

330

SUPREME COURT CASES

(2023) 12 SCC

(2023) 12 Supreme Court Cases 330

(Record of Proceedings)

3J

(BEFORE R.F. NARIMAN, NAVIN SINHA AND K.M. JOSEPH, JJ.)

UNION OF INDIA

.. Petitioner;

Versus

TANTIA CONSTRUCTIONS LIMITED

.. Respondent.

SLP (C) No. 12670 of 2020[†], decided on January 11, 2021

Arbitration and Conciliation Act, 1996 — S. 11(6) — Appointment of arbitrator — Disagreeing with law laid down in *Central Organisation for Railway Electrification*, (2020) 14 SCC 712 for basic reason that once appointing authority itself is incapacitated from referring matter to arbitration, it does not then follow that notwithstanding this yet appointments may be valid depending on facts of the case, matter referred to larger Bench (Paras 2 and 3)

Tantia Constructions Ltd. v. Union of India, AP No. 732 of 2018, order dated 12-3-2020 (Cal), affirmed

Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), (2020) 14 SCC 712, doubted and referred to larger Bench

SLP dismissed

RM-D/67586/SV

Advocates who appeared in this case :

K.M. Nataraj, Additional Solicitor General [Sharath Nambiar, Uday P. Yadav and Raj Bahadur Yadav (Advocate-on-Record), Advocates], for the Petitioner;

Soumya Chakraborty, Senior Advocate [Raghunath Ghose, Santanu Ghosh and Nikhil Jain (Advocate-on-Record), Advocates], for the Respondent.

Chronological list of cases cited

on page(s)

1. (2020) 14 SCC 712, *Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)* (doubted and referred to larger Bench)

330f-g

2. AP No. 732 of 2018, order dated 12-3-2020 (Cal), *Tantia Constructions Ltd. v. Union of India*

330e-f

ORDER

1. Having heard Mr K.M. Nataraj, learned ASG for some time, it is clear that on the facts of this case, the judgment¹ of the High Court cannot be faulted with. Accordingly, the special leave petition is dismissed.

2. 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 v. ECI-SPIC-SMO-MCML (JV)*². 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.

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

4. Pending application stands disposed of.

[†] Arising from the impugned Final Judgment and Order in *Tantia Constructions Ltd. v. Union of India* (Calcutta High Court, AP No. 732 of 2018, dt. 12-3-2020) [Affirmed]

1 *Tantia Constructions Ltd. v. Union of India*, AP No. 732 of 2018, order dated 12-3-2020 (Cal)

2 (2020) 14 SCC 712