N.B.C.C.Ltd vs J.G.Engineering Pvt.Ltd on 5 January, 2010

Equivalent citations: AIR 2010 SUPREME COURT 640, 2010 (2) SCC 385, 2010 AIR SCW 390, (2010) 2 MAD LW 232, (2010) 1 RECCIVR 725, 2010 (1) SCALE 138, (2010) 1 WLC(SC)CVL 239, (2010) 2 MAD LJ 805, (2010) 2 ALLMR 417 (SC), (2010) 2 CIVLJ 444, (2010) 4 KCCR 225, (2010) 1 ALL WC 589, (2010) 2 MPLJ 310, (2010) 2 ICC 151, (2010) 1 ARBILR 165, (2010) 3 MAH LJ 18, (2010) 1 SCALE 138

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Bench: Aftab Alam, Tarun Chatterjee

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO .8 OF 2010
(Arising Out of SLP) No. 19471 of 2007)

N.B.C.C. Ltd. .... Appellant

Versus

J.G. Engineering Pvt. Ltd. .... Respondent

WITH

CIVIL APPEAL NO.9 OF 2010
(Arising out of SLP)No.22243 of 2008)

JUDGMENT

TARUN CHATTERJEE, J.

1. Leave granted.

2. These appeals are directed against the final Judgments and orders dated 23rd of March, 2006, and 21st of September, 2007 passed by the High Court at Calcutta in G.A. No.235 of 2006 arising out of A.P. No. 361 of 2005, whereby the High Court had allowed the petition of the respondent and thereby terminated the mandate of the arbitrator and thus appointed a new Arbitrator for deciding the dispute between the parties.

3. In order to appreciate the controversy existing between the parties, it may be important to narrate the facts as emerging from the case made by the appellant, which are as follows :-

> In the month of December 1992, the appellant had issued notice inviting tender for construction of terminal buildings and various ancillary jobs at the Bhubaneshwar Airport at Bhubaneshwar, Orissa. The respondent submitted its offer, which was accepted by the appellant.
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> On 30th of March, 1993, the appellant entered into a contract with the respondent for construction of the aforesaid work at the Bhubaneshwar Airport for a total consideration of Rs. 5,71,13,541.33/-. The date of commencement of the work was fixed on 1st of March, 1993 and the stipulated date of completion was 31st of October, 1994. However, on 20th of March, 1996, the appellant terminated the contract of the respondent alleging that the respondent had failed to fulfill its part of the obligations required under the contract. On 20th of May, 1996, the respondent invoked the arbitration clause and sought for an appointment of an arbitrator for adjudication of the disputes between the parties. On 9th of August, 1996, the Chairman-cum-Managing Director of the appellant appointed a sole arbitrator to adjudicate upon the claims and counter claims of the parties. The appellant filed its counter claim on 30th of April, 1997 before the sole arbitrator. The respondent submitted its rejoinder and objections to the counter claims on 12th of May, 2001, after about 4 years from the date of reply by the appellant. During this period, the appellant had virtually closed its regional office in Calcutta as most of the work done in its office was completed. This, according to the appellant, caused in several transfers of the arbitrators appointed by the appointing authority. Meanwhile, the appointing authority had appointed three arbitrators due to the above-mentioned reason and the arbitration process had come to a stand still due to the inaction of the respondent and its failure to participate.
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> Thereafter, on 20th of May, 2004, the respondent filed an application before the Calcutta High Court seeking removal of the then incumbent arbitrator and the arbitral proceedings were stayed by the Court. On 20th of September, 2004, the High Court directed the Chairman-cum-Managing Director of the appellant company to appoint a new arbitrator in terms of the arbitration clause within a period of four weeks from the date of communication of its order. The High Court further directed the arbitrator so appointed to conclude the arbitration proceedings within a period of six months from the date of his appointment. Pursuant to the order of the High Court, the Chairman-cum-Managing Director of the appellant company appointed Shri A.K. Gupta, Deputy General Manager of the appellant as the sole arbitrator. The said arbitrator finally concluded the proceedings after hearing on 18th of June, 2005. It is an admitted position that the time to conclude the arbitration proceeding in terms of the order of the High Court before Shri A. K. Gupta, who was appointed as the sole arbitrator by the Chairman-cum-Managing Director of the company had by then already expired.

