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## CASE COMMENTARY ON NATIONAL HIGHWAY AUTHORITY OF INDIA VS SAYEDABAD TEA COMPANY LIMITED AND OTHERS

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### Abstract

*Alternative Dispute Resolution brought a change in a dynamic legal process where lengthy processes of justice drain a person both physically, mentally, and in monetary terms too. Alternative Dispute Resolution provides relief to the person to be saved from the hassle of filing file papers and waiting for long periods of hearing. Alternative Dispute Resolution provides the remedy of out-of-court settlement which helps the parties to agree on the issues from the process which is not tedious and is cost-efficient. Although we are still living in a time where the transition of the legal process from litigation to Alternative Dispute Resolution is slow yet before we can form the strategies to address the problem we need to identify the inefficiency in the Alternative Dispute Resolution and Conciliation Act, of 1996. The landmark judgment on National Highways Authority of India vs Sayedabad Tea Estate addresses the conflict between Section 11 of the Arbitration and Conciliation Act, 1996, and Section 3G of the National Highways Act 1956. The question of law which was addressed in this case is whether Section 11 of the Act, 1996 which provided the procedure for the appointment of an arbitrator can override Section 3G of the National Highways Authority of India.*

### I. Introduction and Background of Judgment

The Alternative Dispute Resolution and Conciliation Act, of 1996 was the outcome of the many provisions and legislations passed by the Parliament, for example, the Second Schedule in the Code of Civil Procedure, 1908 introduced the concept of arbitration. While in 1940, the Arbitration Act was introduced which was predominantly founded on the English Arbitration Act of 1934 but it majorly focused on the matter of domestic arbitration. The Act of 1996 addresses these issues as it was based on United Nations Commission on International Trade Law on International Commercial Arbitration, 1985. But, still, the Act of 1996 contains the issues such as where its jurisdiction is exclusive or implied or where it can be denied. The Alternative Dispute Resolution and Conciliation Act, of 1996 is an alternative to the lengthy judicial process which

is not an exhaustive option for the clients. Alternative Dispute Resolution can be considered an option by the parties during the agreement, the parties can appoint an arbitrator when any dispute arises between them. The Procedure for appointment is given under Section 11 of the Act of 1996.

The National Highways Act is legislation that gives exclusive power to declare highways as National Highways, acquisition of lands, and determination of compensation. If any party is not satisfied with the compensation received, the Act provides the procedure for the appointment of the arbitrator to resolve the compensation amount received.

### Judgment Course Title

National Highways Authority of India  
.....Appellant



Vs

Sayedabad Tea Company Limited and Others  
..... Respondent

**Case Number:** – Civil Appeals Nos. 6958-959 of 2005 with Nos. 6965-966 of 2019

**Court:** Supreme Court of India

**Quorum:** Three-Judge Bench: Justice N.V. Ramana, Justice Mohan M. Shantanagoudar, and Justice Ajay Rastogi

**Author and Citation:** Judgement was delivered by Justice Ajay Rastogi and Citation is 2019 SCC Online SC 1102

## II. Related Provisions

### Section 3D in The National Highways Act, 1956

#### 3D. Declaration of acquisition.—

(1) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.

(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under sub-section (1) of section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect: Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-

section (1) of section 3A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called into question in any court or by any other authority.

**Section 3G (5) of the Act of 1956:** 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.

**Section 3G (6) of the Act of 1956:** 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.

#### Section 11(6) of the Arbitration and Conciliation Act, 1996:

(6) Where, under an appointment procedure agreed upon by the parties,—

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, a party may request the Chief Justice or any person or institution designated by him to take the necessary measure unless the agreement on the appointment procedure provides other means for securing the appointment

### III. Background and Facts of the Case

The land in dispute was acquired by the appellant National Highways Authority of India in the exercise of its under Section 3D of the 1956 Act for the construction of highways. The Respondent applicant is dissatisfied with the award of compensation determined by the



competent authority under Section 3G (5) of the 1956 Act and applied for the appointment of an arbitrator to the Central Government. Since the Central Government did not respond, the Respondent applied for the appointment of the arbitrator to the Chief Justice under Section 11(6) of the Act, 1996. However, the Central Government appointed the arbitrator. The High Court of Calcutta decided that the arbitrator appointed by the Central Government, after the respondent had already applied with the Chief Justice, is forfeited and the appointment cannot be considered a valid appointment. After this order, the appellant moved an application for review, and the High Court held that since the 1956 Act exclusively provides the special procedure for the appointment of the arbitrator by the Central Government, the application made by the respondent is not maintainable under Section 11(6) of the Act, 1996. The application for review was dismissed by the High Court of Calcutta under Order 47 of the Code of Civil Procedure. The application by the Respondent was accepted by the Supreme Court of India.

