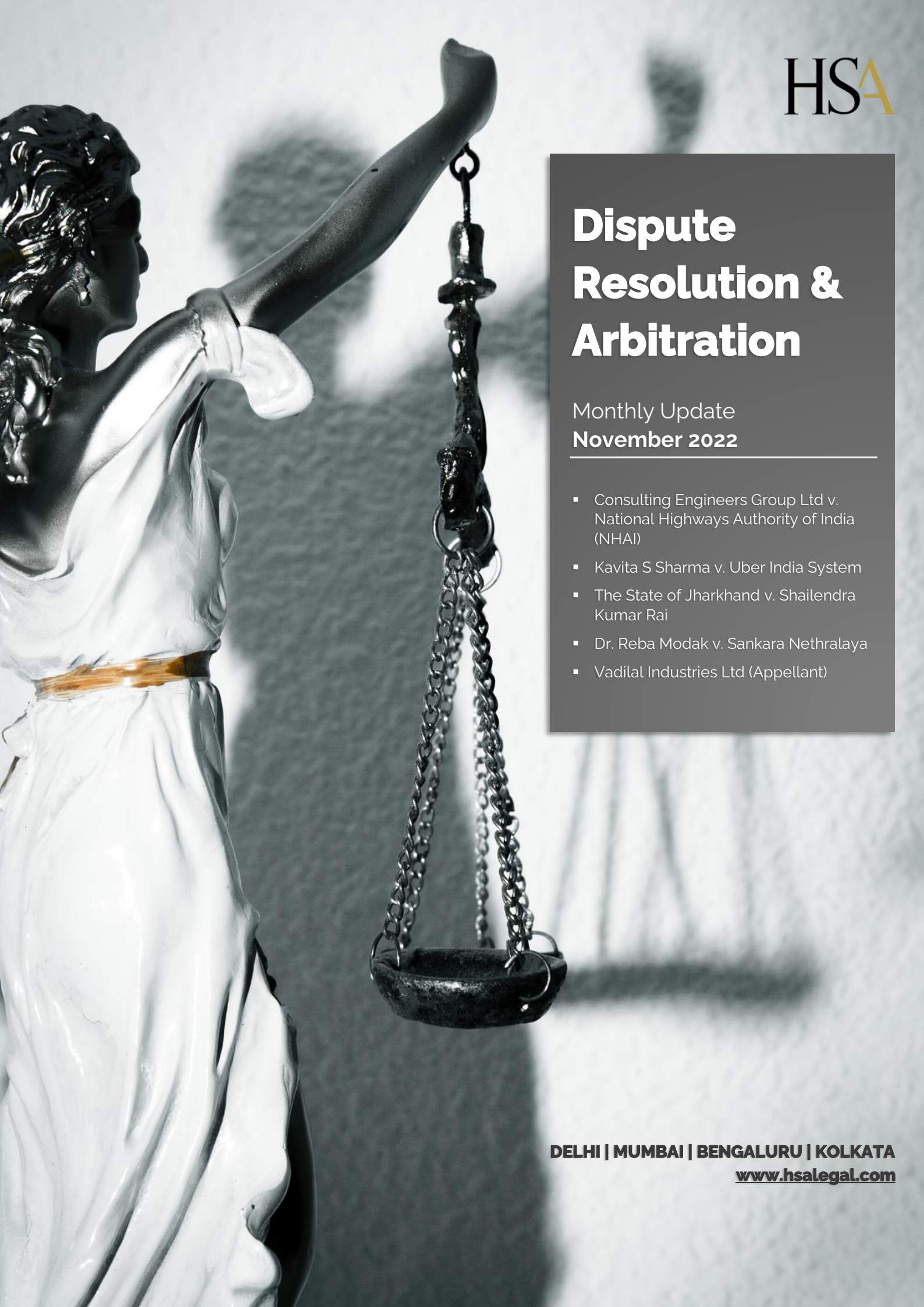

HSA

Dispute Resolution & Arbitration

Monthly Update
November 2022

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- Kavita S Sharma v. