

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4670-2021(O&M)
Date of decision: 29 .07.2021

Kashmira Singh and others

.....Petitioners

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Charanpal Singh Bagri, Advocate, for the petitioners

Mr. Raghujeet Madan, Advocate

Mr. Anil Mehta, Advocate

Mr. Mayank Aggarwal, Advocate and

Ms. Deepshikha Gupta, Advocate for respondent no.2

ANIL KSHETARPAL, J.

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

Through this writ petition, as many as 28 petitioners who are residents of various villages have invoked the extraordinary jurisdiction under Article 226/227 of the Constitution of India, for the following substantive reliefs:-

“i. to declare entire arbitral proceedings before Arbitrator, Patiala including subsequent and consequential proceedings arisen thereon pertaining to acquisition of land of villages Khant, Ranwan, Khamano Kalan, Manderan, Jatana Niwan, Jatana Ucha, thesil Khamano District Fatehgarh Sahib for widening of National Highway No.5 as illegal, null and void ab-initio as central government has not yet appointed any Arbitrator for holding arbitral

proceedings for land acquired in the year 2018-20 of above villages.

ii. To direct the respondents to initiate criminal and departmental proceedings against arbitrator Sh. Chander Gaiind, for entertaining and exercising jurisdiction without appointment orders and for passing illegal interim measures/orders against innocent land owners/petitioners at their back and for changing the orders passed in open court to favour the respondent NHAI.

iii. To direct the respondents to initiate criminal and disciplinary proceedings against the responsible officers, authorities of NHAI including legal Advisor who recommended or filed wrong cases before the arbitrator without his appointment as arbitrator even without moving application for appointment of an Arbitrator to the central government.

iv. To impose heavy cost and direct the respondents to compensate for financial loss, physical and mental harassment suffered by petitioners/landowners who are helpless for filing and contesting following wrong, false proceedings before arbitral tribunal, District Courts, this Hon'ble Court:-

a. More than ten cases before arbitrator, Patiala and almost hundred of land owners were party in one matter and helpless to engage counsels and to attend proceedings.

b. Eight Civil writ petitions before this Hon'ble Court arisen due to illegal interim orders passed by arbitrator in above proceedings.

c. Eight appeals before Ld. District Court Fatehgarh Sahib.

- d. Eight civil revisions preferred by NHAI which have arisen from interim stay orders passed by Ld. District Court in the above arbitral proceedings.
- e. Seven review petitions before Ld. District Court.
- v. To recover the entire legal charges including stationary charges incurred or paid out of account of National Highway Authority of India for engaging counsels, senior standing counsels for contesting these wrong, false cases due to negligence of concerned officials, employees of respondents.
- vi. To initiate strict criminal, civil proceedings against the contractors, their agents who attempted to negotiate with land owners and demanded bribe for releasing the compensation in view of awards passed by the competent authority and on refusal to same they succeeded in their illegal act to get file cases before arbitrator and procured illegal stay orders leading to withhold compensation due towards landowners/petitioners.
- vii. part away the land owners from compensation caused for loss caused due to negligence and wrong proceedings initiated by NHAI and wrongful orders passed by Arbitrator.

AND

Further, to issue writ in nature of mandamus to withhold and withdraw the entire arbitral proceedings pending before respondent no.5 Arbitrator, Patiala and to appoint an independent and impartial Arbitrator because he incompetent, ineligible, biased and become de jure unable to perform his functions as a sole Arbitrator in view of provisions of section

14(1) (a), section 12, and 5th and 7th schedule of the Arbitration and Conciliation Act, 1996 because:-

His son has been appointed on the penal of legal practitioner to contest cases on behalf of the National Highways of India as he has personal and vested interest in view of 5th and 7th schedule.

