

ITEM NO.2

COURT NO.15

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (C) No.6125/2021

(Arising out of impugned final judgment and order dated 25-02-2021 in CMP No.7/2020 passed by the High Court Of Karnataka At Bengaluru)

BANGALORE METRO RAIL CORPORATION LIMITED

Petitioner(s)

VERSUS

JMC ATEPL JOINT VENTURE

Respondent(s)

(FOR ADMISSION and I.R.; IA No.53556/2021 - FOR EXEMPTION FROM FILING O.T.; IA No.53558/2021 - FOR PERMISSION TO FILE LENGTHY LIST OF DATES; and, IA No.53559/2021 - FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 17-02-2022 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

For Petitioner(s) Mr. Arvind Kamath, Sr. Adv.
Mr. Gopal Jain, Sr. Adv.
Mr. Pai Amit, AOR
Mr. Nikit Bala, Adv.
Ms. Pankhuri Bhardwaj, Adv.
Ms. Ranu Purohit, Adv.

For Respondent(s) Mr. Jaideep Gupta, Sr. Adv.
Mr. Mahesh Agarwal, Adv.
Dr. Sunil Mittal, Adv.
Mr. Rishabh Parikh, Adv.
Mr. Rohan Talwar, Adv.
Ms. Anu Tiwari, Adv.
Mr. Kunal Chatterji, Adv.
Mr. E. C. Agrawala, AOR

UPON hearing the counsel the Court made the following
O R D E R

This Special Leave Petition challenges the final judgment and order dated 25.02.2021 passed by the High Court of Karnataka at

Bengaluru in an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 being Civil Miscellaneous Petition No.7 of 2020.

We have heard Mr. Arvind Kamath, learned Senior Advocate for the petitioner and Mr. Jaideep Gupta, learned Senior Advocate for the respondent.

Mr. Arvind Kamath, learned Senior Advocate for the petitioner submits that the judgment and order passed by the High Court is not sustainable in view of the judgment of this Court in the case of *Central Organisation for Railway Electrification v. M/s. ECI-SPIC-SMO-MCML (JV), A Joint Venture Company*, (2020) 14 SCC 712, rendered by a three-Judge Bench of this Court.

Mr. Jaideep Gupta, learned Senior Advocate for the respondent per contra submits that the correctness of the view taken by this Court in "*Central Organisation for Railway Electrification v. M/s. ECI-SPIC-SMO-MCML (JV), A Joint Venture Company*", has been doubted by another three-Judge Bench of this Court in the case of *Union of India v. M/s. Tania Constructions Ltd.*", SLP (Civil) No.12670 of 2020, and vide order dated 11.01.2021, the decision in the matter of *Central Organisation for Railway Electrification (supra)* has been referred to a larger Bench to re-look into the correctness thereof. The said order of reference reads as under:

"Having heard Mr. K.M. Nataraj, learned ASG for sometime, it is clear that on the facts of this case, the judgment of the High Court cannot be faulted with. Accordingly, the Special Leave Petition is dismissed. However, reliance has been placed upon a recent three-Judge Bench decision of this Court delivered on 17.12.2019 in *Central Organisation for Railway Electrification vs. M/s ECI-SPIC-SMO-MCML (JV) A Joint Venture Company*, 2019 SCC OnLine 1635. We have perused the aforesaid judgment and *prima facie* disagree

with it for the basic reason that once the appointing authority itself is incapacitated from referring the matter to arbitration, it does not then follow that notwithstanding this yet appointments may be valid depending on the facts of the case.

We therefore request the Hon'ble Chief Justice to constitute a larger Bench to look into the correctness of this judgment.

Pending application stands disposed of.

The aforesaid reference is now subject matter of consideration in Civil Appeal Nos.9486-9487 of 2019.

In this view of the matter, we are of the opinion that it would be in the interest of justice to keep the present matter pending till the reference is answered by a larger Bench of this Court. However, pendency of the arbitration proceedings between the parties in the present matter till the outcome of the reference would not be in the interest of either of the parties.

In that view of that matter, while exercising our power under Article 142 of the Constitution of India, we constitute the Arbitral Panel for conducting the arbitration between the parties in the present proceedings as follows:

1. Hon'ble Mr. Justice Santosh Hegde
Former Judge, Supreme Court of India
2. Hon'ble Mr. Justice Anand Byrareddy
Former Judge, High Court of Karnataka
3. Hon'ble Mr. Justice K.N. Phaneendra
Former Judge, High Court of Karnataka

The Registry is directed to transmit a copy of this order to the Hon'ble Judges of the above Arbitral Panel.

The Registry is further directed to tag this matter alongwith Civil Appeal Nos.9486-9487 of 2019, after seeking requisite directions from the Hon'ble the Chief Justice of India.

The parties are at liberty to make a mention before the Hon'ble the Chief Justice of India for expeditious listing of the reference.

We however clarify that the pendency of the present Special Leave Petition should not be construed as an impediment in conducting the arbitration proceedings and passing of an award.

(MUKESH NASA)
COURT MASTER

(VIRENDER SINGH)
BRANCH OFFICER