However, both the parties extended the time to conclude the arbitration proceeding and to pass an award accordingly, the time was enlarged for conclusion of the arbitration to 30th of September, 2005.

It is also an admitted position that the time limit so fixed i.e. arbitration must be concluded and award must be passed within 30th of September, 2005, could not be adhered to by the arbitrator and he failed to publish the award within this period. About three months after the expiry of the period of concluding the proceeding and passing of the award, it was the respondent who moved an application before the High Court for a declaration that the mandate of the arbitrator had already stood terminated. We may keep it on record that the appellant had not filed any application for enlargement of time for the conclusion of the arbitration proceeding or to pass the award after the expiry of the period.

On 22nd of December, 2005, the High Court, vide an interim order, restrained the arbitrator from making an award and at the same time, had refused to accept the award produced by the arbitrator before it which were well beyond the period fixed by the High Court. On 23rd of March, 2006, the High Court, by its impugned order, terminated the mandate of the arbitrator on the ground of delay in making the award. The appellant then challenged the above mentioned order of the Calcutta High Court before this Court vide SLP No.19471 of 2007 on 12th of September, 2007. At the same time, the High Court by the impugned order dated 21st of September, 2007 passed in AP No. 361/2005 appointed Mr. Justice Chittatosh Mookherji (As His Lordship then was) as the sole arbitrator to adjudicate the disputes between the parties. The appellant, feeling aggrieved by this order as well has filed a special leave petition which came to be registered as SLP No. 22243 of 2008, which after hearing the learned counsel for the parties and on grant of leave, was heard in presence of the learned counsel for the parties.

4. We have heard the learned counsel appearing on behalf of the parties and examined the impugned orders of the High Court and also other materials on record in depth and in detail. As noted herein earlier, the respondent had made an application before the Calcutta High Court under Section 14 of the Arbitration and Conciliation Act, 1996 (in short the "Act") for a declaration that the mandate of the arbitrator Shri A.K. Gupta had already stood terminated. As had already been mentioned above, the appointing authority had appointed three arbitrators prior to the appointment of Shri Gupta who were all unable to conduct the arbitral proceedings for some reason or the other. It may be kept on record that the respondent filed an application before the High Court for a declaration that the appointment of the arbitrator namely, Shri Amitava Basu, who was appointed as the sole arbitrator prior to the appointment of Shri A. K. Gupta had stood terminated by an order dated 20th of September, 2004, by which the High Court had terminated the appointment and ordered the appointing authority of the appellant to appoint a new arbitrator who will conclude the proceeding and pass an award within six months from the date of his appointment. Subsequent to this order of the High Court, the appellant appointed Mr. AK Gupta as the new arbitrator who was to complete his proceedings by 27th of March, 2005 i.e. six months from the date of his appointment.

It is pertinent to mention that the appellant did not file any appeal against the above-mentioned order of the High Court. Therefore, it may be taken that the appellant had accepted the aforesaid order of the High Court and thereby accepted its decision to fix the time of the arbitration proceedings to be mandatorily concluded within six months from the date of appointment of the arbitrator. The order, thus having assumed finality, a time limit was imposed for the conclusion of the arbitration proceedings. Thus, the appellant is estopped from raising any objection against the imposition of the time limit as had been done by the Court in this respect. From the records before us, we have noticed that inspite of conducting a number of proceedings, the arbitrator was unable to conclude the proceedings within the time fixed by the High Court. The arbitration clause in the contract enables the arbitrator to extend the time for making and publishing the award by mutual consent of the parties. From a perusal of the documents before us, we notice that the parties mutually agreed to extend the time till 31st August, 2005 for making and publishing the award, which were further extended by the parties till 30th of September, 2005 on account of the arbitrator having failed to conclude the proceedings within the previous date fixed by the parties. But the arbitrator having failed to do so by 30th of September, 2005, the respondent moved the High Court to terminate the mandate of the arbitrator as he had failed to conclude the proceedings within the time limit fixed by the parties. The High Court accordingly terminated the mandate of the arbitrator on account of his failure to publish the award within the time fixed by the parties. We are of the opinion that the High Court was perfectly justified in doing so on an application filed by the respondent before it. Quite interestingly, it has come to our notice that the arbitrator in question had appeared before the High Court and submitted that the award was ready but the same could not be published on account of the interim order passed by the same restraining him from publishing it. There was, however, no order of the Court restraining the arbitrator from publishing the award till almost three months after the expiry of the time fixed by the mutual consent of the parties to make and publish the award prior to the interim order passed by the High Court.