AND

Further issue writ in the nature of mandamus directing the respondents to release the amount of compensation in view of awards passed by competent authority without any delay:

- i. The petitioners are entitled for compensation in view of section 3(H)1 of National Highways Act 1956 and the National Highways (manner of depositing the amount by the Central Government; making requisite funds available to the competent authority for acquisition of land) Rules, 2019.
- ii. Petitioners are claiming parity to the landowners of adjoining 8 villages including the village of petitioners whose land has been acquired for same project to whom compensation has already been released even though the award of has been challenged by NHAI before arbitrator and
- iii. The petitioners are also entitled to get release amount of compensation in view of judgment dated 31/05/2017 passed in CWP-962 of 2017 as impugned orders of arbitrator has been set aside by appellate court.

And

During the pendency of this writ petition entire

arbitral proceeding pending before arbitrator,
Patiala may kindly be stayed”

Some facts are required to be noticed. In order to expand the capacity of Chandigarh Kharar Ludhiana Road, the Union of India acquired the land situated in various villages, semi urban areas, cities and towns. The notification under Section 3-A of the National Highways Act, 1956 (hereinafter referred to as ‘the Act of 1956’) was issued on 03.04.2014, followed by a declaration under Section 3D on 28.01.2015. The competent authority passed an award determining the amount of compensation payable to the landowners on 23.06.2015. However, there were certain left over pockets of land which were required for completing the work of four laning the highway. Hence, a fresh notification was issued on 13.07.2018, followed by a declaration under Section 3D on 07.01.2019. The competent authority passed an award for almost all the villages on 31.05.2019. However, the amount with respect to the land situated in the villages Jatana Ucha and Jatana Niwan, was announced on 19.03.2020.

On one hand, the petitioners alleged that the Union of India/ National Highway Authority of India is not releasing the complete payment, although, the petitioners are being pressurized to hand over the possession of the acquired land whereas on the other hand, the National Highway Authority of India has taken a stand that major part on the Highway has already been constructed and completed, however, due to resistance of the petitioners and other land owners the work of four laning of the National Highway could not be completed as they are not prepared to hand over the possession of the land acquired vide the

awards dated 31.05.2019 and 19.03.2020, respectively.

In the writ petition, although, no notice of motion has been issued, however, on 26.02.2021, learned Senior Counsel representing the National Highway Authority of India joined the proceedings and contended that there has been deliberate concealment of facts in the matter. Hence, the Bench permitted him to file an affidavit which now stands filed. A complete copy alongwith the annexures thereof has already been furnished to the learned counsel for the petitioners.

Heard learned counsel for the parties at length and with their able assistance perused the paper book. The learned counsel representing the petitioners while referring to various provisions of the Act of 1956 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the Act of 2013') submits that the respondents are bound to deposit the amount with the competent authority before calling upon the landowners to hand over the possession of the land acquired. He submits that except the land under the buildings, the possession of the remaining land has already been taken over by the National Highway Authority of India. He further submits that no doubt, a new Arbitrator has been appointed by the Central Government vide order dated 19.03.2021, but a direction is required to be issued, not to proceed further in the matter from the stage left by the previous Arbitrator, rather he should start the proceedings de novo. All the orders passed by the previous Arbitrators should be declared nullity. Since the respondents have not filed their written statements, they should be

directed to file para wise reply. After acquisition of the land, the land owners are being harassed, compelling them to file as many as 32 cases in various courts.

On the other hand, the learned counsel representing the respondent contends that the National Highway Authority of India has not taken over the possession of the acquired land through awards dated 31.05.2019 and 19.03.2020, respectively. The petitioners have not challenged the correctness of the awards. He further tried to highlight that the previous award, passed by the Land Acquisition Collector for acquiring the land, could not have been relied upon by the competent authority to assess the compensation in view of the Explanation III of Section 26 of the Act of 2013. Since a new Arbitrator has been appointed, therefore, the petitioners should be relegated to the remedy before the Arbitrator.

