

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5250 OF 2018  
(Arising out of S.L.P. (C) NO. 20049 OF 2017)

GENERAL MANAGER (PROJECT),  
NATIONAL HIGHWAYS AND INFRASTRUCTURE  
DEVELOPMENT CORPORATION LTD.

APPELLANT(S)

VERSUS

PRAKASH CHAND PRADHAN & ORS.

RESPONDENT(S)

WITH  
CIVIL APPEAL NO. 5251 OF 2018  
(Arising out of S.L.P. (C) No. 595 of 2018)

O R D E R

Leave granted.

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.

.....J.  
(ROHINTON FALI NARIMAN)

.....J.  
(ABHAY MANOHAR SAPRE)

NEW DELHI,  
MAY 16, 2018

ITEM NO.39

COURT NO.11

SECTION XIV

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 20049/2017

(Arising out of impugned final judgment and order dated 05-07-2017 in ARBP No. 01/2017 passed by the High Court of Sikkim At Gangtok)

GENERAL MANAGER (PROJECT), NATIONAL HIGHWAYS  
AND INFRASTRUCTURE DEVELOPMENT CORPORATION LTD.      Petitioner(s)

VERSUS

PRAKASH CHAND PRADHAN & ORS.      Respondent(s)

WITH

SLP(C) No. 595/2018 (XIV)

Date : 16-05-2018 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN  
HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Petitioner(s)      Mr. Anupam Lal Das, Adv.  
                                 Mr. Kabir Shankar Bose, Adv.  
                                 Mr. Shashank Manish, Adv.  
                                 Mr. Sameer Kumar, AOR

Mr. Vikramjit Banerji, A.S.G.  
Mr. Ashok K. Srivastava, Adv.  
Ms. Sunita Sharma, Adv.  
Mr. Arvind Kumar Sharma, AOR  
Mr. Anshul Gupta, Adv.  
Mr. Gurmeet Singh Makker, AOR

For Respondent(s)      Mr. Sunil Kumar Jain, AOR  
                                 Mr. A.K. Shah, Adv.  
                                 Mr. Punya Garg, Adv.  
                                 Mr. Abhishek Jain, Adv.

Mr. Anupam Lal Das, Adv.  
Mr. Kabir Shankar Bose, Adv.  
Mr. Shashank Manish, Adv.  
Mr. Sameer Kumar, AOR

UPON hearing the counsel the Court made the following

**O R D E R**

**Leave granted.**

**The appeals are allowed in terms of the signed order.**

**Pending applications, if any, shall also stand disposed of.**

**(SUSHIL KUMAR RAKHEJA)  
COURT MASTER (SH)**

**(SAROJ KUMARI GAUR)  
BRANCH OFFICER**

**(Signed Order is placed on the file)**