

ITEM NO.17+ 51

COURT NO.8

SECTION XII

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

Miscellaneous Application No. 184/2023 in SLP(C) No. 8553/2022

CHENNAI METRO RAIL LIMITED ADMINISTRATIVE BUILDING Petitioner(s)

VERSUS

M/S TRANSTONNELSTROY AFCONS (JV) &amp; ANR.

Respondent(s)

(FOR ADMISSION and IA No.153240/2022-CLARIFICATION/DIRECTION )

SLP (C) No. 3660/2023

([TO BE TAKEN UP ALONG WITH ITEM NO. 17 I.E. MA 184/2023 in SLP(C)No. 8553/2022].....FOR ADMISSION and I.R. and IA No.35804/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT )

Date : 20-02-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI  
HON'BLE MR. JUSTICE ARAVIND KUMAR

For Petitioner(s) Mr. N. Venkataraman, A.S.G.  
Mr. Ritin Rai, Sr. Adv.  
Mr. Sairam Arjun Suresh, Adv.  
Mr. Chitranshul A. Sinha, Adv.  
Mr. Raghavendra Ross Divakar, Adv.  
Mr. Jaskaran Singh Bhatia, Adv.  
For M/S. Dua Associates, AOR

For Respondent(s)/ Mr. C A Sundaram, Sr. Adv.  
Applicant(s) Mr. K V Vishwanathan, Sr. Adv.  
Mr. Manu Seshadri, Adv.  
Mr. Aveak Ganguly, Adv.  
Mr. Abhijit Lal, Adv.  
Ms. Pallavi Anand, Adv.  
Mr. Mithu Jain, AOR

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

1. Mr. N. Venkataraman, learned A.S.G., relying on the judgment of Union of India vs. Singh Builders Syndicate (2009) 4 SCC 523 and Oil and Natural Gas Corporation Ltd. vs. Afcons Gunanusa JV (2022 SCC OnLine SC 1122) submits that if an arbitrator unilaterally increases his fees and if the same increase is opposed by one of the parties and accepted by the other parties, there is likelihood of bias in the mind of the Arbitrators against a party who has opposed the increase.

2. Shri C.A. Sundaram, learned senior counsel on the contrary, relies on the judgment of this Court in the case of HRD Corporation (Marcus Oil and Chemical Division) vs. Gail (India limited (Formerly Gas Authority of India Limited) (2018) 12 SCC 471 and submits that if a case of the parties is based on bias then it will be covered under Section 13 of the Arbitration and Conciliation Act, 1996 (for short, the Act) and the only stage at which such a challenge could be raised is after the award is passed by the Tribunal.

3. Shri Sundaram, learned senior counsel further submits that the case of bias would not fall under Section 14 of the Act so as to automatically lead to

termination of the mandate of an arbitrator.

4. The judgment of this Court in the case of Union of India vs. Singh Builders Syndicate (supra) is rendered by a Bench of two Judges so also the HRD Corporation (Marcus Oil and Chemical Division) vs. Gail (India limited (Formerly Gas Authority of India Limited) (supra) is rendered by two learned Judges whereas the judgment in Oil and Natural Gas Corporation Ltd. vs. Afcons Gunanusa JV (supra) is by a Bench strength of three learned Judges.

5. In that view of the matter, we find that this issue requires to be considered and decided.

6. Taking into consideration that the decision on the issue will have wider ramifications, the matter requires to be heard expeditiously.

7. We therefore direct the matter to be placed after two weeks.

8. We are informed that a special Bench for considering the arbitration matters is being constituted by Hon'ble the Chief Justice of India.

9. Since the present Bench on non miscellaneous days is largely taking up death references, it may not be possible for this Bench to hear the matter expeditiously.

10. Since a special Bench for taking up arbitration matters is being constituted, we direct the Registry to place the matter before the Hon'ble the

Chief Justice of India for obtaining orders as to whether this matter can also be referred to the special Bench.

(CHARANJEET KAUR)  
ASTT. REGISTRAR-cum-PS

(ANJU KAPOOR)  
COURT MASTER (NSH)