Before this Bench proceeds to analyze the argument of the learned counsel for the parties, it is important to take note of the relevant statutory provisions. Section 3E, 3F, 3G, 3H of the Act of 1956 are extracted as under:-

3-E. Power to take possession.—(1) Where any land has vested in the Central Government under sub-section (2) of Section 3-D, and the amount determined by the competent authority under Section 3-G with respect to such land has been deposited under sub-section (1) of Section 3-H, with the competent authority by the Central Government, the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within sixty days of the service of the notice.

(2) If any person refuses or fails to comply with any direction made under sub-section (1), the competent authority shall apply—

(a) in the case of any land situated in any area falling within the metropolitan area, to the Commissioner of Police;

(b) in case of any land situated in any area other than the area referred to in clause (a), to the Collector of a District,

and such Commissioner or Collector, as the case may be, shall enforce the surrender of the land, to the competent authority or to the person duly authorised by it.

3-F. Right to enter into the land where land has vested in the Central Government.—Where the land has vested in the Central Government under Section 3-D, it shall be lawful for any person authorised by the Central Government in this behalf, to enter and do other act necessary upon the land for carrying out the building, maintenance, management or operation of a national highway or a part thereof, or any other work connected therewith.

3G. Determination of amount payable as compensation.(1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent. of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to

appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(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.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

Section 3H Deposit and payment of amount.—

(1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons

entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent. per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit.]”

Section 14 and 15 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as ‘the Act of 1996’) are extracted as under:-

14. Failure or impossibility to act.—(1) 29[The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if]—

(a) he becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay; and

(b) he withdraws from his office or the parties agree to the termination of his mandate.

(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties,

apply to the Court to decide on the termination of the mandate.

(3) If, under this section or sub-section (3) of Section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of Section 12.

15. Termination of mandate and substitution of arbitrator.—(1) In addition to the circumstances referred to in Section 13 or Section 14, the mandate of an arbitrator shall terminate—

(a) where he withdraws from office for any reason; or

(b) by or pursuant to agreement of the parties.

(2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.

Section 26 of the Act of 2013 is extracted as under:-

26. Determination of market value of land by Collector.

—(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:—

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

- (b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or
- (c) consented amount of compensation as agreed upon under sub-section (2) of Section 2 in case of acquisition of lands for private companies or for public private partnership projects,

whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under Section 11.

Explanation 1.—The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2.—For determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3.—While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4.—While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value.

(2) The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule.

(3) Where the market value under sub-section (1) or sub-section (2) cannot be determined for the reason that—

- (a) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or
- (b) the registered sale deeds or agreements to sell as mentioned in clause (a) of sub-section (1) for similar land are not available for the immediately preceding three years; or
- (c) the market value has not been specified under the Indian Stamp Act, 1899 (2 of 1899) by the appropriate authority,

the State Government concerned shall specify the floor price or minimum price per unit area of the said land based on the price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in the immediate adjoining areas:

Provided that in a case where the Requiring Body offers its shares to the owners of the lands (whose lands have been acquired) as a part compensation, for acquisition of land, such shares in no case shall exceed twenty-five per cent of the value so calculated under sub-section (1) or sub-section (2) or sub-section (3) as the case may be:

Provided further that the Requiring Body shall in no case compel any owner of the land (whose land has been acquired) to take its shares, the value of which is deductible in the value of the land calculated under sub-section (1):

Provided also that the Collector shall, before initiation of any land acquisition proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area:

Provided also that the appropriate Government shall ensure that the market value determined for acquisition of any land or property of an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice.”

On a careful reading of Section 3E of the Act of 1956, it is apparent that before the Central Government is permitted to take over the possession of the acquired land, there are two pre-conditions: the