#### **IV. Arguments by the Parties**

The Appellant represented by Advocate Mr. Vikas Goel argued that the 1956 Act was a special enactment that provides not only the procedure of acquisition but also the mode of determining compensation by the competent authority, and any person, if aggrieved by the compensation amount received under Section 3G (1) & (2) of the Act, 1956, can move an application for the appointment of an arbitrator to the Central Government. But before it could be reached by the Central Government, the respondent applied to the High Court under Section 11(6) of the Act of 1996. The Advocate for the Respondent argued that since the special law prevail over the general law, the provisions of 1996 cannot be invoked. The learned counsel in support of the argument presented the case of the National Highways & Infrastructure Development Corpn. Ltd. vs Prakash Chand Pradhan.

The Act of 1956, which specifically addresses land acquisition and compensation for national highways, stipulates that the appointment of an arbitrator should strictly adhere to its provisions. However, utilizing Section 11 of the Arbitration and Conciliation Act of 1996 to appoint an arbitrator is an effort to nullify the authority of the Central Government to appoint an arbitrator under the Act of 1956.

The Respondent was represented by Senior Advocate Mr. Prashant Bhushan, who supported the order of the High Court of Calcutta. Section 3G (6) of the Act, 1956 applies to every arbitration under the 1956 Act. If the Respondent did not receive any response from the Central government within 30 days then it is justified to take recourse under Section 11(6) of the 1996 Act. Also, the Appellant forfeited his right to appoint the arbitrator after the presentation of the application under the 1996 Act before the High Court of Calcutta thus invoking Section 11(6) of the Act. To support his argument relied on the Judgement of Deep Trading Co. vs Indian Oil Corporation.

#### **V. Judgment by the Court**

The court clarified the interpretation of the term "Subject to" in Section 3G(6) of the National Highways Act of 1956 before delivering the judgment. This phrase implies that the Act of 1956 might have the ability to take precedence over other legislation. However, if the Act of 1956 contains clear and active provisions, the recourse to the Arbitration Act is not permissible. Thus, the provisions of the Arbitration Act can only be utilized when the Highway Act is silent on the matter. Consequently, in this specific case, the application of Section 11 of the Arbitration Act is not allowed.

To support this argument, the court agreed with the appellant's cited case and relied on the judgment in the Gujarat Urja Vikash Nigam Ltd. v. Essar Power case. The court also emphasized that the National Highways Act, being a special enactment, contains exclusive provisions for



land acquisition and compensation determination. Based on this provision, it was concluded that Section 11 of the 1996 Act does not apply.

The Supreme Court reiterated the established legal principle that special laws have their specific code, thereby excluding the application of general laws.

As per Section 3G of the 1956 Act, it is evident that the central government possesses the authority to appoint the arbitrator. Therefore, Section 11 of the 1996 Act is not applicable. The court directed the parties involved to either file a Writ Petition under Article 226 of the Indian Constitution or initiate a lawsuit since the central government failed to appoint the arbitrator within the stipulated 30-day timeframe.

#### **VI. Conclusion**

The case reflects the conflicts that arise in the jurisdiction where the clause of arbitration can be exercised. While it is of the parties' discretion to decide if they want to solve the dispute through arbitration but when the special legislation is applicable then general law will not prevail. Thus, the Jurisdiction for arbitration is not exclusive and in the case of special legislation, the provision for the arbitration will prevail.

#### **VII. References**

- A. Arbitration and Conciliation Act 1996
  1. Section 11 sub-clause 6
- B. National Highways Authority Act, 1956
  1. Section 3G sub-clause 5 and sub-clause 6
- C. <https://indianlawportal.co.in/national-highways-authority-of-india-v-sayedabad-tea-estate/>

#### **VIII. Related Cases**

1. General Manager (Project), National Highways and Infrastructure Development Corporation Ltd. vs. Prakash Chand Pradhan & Ors
2. Deep Trading Company v. Indian Oil Corporation and Others
3. Gujarat Urja Vikash Nigam Ltd. v. Essar Power