5. A perusal of the arbitration agreement quite clearly reveals that the arbitrator has the power to enlarge the time to make and publish the award by mutual consent of the parties. Therefore, it is obvious that the arbitrator has no power to further extend the time beyond that which is fixed without the consent of both the parties to the dispute. It is an admitted position that the respondent did not give any consent for extension of time of the arbitrator. Thus given the situation, the arbitrator had no power to further enlarge the time to make and publish the award and therefore his mandate had automatically terminated after the expiry of the time fixed by the parties to conclude the proceedings. The learned counsel contended that the arbitration proceedings involved questions of highly technical and complex issues which would require sufficient amount of time to be decided in a just and proper way. However the records clearly illustrate that even after a passage of over nine years, the matter which was to be decided between the parties by way of arbitration, could not be resolved and the process lingered on. Arbitration is an efficacious and alternative way of dispute resolution between the parties. There is no denying the fact that the method of arbitration has evolved over the period of time to help the parties to speedily resolve their disputes through this process and in fact the Act recognizes this aspect and has elaborate provisions to cater to the needs of speedy disposal of disputes. The present case illustrates that inspite of adopting this efficacious way of resolving the disputes between the parties through the arbitration process, there was no outcome and the arbitration process had lingered on for a considerable length of time which defeats

the notion of the whole process of resolving the disputes through arbitration. The contention of the appellant therefore cannot be justified that since the dispute was highly technical in nature, it had to be dealt with elaborately by the arbitrator and thus, he was justified in being late. The High Court had thus correctly fixed the time for the arbitration to be concluded within a period of six months from the appointment of the fourth arbitrator Shri A.K. Gupta considering the time that had been spent for the arbitration process prior to Mr. Gupta's appointment. That apart, even assuming that the arbitration process involved highly technical and complex issues, which was time consuming, even then, it was open for the arbitrator or for the parties to approach the Court for extension of time to conclude the arbitration proceeding which was not done by either by the arbitrator or by any of the parties. As had been correctly noted by the High Court in its impugned judgment, there was no cogent reason for the delay in making and publishing the award by the arbitrator. He already had the relevant materials at his disposal and could base his findings on the observations made by the three arbitrators who were appointed prior to him. The Arbitrator was bound to make and publish his award, within the time mutually agreed to by the parties, unless the parties consented to further enlargement of time. Therefore, the condition precedent for enlargement of time would depend only on the consent of the parties, that is to say, that if the parties agree for enlargement of time. If consent is not given by the parties, then the authority of the arbitrator would automatically cease to exist after the expiry of the time limit fixed. In the present case, the arbitrator had failed to publish the award within the time limit fixed by the parties, and hence, the High Court was justified in terminating the mandate of the arbitrator. We therefore do not find any fault with the impugned order of the High Court in this regard. From a perusal of the records, we can see that the respondent had filed an application to terminate the mandate of the arbitrator before the High Court almost after three months from the date of expiry of the time to publish the award although the appellant did not choose to file any application for enlargement of time for conclusion of the arbitration proceeding. It is obvious that the respondent could not have possibly known about the outcome of the award. Even after the expiry of the time as mentioned above, the arbitrator did not make any effort to publish the award nor was anything conveyed on behalf of the appellant to the respondent for extending the time of the arbitrator to publish his award. It was a clear lapse on the part of both the arbitrators and the appellant who was well aware that the mandate of the arbitrator had already expired and it could only be extended by a mutual consent of the parties according to the arbitration agreement.

