

ITEM NO.301 Court 7 (Video Conferencing) SECTION XIV

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

Petition(s) for Special Leave to Appeal (C) No(s). 7172/2020

(Arising out of impugned final judgment and order dated 19-02-2020 in OMP No. 15/2016 passed by the High Court Of Delhi At New Delhi)

GOVERNMENT OF INDIA

Petitioner(s)

VERSUS

VEDANTA LIMITED (FORMERLY CAIRN INDIA LTD.) & ORS. Respondent(s)

(FOR ADMISSION and I.R., IA No.50904/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.50906/2020-PERMISSION TO FILE LENGTHY LIST OF DATES AND

IA No. D.64169/2020 - CLARIFICATION/DIRECTION

IA No. D.64170/2020 - EXEMPTION FROM FILING NOTORISED AFFIDAVIT AND COURT FEE)

IA No. D.64203/2020 - EXEMPTION FROM FILING NOTORISED AFFIDAVIT AND COURT FEE)

IA No. D.64912/2020 - CONDONATION OF DELAY IN FILING WRITTEN SUBMISSION)

IA No. D.64917/2020 - EXEMPTION FROM FILING NOTORISED AFFIDAVIT AND COURT FEE)

IA No. D.65097/2020 - APPLICATION FOR PERMISSION TO FILE COMPILATION OF AUTHORITIES)

IA No. D.65098/2020 - EXEMPTION FROM FILING NOTORISED AFFIDAVIT AND COURT FEE)

I.A. NO. D.65341/2020- PERMISSION TO FILE ADDITIONAL DOCUMENTS ON BEHALF OF RESPONDENT NO. 1)

I.A. NO. D.65329/2020-EXEMPTION FROM FILING NOTORISED AFFIDAVIT AND COURT FEE)

I.A. NO. D.70408/2020-EXEMPTION FROM FILING DULY EXECUTED AFFIDAVIT, ORIGINAL SIGN AND COURT FEE)

I.A. NOS.D. NOS.71520 AND 71521/2020- APPLICATION TO REPLACE PAGES IN THE REJOINER AND EXEMPTION FROM FILING DULY EXECUTED AFFIDAVIT, ORIGINAL SIGN AND COURT FEE)

IA NOS. D. NOS.71527 & 71528/2020- APPLICATIONS FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS AND EXEMPTION FROM FILING DULY EXECUTED AFFIDAVIT, ORIGINAL SIGN AND COURT FEE)

Date : 24-08-2020 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. ABDUL NAZEER

HON'BLE MS. JUSTICE INDU MALHOTRA

HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Petitioner(s) Mr. K. K. Venugopal, Attorney General
Mr. Tushar Mehta, Solicitor General
Mr. K. R. Sasiprabhu, AOR
Ms. Neelu Mohan, Adv
Mr. Tushar Bhardwaj, Advocate
Mr. Vinayak Maini, Advocate

For Respondent(s) Mr. C.A. Sundaram, Sr. Adv.
Mr. Akhil Sibal, Sr. Adv.
Mr. Anirudh Das, Adv.
Mr. Aashish Gupta, Adv.
Mr. Arjun Pal, Adv.
Mr. Anirudh Lekhi, Adv.
Ms. Rohini Musa, Adv.
Mr. Abhishek Gupta, Adv.
Mr. S. S. Shroff, AOR

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

Mr. K. K. Venugopal, learned Attorney General, has submitted on behalf of the Government of India that the Award was challenged before the Malaysian High Court, which was examined on the basis of the public policy of Malaysia, as per the Malaysia Act 646 Arbitration Act, 2005.

Our attention has been drawn to Article 33.1 of the Production Sharing Contract ("PSC") dated 28.10.1994, which provides that the Contract shall be governed and interpreted in accordance with Indian Law. Article 33.2 provides that the Contractor is not entitled to exercise its power under the Production Sharing Contract in a manner which will contravene the laws of India.

The learned Attorney General has placed reliance on a judgment of this Court in *Reliance Industries Limited and Another v. Union of India* (2014) 7 SCC 603, wherein this Court observed as follows:

"76. In view of the above, we hold that:

76.1. The petition filed by respondents under Section 34 of the Arbitration Act, 1996 in the Delhi High Court is not maintainable.

76.2. We further overrule and set aside the conclusion of the High Court that, even though the arbitration agreement would be governed by the laws of England and that the juridical seat of arbitration would be in London, Part I of the Arbitration Act would still be applicable as the laws governing the substantive contract are Indian laws.

76.3. In the event a final award is made against the respondent, the enforceability of the same in India can be resisted on the ground of public policy.

76.4. The conclusion of the High court that in the event, the award is sought to be enforced outside India, it would leave the Indian party remediless is without any basis as the parties have consensually provided that the arbitration agreement will be governed by the English law. Therefore, the remedy against the award will have to be sought in England, where the juridical seat is located. However, we accept the submission of the appellant that since the substantive law governing the contract is Indian law, even the courts in England, in case the arbitrability is challenged, will have to decide the issue by applying Indian law viz. the principle of public policy, etc. as it prevails

in Indian Law.”

(emphasis supplied)

In view of the above, the following issue has arisen for our consideration:

Whether the Malaysian Courts were justified in applying the Malaysian law to determine the challenge to the foreign award, particularly since the Production Sharing Contract dated 28.10.1994 was governed by Indian Law, and the PSC contained a negative covenant that the Respondent Companies were not entitled to exercise its power under the PSC in a manner which would contravene the laws of India. The Malaysian Courts have decided the objections by applying the Malaysian law, while the Indian courts are required to examine whether the award is in conflict with the public policy of India at the enforcement stage. This would create an anomalous situation.

We appoint Mr. Gourab Banerji, Senior Advocate as Amicus Curiae to assist us on this limited issue.

The Registry is directed to furnish forthwith a complete set of papers to the Amicus Curiae.

List the matter on 26.08.2020 at 10:30 a.m. as part heard.

(NEELAM GULATI)
ASTT. REGISTRAR-cum-PS

(RAJINDER KAUR)
ASSISTANT REGISTRAR