land must have vested with the Central Government under sub section 2 of Section 3D and the amount determined by the competent authority under Section 3G with respect to such land has been deposited under sub-section 1 of Section 3H by the Central Government with the competent authority. Section 3 F enables any person authorized by the Central Government to enter into the land only after the land has vested in the Central Government. Section 3G(1) provides that where any land is acquired, the compensation thereof is required to be determined by the competent authority. If the amount determined by the competent authority is not acceptable, sub-section 5 enables either of the parties to apply for the determination of the compensation by the Arbitrator. Sub-section 6 of Section 3G of the Act of 1956 provides that the provisions of the Act of 1996 shall apply to every arbitration under this Act subject to the provisions of this Act. In other words, the arbitration proceedings under the Act of 1956 would be governed by the Act of 1996 unless there is anything contrary in the Act of 1956. Sub-section 1 of Section 3H requires the Central Government to deposit the amount determined under Section 3G of the Act of 1956, in such manner, as may be laid down by the rules with the competent authority before taking possession of the land. Sub-section 2 of Section 3H of the Act of 1956 authorizes the competent authority to pay the amount to the person or persons entitled thereto as soon as the amount is deposited.

In the present case, in a previous writ petition i.e CWP 962-2017, a Division Bench vide order dated 31.05.2017 issued the following directions:-

“After hearing learned counsel for the parties, in our opinion, the NHAI cannot discriminate in deposit of compensation for acquisition of land. It is admitted position that same amount of compensation determined for neighbouring villages has been paid. NHAI is directed to deposit the compensation with the Competent Authority for disbursement to the landowners. The needful shall be done upto 15.7.2017. Needless to add that the parties shall be bound by the award passed by the Arbitrator or the Court determining value of the acquired land finally.

The petitions stand disposed of accordingly.”

Of course, these directions are with respect to the pockets of land which were acquired as per the previous award dated 23.06.2015. A review application filed by the National Highway Authority of India was also dismissed vide order dated 07.07.2017, with the following order:-

“After hearing learned counsel for the applicant, we do not find any reason to review or modify the order already passed. It is a case in which the land pertaining to number of villages has been acquired. For the land of neighbouring villages, the compensation has already been deposited with the authority and paid to the landowners. In those cases, even the award passed by the authority has been accepted by the applicant, whereas for the same amount of compensation awarded for the neighbouring villages, the award is sought to be challenged. Once the applicant had accepted the award pertaining to acquisition of land of

neighbouring villages, even if the award for the villages in question is being challenged, we do not find any reason to direct furnishing of surety by the landowners, whose land has been acquired.”

It is apparent that as per the scheme of the Act, the Central Government is required to deposit the amount of compensation determined by the competent authority before initiating proceedings for taking over the possession of the acquired land. On cumulative reading of the aforesaid provisions, it is apparent that before proceeding to take the over possession, the Central Government, as a condition precedent is required to deposit the amount with the competent authority. No doubt, as per the provisions of sub section 5 of Section 3G of the Act of 1956, either of the parties can apply to the the Central Government for re-determination by the Arbitrator to be appointed by the Central Government. In other words, either of the parties can get the amount re-determined from the Arbitrator. The provisions of the Act or the rules framed thereunder are silent as to disbursement of the amount if the National Highway Authority of India disputes the correctness of the amount determined by the competent authority. Keeping in view the aforesaid facts, one has to examine the provisions of the Act of 1996. Section 17 of the Act of 1996 enables the Arbitrator to pass an interim order. Therefore, if either of the parties object to the distribution/disbursement/payment of the amount, the interim orders can be passed by the Tribunal only. In any case, before appointment of the Arbitrator, the Court under Section 9 of the Act of 1996 has the enabling power to pass interim orders. The provisions of Section 9 and 17 of the

Act of 1996 are not inconsistent with the provisions of Act of 1956. Therefore, either of the parties have the remedy before the Court or the Arbitrator. Now, a new Arbitrator has already been appointed on 19.03.2021 therefore, it would be more appropriate if either of the parties apply for the interim measures before the Arbitrator. In these circumstances, this Bench does not find it appropriate to issue direction for deposit of the payment with the competent authority and its release in exercise of its writ jurisdiction.