It has been correctly observed by the High Court that the arbitrator had become functus officio in the absence of extension of time beyond 30th of September, 2005 to make and publish the award. After the said date, the arbitrator had no authority to continue with the arbitration proceedings. The learned counsel appearing on behalf of the appellant argued that in the absence of any statutory period prescribed under the Act for rendering an award, the direction of the Court to conclude the arbitration proceedings within the time prescribed by it, would not make an award passed beyond the time so prescribed, null and void. He further argued that the High Court was wrong in not extending the time fixed by it in the order dated 20th of September, 2004, for early conclusion of the arbitration proceedings and terminating the mandate of the arbitrator when neither the Act nor the arbitration agreement prescribed any time for making and publishing the award.

6. The learned counsel appearing on behalf of the appellant had drawn our attention to a decision of this Court in Jatinder Nath Vs. M/s Chopra Land Developers Pvt. Ltd. & Anr. [AIR 2007 SC 1401] to satisfy us that the award which was passed after four months of entering upon reference does not ipso facto become nonest and the Court has power to extend time and give life to the vitiated award. So far as this decision is concerned, we may keep it on record that this decision was rendered under the Arbitration Act of 1940 and not under the present act with which we are only concerned. In view of our reasonings given hereinafter and in view of the facts involved in this case, we do not find any ground to rely on this decision of this Court for the purpose of this case. The other decision cited by the learned counsel for the appellant is the decision reported in General Manager, Department of Telecommunications, Thiruvananthapuram Vs. Jacob S/o Kochuvarkey Kalliath (Dead) by LRs. And Others [2003 (9) SCC 662]. The learned counsel particularly relied on para 8 of the said decision. We have carefully gone through para 8 of the decision relied on by the learned counsel for the appellants. We may not forget that we are concerned in this case with the Arbitration and Conciliation Act, 1996 and not under the Land Acquisition Act, 1894. Without going into the details of this decision, we may simply say that this decision cannot have any manner of application and the principles laid down to the facts and circumstances of the present case. The last decision, which was cited by the learned counsel for the appellant is the decision reported in National Aluminum Co. Ltd. Vs. Pressteel & Fabrications (P) Ltd. and Another [2004 (1) SCC 540]. In our view, this decision also is of no help to the appellant. The principles laid down in the said decision cannot have any application in the present case although the decision rendered in this case is the decision under the Arbitration and Conciliation Act, 1996.

7. Taking into consideration the arguments of the appellant, it is necessary to mention here that the Court does not have any power to extend the time under the Act unlike Section 28 of the 1940 Act which had such a provision. The Court has therefore been denuded of the power to enlarge time for making and publishing an award. It is true that apparently there is no provision under the Act for the Court to fix a time limit for the conclusion of an arbitration proceeding, but the Court can opt to do so in the exercise of its inherent power on the application of either party. Where however the Arbitration agreement itself provides the procedure for enlargement of time and the parties have taken recourse to it, and consented to the enlargement of time by the arbitrator, the Court cannot exercise its inherent power in extending the time fixed by the parties in the absence of the consent of either of them.

8. The counsel for the appellant further contended that the High Court could not have terminated the mandate of the arbitrator on the ground that the award was passed beyond the time limit fixed by it. It is clear from an apparent perusal of the judgment of the High Court and the records before us that the High Court had not terminated the mandate of the arbitrator on the ground that the arbitrator could not pass the award within the time fixed by it vide its order dated 20 th of September, 2004. In fact, the arbitrator had continued to proceed with the arbitration procedure after the time fixed by the Court had expired on account of the mutual consent of the parties to extend the time limit. Such an action was clearly warranted under the arbitration agreement in force between the parties. On the contrary, the arbitrator had ceased to have any authority only after the time limit fixed by the parties had expired and the respondent did not give consent to the extension of the time for publishing the award. Thus, such a contention of the appellant cannot be accepted.

The High Court had merely asserted this fact that the mandate of the arbitrator had automatically expired after the time fixed by the parties to the effect that it had lapsed.

