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

Date of Decision: 17.9.2018

+ **ARB.P. 696/2018 & I.A. No.12516/2018**

ISHWAR SINGH & ORS.

..... Petitioners

Through Mr. Uttam Datt and Mr. Tarun
Sharma, Advs.

versus

UNION OF INDIA & ANR.

..... Respondents

Through Ms. Gunjan Sinha Jain and Mr.
Mukesh Kumar, Advs.

+ **ARB.P. 697/2018 & I.A. No.12517/2018**

SAJJAN KAUR

..... Petitioner

Through Mr. Uttam Datt and Mr. Tarun
Sharma, Advs.

versus

UNION OF INDIA & ANR.

..... Respondents

Through Mr. Mahender Kr. Bhardwaj and
Ms. Tapasiya Bhardwaj, Advs

+ **ARB.P. 698/2018 & I.A. No.12533/2018**

SAMEEN KUMAR & ANR.

..... Petitioners

Through Mr. Uttam Datt and Mr. Tarun
Sharma, Advs.

versus

UNION OF INDIA & ANR.

..... Respondents

Through Mr R. Mishra and Mr. M.K.
Tiwari, Advs.

+ **ARB.P. 699/2018 & I.A. No.12524/2018**
SATBIR SINGH RANA

..... Petitioner

Through Mr. Uttam Datt and Mr. Tarun
Sharma, Advs.

versus

UNION OF INDIA & ANR.

..... Respondents

Through Mr R. Mishra and Mr. M.K.
Tiwari, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1 Issue notice.

1.1 Ms. Jain accepts notice on behalf of the respondents in Arb. P. No.696/2018. Mr. Mahender Kr. Bhardwaj accepts notice on behalf of the respondents in Arb. P. No.697/2018. Mr. R. Mishra accepts notice on behalf of the respondents in Arb. P. Nos.698/2018 & 699/2018.

2 Learned counsel for the respondents has drawn my attention to an order dated 16.05.2018, passed in Civil Appeal No.5250/2018, in the matter of *National Highways and Infrastructure Development Corporation Ltd. Vs. Prakash Chand*

Pradhan & Ors. This is an order passed by the Supreme Court. Based on this order, learned counsel submits that the captioned petitions under Section 11 of the Arbitration and Conciliation Act, 1996 (in short '1996 Act') are not maintainable, in view of the fact that Section 3G of the National Highways Act, 1956 (in short '1956 Act') which gives the power only to the Central Government to appoint an Arbitrator. It is stated that being a Special Act, it overrides the 1996 Act.

3 Furthermore, learned counsel for the respondents has placed before me a communication dated 11.09.2018 addressed by the Deputy Secretary (LA), Government of NCT of Delhi to the General Manager of the respondents. Via this communication, it is indicated that the competent authority has nominated the District Magistrate/Deputy Commissioner of North, North-West and South-West Districts as an Arbitrator under the 1956 Act.

4 Ms. Jain has also placed before me a copy of a prior letter of the respondents dated 13.03.2018 addressed to the same authority i.e. Deputy Secretary (LA) regarding the appointment of an Arbitrator, *albeit*, by the Central Government. The communication dated 11.09.2018 has been issued pursuant to the respondents' letter dated 13.03.2018.

5 Having perused the order of the Supreme Court, I am of the view that while Ms. Jain is right in contending that a petition under Section 11 of the 1996 Act will not lie. Her contention that the Arbitrator can be appointed by the Government of the NCT of Delhi is not borne from the aforementioned order of the Supreme

Court.

6 For the sake of easy reference, relevant part of the aforementioned order of the Supreme Court is set forth hereafter:-

“Section 3-G of the National Highways Act, 1956 provides for determination of the amount that is payable by way of compensation. We are concerned in these appeals with sub-sections (5) and (6) of Section 3-G which read as under:

"(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act."

A cursory reading of sub-section (5) shows us that appointment of the arbitrator under the said sub-section is only in the hands of the Central Government. Sub-section (6) begins with the important expression "subject to the provisions of this Act", the provisions of the Arbitration and Conciliation Act, 1996 shall apply.

Having heard learned counsel for the parties, we are, therefore, of the view that a Section 11 application under the 1996 Act cannot be made as the Central Government alone is to determine who is

to be an arbitrator under Section 3-G (5) of the National Highways Act. If a demand is made for the appointment of an arbitrator, and the Central Government does not appoint an arbitrator within a reasonable time, the remedy that is to be availed of is a writ petition or a suit for the said purpose, and not Section 11 of the Arbitration and Conciliation Act, 1996.

A similar provision contained in Section 86 (1)(f) of the Electricity Act, 2003 specifically gives the State Commission power to refer any dispute for arbitration. In this view of the matter, this Court in Gujarat Urja Vikas Nigam Ltd. vs. Essar Power Ltd., (2008) 4 SCC 755, held as under:

"28. Section 86(1)(f) is a special provision and hence will override the general provision in Section 11 of the Arbitration and Conciliation Act, 1996 for arbitration of disputes between the licensee and generating companies. It is well settled that the special law overrides the general law. Hence, in our opinion, Section 11 of the Arbitration and Conciliation Act, 1996 has no application to the question who can adjudicate/arbitrate disputes between licensees and generating companies, and only Section 86(1)(f) shall apply in such a situation."

We respectfully agree with the ratio of the said judgment. Likewise, Section 3-G of the National Highways Act is a special provision which will be given effect insofar as the appointment of an

arbitrator is concerned.

Learned counsel appearing on behalf of the respondents has, however, argued that an arbitrator has now been appointed under Section 11 of the Arbitration and Conciliation Act, 1996 and, that, therefore, no prejudice will be caused if he is allowed to continue. This arguments ignores the fact that Section 11 of the Arbitration and Conciliation Act does not apply and that, under Section 3-G, the Central Government alone can appoint an arbitrator.

Accordingly, the impugned judgment is set aside and the appeals are allowed.”

7 In view of the above, the captioned petitions are dismissed with liberty, though, to the petitioners to take recourse to an appropriate remedy as may be available to them in law.

8 Pending applications will, accordingly, stand closed.

RAJIV SHAKDHER,J

SEPTEMBER 17, 2018

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