The next argument of the learned counsel is regulated by sub-section 3 and 4 of Section 15 of the Act of 1996. Hence, while exercising writ jurisdiction, it would not be appropriate to issue any direction. On careful reading of Section 5 of the Act of 1996, it is apparent that judicial intervention in the matters governed by Part I of the Act of 1996 is ordinarily not permissible except where so provided. It starts with a non obstante provision which gives it an overriding effect. No doubt, in extraordinary circumstances, a writ Court may find it appropriate to pass orders. However, such enabling power can be used only sparingly. Hence, this Bench does not find it appropriate to issue any direction and the decision on the aforesaid contention is left to the new Arbitrator, who stands nominated.

The next argument of the learned counsel representing the petitioners does not need much deliberation. In this writ petition, although, no notice has been issued but the respondents have been permitted to file affidavit only to clarify the facts. Still further, a writ petition is not a regular suit where it is incumbent on the court to call

upon the defendants to submit para wise reply of the case. Even in a civil suit, the court, in appropriate cases, can permit filing of the affidavit and proceed with the matter. Hence, the argument has no substance.

The last argument of the learned counsel representing the petitioners is that the land owners are being harassed as they have been compelled to file 32 cases before various courts. It may be noted here that in the facts and circumstances of this case, this Bench does not find it appropriate to give any finding on the contentions raised. In the considered view of this Court, the Act of 1956 read with the provisions of the Act of 1996 and the provisions of Act of 2013 are a complete Code qua the acquisition of land and disputes relating thereto. Hence, the petitioners, if so advised, may initiate appropriate proceedings.

Now, let us analyze the prayers made. With regard to prayer in para (i) the Court has already noted that the new Arbitrator has been appointed and with regard to declaration of entire arbitral proceedings before the previous Arbitrator, the matter is left to the new Arbitrator who shall be at liberty to decide in accordance with the provisions of Section 15 of the Act of 1996. With respect to the prayer in para (ii) and (iii) it may be noted that in the facts and circumstances of this case, this Bench does not find it appropriate to direct initiation of any criminal or departmental proceedings against the previous Arbitrator in the exercise of its writ jurisdiction. With regard to prayer in para (iv) and (v), it may be noted that the dispute is pending before the Arbitrator and the petitioners, if so advised, may file a claim before him. With regard to the prayer in para (vi), it may be noted that while exercising

writ jurisdiction, this Bench does not find it appropriate to initiate an action as prayed for. With regard to the prayer in para (viii), this Bench does not find it appropriate to issue any direction. Thereafter, under sub-para (vii), second part of the para already stands complied with as a new Arbitrator has been appointed. With regard to the next part of the prayer under para (vii), the observations have already been made and hence, it needs no further deliberation. As regards, the prayers made in sub-paras of part (iii) of para (vii), also stand answered accordingly.

It may be noted here that both the parties have made allegations not only against each other but also against their respective counsels. Even the previous Arbitrator, while recusing, has made certain observations against the land owners as well as their counsel. At the time of hearing, this Bench requested the learned counsels not to indulge in mud slinging. Hence, this Bench refrains from going into the aforesaid issue.

Inspite of an opportunity being given, the learned counsel representing the petitioners has not filed his written arguments. But, the same has been filed by the counsel representing the National Highway Authority of India. However, the learned counsel representing the petitioners has forwarded two compilation of judgments, which are not relevant, however, it is the duty of the Court to make a reference. In the first compilation, learned counsel relies upon the following judgment:-

1. Prakash Chand Pradhan vs. UOI 2020 AIR (Sikkim) 2
2. Haryana Space Application Centre Vs. Pan India Consultants Pvt. Ltd. 2021 (1) RCR (Civil) 672
3. Veostalpine Schienen Gmbh vs. Delhi Metro Rail Corporation

Ltd. 2017 (2) RCR (Civil) 815

4. Bharat Broadband Newtwork Ltd. Vs. United Telecoms Ltd. 2019 (5) RCR (Civil) 388
5. HRD Corporation (Mercus Oil and Chemical Division) Vs. Gail India Ltd. 2017 (4) RCR (Civil) 645.