9. The Appellant further argued that the High Court had failed to appreciate that the parties had undergone the process of arbitration for a long time and it was not wise to terminate the mandate of the arbitrator when the award was ready and fit to be published, considering the fact that a huge sum of money had been spent during the proceedings. Therefore, the High Court should not have ordered the appointment of a new arbitrator. It is to be noted that the High Court in its impugned judgment had ordered Shri A.K. Gupta to hand over the relevant materials relating to the proceedings to the newly appointed arbitrator. Thus, such an action would inherently make it clear for the newly appointed arbitrator to conduct the proceedings and it is not required from him to start the proceedings from scratch all over again. Further, if the award was ready as had been contended by the appellant, it is baffling that even after three months from the expiry of the period fixed by the parties for publication of the award, the arbitrator had not come out with the award or had notified the respondent that the award was ready. It was only when the High Court restrained the arbitrator from coming out with any award in the dispute that the arbitrator submitted before the Court that the award was ready to be published. At the risk of repetition, we may once again note, that the Court has no inherent power to enlarge the time for publication of the award once it has not been extended by the parties to that effect.

10. The appellant further argued that the arbitrator having concluded the proceedings couldn't be said to have failed to act so as to attract the provisions of Section 14 of the Act and call for termination of the mandate of the arbitration. He had also contended that under Section 15 (2) of the Act, substitute arbitrator should be appointed according to the rules that were applicable to the appointment of the arbitrator. Accordingly, his contention was that the High Court had erred in holding that the appointing authority had not appointed an arbitrator while terminating the mandate of the arbitrator in the same proceedings.

It is necessary to mention here Section 14 and Section 15 of the Act for the sake of convenience.

> "Section 14: Failure or impossibility to act -
>
> (1) The mandate of an arbitrator shall terminate 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 subsection (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."

> "Section 15: Termination of mandate and substitution of arbitrator-
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> (1) In addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate-
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> (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 subsection (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."

11. With reference to the contention made by the appellant that the arbitrator having concluded the proceedings couldn't be said to have failed to act so as to attract the provisions of Section 14 of the Act, which will call for termination of the arbitration proceeding. It is pertinent to mention here that the arbitrator had not concluded the proceedings as had been agreed to by the parties within the time fixed for doing so. The mandate of the arbitrator was terminated only because of the fact that the arbitrator having failed to conclude his proceedings within time did not warrant to be continued as an arbitrator in the absence of the consent of both the parties. It is clear from a bare reading of sub section 1 (a) of section 14 of the Act, the mandate of an arbitrator shall terminate if he fails to act without undue delay. In the present case, it is clear that the arbitrator had extended the time provided to it without any concrete reasons whatsoever and thus his mandate was liable to be terminated. Sub section 1(b) further states that the mandate of an arbitrator shall also stand to be terminated if he withdraws from his office or the parties agree to the termination of his mandate. From the perusal of the records and the submissions of the parties, we observe that the mandate of the arbitrator was extended by an agreement between the parties, which was not extended beyond 30th September, 2005. Thus it can be construed that the parties had not agreed to the extension of the mandate of the arbitrator failing which, the mandate was automatically terminated.

12. Further, Subsection (2) of Section 14 of the Act stipulates that if a controversy remains concerning any of the grounds referred to under clause (a) of subsection 1, a party may, unless otherwise agreed to by the parties, apply to the Court to decide on the termination of the mandate. Thus the respondent rightly applied to the Court for the termination of the mandate of the arbitrator pursuant to the provisions of this section, and the Court was within its jurisdiction to decide accordingly.

13. However, the contention of the Appellant that the High Court had erred in not allowing the appellant to decide upon the appointment of an arbitrator pursuant to sub-section (2) of Section 15 of the Act must be accepted. Section 15 (2) of the Act provides that 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 replaced. In this connection, it would be appropriate to refer to the relevant portion of the impugned judgment of the High Court, which gives an elaborate observation on the above-mentioned issue raised by the appellant:

> "The question therefore is, whether in view of section 15 (2) of the 1996 Act, an independent arbitrator can be appointed by this Court as prayed for by the appellant or whether the appellant should once again invoke the Arbitration Clause, call upon the Chairman-cum-

Managing Director of the respondent to appoint an arbitrator, wait for a further period of 30 days, to see whether the Chairman-cum-Managing Director acts or not and then make a request to the Hon'ble Chief Justice or his designate under Section 11(6) of the 1996 Act to appoint an arbitrator.

