Tribunal. However even if it were to be assumed, without admitting, that the contention of the petitioner is correct even then this Court would not interfere with the arbitral award for the reason that it is

settled law that an error relatable to interpretation of the contract by an arbitrator is an error within his jurisdiction. The Hon'ble Supreme Court in the case of *Steel Authority of India Ltd. Vs. Gupta Brother Steel Tubes Ltd.*, (2009) 10 SCC 63 has summarized the law on this point, in paragraph 26 of the said judgment, as follows:

“26. (ii) An error relatable to interpretation of the contract by an arbitrator is an error within his jurisdiction and such error is not amenable to correction by Courts as such error is not an error on the face of the award.”

27. The findings of the Ld. Arbitral Tribunal under claim no.2 are correct findings of fact that are in consonance with the contract between the parties. The objections of the petitioner are thus without any merit.

28. Thus, there is no merit in the petition filed by the petitioner under Section 34 of the Act even if the delay of 63 days in refiling of petition is condoned. Thus, incase there is no delay in filing of petition is considered, this court is not inclined to interfere with the Award passed by the learned Arbitral Tribunal. The objections are dismissed. I.A. No.7656/2011 for condonation of delay of 63 days in refiling is also disposed of.

29. No costs.

(MANMOHAN SINGH)
JUDGE

FEBRUARY 7, 2013