

Ghanshyam Das Damani reported at **(2018) 11 SCC 328**.

3. Per contra, Shri Naveen Sinha, learned Senior Counsel assisted by Shri Tarun Agrawal, learned counsel for the respondent No.1 submits that the prerequisites of remand are satisfied in the facts of this case. The learned court below had the jurisdiction to remand the matter to the arbitrator. In this regard, reliance is placed on the judgement rendered by the Hon'ble Supreme Court in **National Highways Authority of India v. P. Nagaraju alias Cheluvaiah and another**, reported at **(2022) 15 SCC**.

4. Heard Shri Pranjali Mehrotra, learned counsel for the appellant and Shri Naveen Sinha, learned Senior Counsel assisted by Shri Tarun Agrawal, learned counsel for the respondent No.1.

5. While remanding the matter, the learned court below has opined that the arbitrator had erred in law by computing the compensation in the teeth of Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

6. It needs to be examined whether the learned court below was justified in remanding the matter to the arbitrator. In **P. Nagaraju alias Cheluvaiah (supra)** the question as regards the power of remand in proceedings under Section 34 of the Arbitration and Conciliation Act arose for consideration. Dealing with the distinction between the private contracts and the statutory contracts under the National Highways Act, the Supreme Court held as under:

"42. Having taken note of the said decision, though it is seen that it was held

so while considering the maintainability of petition under Section 11 of the Act, 1996 to exclude the right of the land loser to seek the appointment of an Arbitrator keeping in view the statutory provision in the NH Act, the larger perspective of such limited right to the land loser in the process of arbitration is also to be kept in view. Unlike the arbitration in a contractual matter where the parties from the very inception at the stage of entering into a contract would mutually agree to refer any future dispute to an arbitrator, at that very stage are aware that in the event of any dispute arising between the parties the contours of the right, remedy, and scope from the commencement of the arbitration up to the conclusion through the judicial process. The terms of arbitration and the rights and obligations will also be a part of the agreement and a reference to the same in the award will constitute sufficient reasons for sustaining the award in terms of Section 31(3) of Act, 1996. Whereas, in the arbitration proceedings relating to NH Act, the parties are not governed by an agreement to regulate the process of arbitration. However, in the process of determination of just and fair compensation, the provisions in Section 26 to 28 of RFCTLARR Act, 2013 will be the guiding factor. The requirement therein being adverted to, should be demonstrated in the award to satisfy that Section 28(2) and 31(3) of Act, 1996 is complied."

45. Therefore, while examining the award within the parameters permissible under Section 34 of Act, 1996 and while examining the determination of compensation as provided under Sections 26 and 28 of the RFCTLARR Act, 2013, the concept of just compensation for the acquired land should be kept in view while taking note of the award considering the sufficiency of the reasons given in the

award for the ultimate conclusion. In such event an error if found, though it would not be possible for the Court entertaining the petition under Section 34 or for the appellate court under Section 37 of Act 1996 to modify the award and alter the compensation as it was open to the court in the reference proceedings under Section 18 of the old Land Acquisition Act or an appeal under Section 54 of that act, it should certainly be open to the court exercising power under Section 34 of Act, 1996 to set aside the award by indicating reasons and remitting the matter to the Arbitrator to reconsider the same in accordance with law. The said exercise can be undertaken to the limited extent without entering into merits where it is seen that the Arbitrator has on the face of the award not appropriately considered the material on record or has not recorded reasons for placing reliance on materials available on record in the background of requirement under RFCTLARR Act, 2013."

47. Under the scheme of the 1996 Act it would not be permissible to modify the award passed by the learned Arbitrator to enhance or reduce the compensation based on the material available on record in proceeding emanating from Section 34 of Act, 1996. The option would be to set aside the award and remand the matter. In this regard it would be apposite to take note of the observation in *M. Hakeem (supra)*, as hereunder:-

"42. It can therefore be said that this question has now been settled finally by at least 3 decisions of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the

UNCITRAL Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in *Redfern and Hunter on International Arbitration*, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the "limited remedy" under Section 34 is coterminous with the "limited right", namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996."