Arbitration is an informal, quick and easy alternative mode of adjudication of disputes by agreement of the parties. This Court cannot but take judicial notice of the fact that the Arbitration Clause was invoked way back in May 1996 and almost 10 years have expired since then. The appointment of successive Arbitrator by the Chairman-cum-Managing Director of the respondent has only resulted in delay.

When the mandate of an arbitrator is terminated on the ground of delay, the rules applicable to the appointment of the arbitrator are to apply to the appointment of a new arbitrator. It would, however, be a mockery of justice, if every time the mandate of an arbitrator was terminated or the arbitrator resigned or otherwise became unable to proceed, the parties were to start from scratch, by invoking the Arbitration Clause.

Once the mandate of the arbitrator terminates, the person required to appoint arbitrator is required to fill up the vacancy with utmost expedition, failing which the provisions of section 11 (6) of the 1996 Act would be attracted. In the instant case, as per the Arbitration agreement the Chairman-cum-Managing Director was required to appoint a new arbitrator in case the arbitrator became unable to continue, whatever be the reason. Even thought the time limit for conclusion of arbitration expired on 30th September, 2005, the Chairman-cum- Managing Director of the respondent did not appoint another arbitrator."

14. We have carefully examined the aforesaid observations of the impugned judgment of the High Court. We are of the view that in view of a three-Judge Bench decision of this Court in the case of Northern Railway Administration, Ministry of Railway vs. Patel Engineering Company Ltd. [2008 (10) SCC 240] in which a decision of this Court in Ace Pipeline Contracts Private Limited vs. Bharat Petroleum Corporation Limited [(2007) 5 SCC 304] was also referred to, the application for appointment of an Arbitrator under Section 11 of the Act should be referred back to the High Court for fresh decision. Arijit Pasayat, (as His Lordship then was), heading a three-Judge Bench of this

Court after considering the scope and object of the Act particularly Section 11 of the Act concluded the following :-

> "A bare reading of the scheme of Section 11 shows that the emphasis is on the terms of the agreement being adhered to and/or given effect as closely as possible. In other words, the Court may ask to do what has not been done. The court must first ensure that the remedies provided for are exhausted. It is true as contended by Mr. Desai, that it is not mandatory for the Chief Justice or any person or institution designated by him to appoint the named arbitrator or arbitrators. But at the same time, due regard has to be given to the qualifications required by the agreement and other considerations.
>
> xxxxxxxxxxxxxx In all these cases at hand the High Court does not appear to have focused on the requirement to have due regard to the qualifications required by the agreement or other considerations necessary to secure the appointment of an independent and impartial arbitrator. It needs no reiteration that appointment of the arbitrator or arbitrators named in the arbitration agreement is not a must, but while making the appointment the twin requirements of Sub-section (8) of Section 11 have to be kept in view, considered and taken into account. If it is not done, the appointment becomes vulnerable. In the circumstances, we set aside the appointment made in each case, remit the matters to the High Court to make fresh appointments keeping in view the parameters indicated above."

In the aforesaid decision in the case of Northern Railway Administration (Supra), Arijit Pasayat, J. (as His Lordship then was), held that the High Court in the said case did not appear to have focused on the requirement to have due regard to the qualifications required by the agreement or other conditions necessary to secure the appointment of an independent and impartial arbitrator. In the aforesaid decision, this Court also concluded that since the requirement of sub-section (8) of Section 11 was not at all dealt with by the High Court in its order, the appointment of an arbitrator without dealing with Sub-Section 8 of Section 11 of the Act became vulnerable and accordingly, such appointment must be set aside. Similar is the position in this case. In this case also, before appointing an arbitrator under Section 11(6) of the Act, the High Court had failed to take into consideration the effect of Section 11(8) of the Act as was done in Northern Railway Administration (supra).

15. In view of the discussions made hereinabove and particularly, in view of the principles laid down by this Court in Northern Railway Administration (supra), we set aside the impugned order and remand the case back to the High Court for fresh decision of the application under Section 11(6) of the Act and while considering the application afresh, the High Court is directed to take into consideration the aforesaid decision of this Court.

16. The appeals are thus allowed to the extent indicate above. There will be no order as to costs.

.....J.

[Tarun Chatterjee]

New Delhi; .....J.
January 05, 2010. [Aftab Alam]