All these judgments are relating to the exercise of powers under Section 11 viz-a-viz the competence of the Arbitrators in view of an amendment in the Act of 1996 brought in the year 2015. The aforesaid judgments have no applicability to the facts of the case. In fact, judgment no.1 in the first compilation is with regard to appointment of Arbitrator before the issuance of notification under Section 3A of the Act of 1956. It may be noted here that now a new Arbitrator has been appointed by the Central Government in exercise of its powers under Section 3G (5) of the Act of 1956. As regards the remaining judgments, those have no applicability because Section 11 is not applicable to the appointment of Arbitrator under Act of 1956. Sub section 5 of Section 3G of the Act of 1956 confers an exclusive power on the Central Government to appoint arbitrators in such cases. Reliance in this regard can be placed on '**National Highway Authority of India vs. Sayedabad Tea Company Ltd. And others**' (2020) 15 SCC 16. Still further, the Central Government has just appointed a retired IAS Officer during the pendency of the writ petition. At this stage, the petitioners have not placed any material to show that newly appointed Arbitrator suffers from any disqualification in view of the amended provisions of the Act of 1996. Hence, the aforesaid judgments have no applicability.

In the second compilation, learned counsel representing the

petitioners relies upon the following judgments:-

1. Hari Krishan Mandir Trust vs. State of Maharashtra (2020) 9 SCC 356.
2. Bal Krishna Ram vs. UOI (2020) 2 SCC 442
3. Benedict Denis Kiwory vs. Julip Brian Miranda AIR 2020 SC 3050.
4. State of UP vs. Indian Hume Pipe Co.Ltd. (1977) 2 SCC 724.

In judgment no.1 of the second compilation, the High Court in the facts of the case held that the High Court has the duty to exercise powers if the Government or the public authority fails to exercise or has wrongly exercised their powers. The Supreme Court further exercised its powers under Article 142 of the Constitution of India to do complete justice between the parties. In view thereof, the aforesaid judgment does not help the petitioners. Judgment no.2 and 3 are on the exercise of the High Courts's power of judicial review which has been held to be part of the basic structure of the Constitution of India and hence, the same cannot be taken away. In Bal Krishna Ram (supra), the Hon'ble Supreme Court was examining whether an appeal before the Division Bench against the judgment of the Single Bench is required to be transferred to the Armed Forces Tribunal or not. Hence, the aforesaid judgment does not help the petitioners. In Benedict Devis (supra) once again the Supreme Court held that the power of the High Court of judicial review is original, extraordinary and discretionary and whenever the Court feels that injustice has been done, the jurisdiction exist to remedy the same. No doubt, it is the duty of the High Court to remedy the injustice,

however, there is a well known self imposed practice of limiting the exercise of discretion only to those cases where the party does not have effective alternative remedy/remedies.

As regards, judgment no.4 the Supreme Court held that exhausting the alternative remedy/remedies is not a rule of law. There is no doubt about the same, however, it is a well settled practice that the High Court before exercising jurisdiction under Article 226 must examine the facts of the case and form an opinion whether the case is fit for exercising jurisdiction under Article 226. In this case on examination of the material available, the Court does not find it to be a case of extraordinary circumstances which requires interference at this stage by the High Court.

With the aforesaid observations, the writ petition is disposed of.

It has been noticed that in the index of the writ petition, learned counsel representing the petitioners has referred to the following similar cases:-

1. CWP-9389-2020
2. CWP-14525-2020
3. CWP-14872-2020
4. CWP-11844-2020
5. CWP-14873-2020
6. CWP-11916-2020
7. CWP-13684-2020

The office is directed to examine the aforesaid fact and if those cases are found to be similar, the office would, after soliciting

orders from Hon'ble the Chief Justice, list the aforesaid writ petitions before the appropriate Bench.

All the pending miscellaneous applications, if any, shall also stand disposed of.

29.07.2021

rekha

Whether speaking/reasoned

Whether Reportable

Yes / No

Yes / No

(ANIL KSHETARPAL)

JUDGE