7. After laying down the aforesaid proposition of law, the arbitration proceedings were remanded to the arbitrator with the following directions:

"84.2. The arbitration proceedings bearing Case Nos.:

LAQ(A)/NH-275/CR/137/2017-18,

LAQ(A)/NH-275/CR/134/2017-18,

LAQ(A)/NH-275/CR/135/2017-18,

LAQ(A)/NH-275/CR/132/2017-18,

LAQ(A)/NH-275/CR/139/2017-18,

LAQ(A)/NH-275/CR/41/2019-20

are remanded to the Deputy Commissioner and Arbitrator, NH-275, Ramanagar District, Ramanagar and Case No.LAQ/ARB/BNG/NH-275/CR-02/ 2/ 2018-19 is remanded to Deputy Commissioner and Arbitrator, Bangalore Rural District."

8. The judgement of the Supreme Court in **Kinnari Mullick (supra)** relied upon by the appeal is not applicable to this case. **Kinnari Mullick (supra)** arose out of a private contract between the parties. In the instant case as in **P. Nagaraju alias**

Cheluvaiah (supra) there exists a statutory arbitrator. Private contracts between parties which contemplate the appointment of an arbitrator and the cases where the statutory arbitrators are appointed under the statute fall in two separate classes.

9. Thus the judgement rendered in **Kinnari Mullick (supra)** being distinguishable is of no avail to the appellants. Further, the said judgement had been considered by the Hon'ble Supreme Court in **P. Nagaraju alias Cheluvaiah (supra)** while rendering its judgement in the aforesaid case.

10. The arbitration appeal is dismissed.

(2024) 11 ILRA 7

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 06.11.2024

BEFORE

THE HON'BLE MANISH MATHUR, J.

Writ A No. 5232 of 2024
with other connected cases

Pushkar Singh Chandel & Ors.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

Counsel for the Petitioners:

Amit Mishra, Dileep Kumar Mishra

Counsel for the Respondents:

C.S.C., Abhinav Singh, Pradeep Tiwari,
Prashant Kumar Singh, Ran Vijay Singh,
Ravi Prakash Yadav, Rishabh Tripathi

A. Civil Law - Transfer of teachers employed in Basic Schools - Constitution of India, Article 14 - Intelligible differentia - Transfer/adjustment of teachers to

maintain Pupil-Teacher Ratio – Right of Children to Free and Compulsory Education Act, 2009, Sections 19 and 25 – U.P. Basic Education Act, 1972 – U.P. Basic Education (Teachers) Service Rules, 1981, Rule 21 – Legality of Clauses 3, 7, 8, & 9 of Government Order dated 26.06.2024 and Circular dated 28.06.2024 – Proceedings initiated for fulfilment of the pupil-teacher ratio. Clause 7 of the Government Order provides that shifting of teachers would be affected by transferring teachers under the principle of "last come, first go", whereby the junior-most teacher would be shifted out first. *Held* : Impugned Government Order does not indicate any reasoning as to why the principle of "last in, first out" is required to be followed for transfer/adjustment of teachers."Last in, first out" does not have any rational nexus with the object sought to be achieved by the Act of 2009. There is no provision in the Act of 2009 or rules framed thereunder for transfer/adjustment to be made in keeping with the norms prescribed under Schedule by transferring the junior-most teacher of a school/district. If the procedure prescribed under the impugned clauses is kept intact, the real purpose or effect of such a condition would entail frequent transfer of junior teachers while keeping intact the posting of senior teachers for all times to come, since a teacher after transfer and joining in another district would *ipso facto* remain a junior. By introducing such a concept, a classification has been made pertaining to those teachers who have been posted in a particular school longer than others who have been posted there subsequently. For such a classification, no intelligible differentia has been indicated either in the Government Order, the Circular, or even in the counter affidavit filed by the opposite parties – Court held the classification to be discriminatory and failing the test of reasonable classification in the context of Article 14 of the Constitution of India. B. U.P. Basic Education (Teachers) Service Rules, 1981, Rules 5 & 8 - Legality of Clause 3 of Government Order dated 26.06.2024 – Clause 3 of the Government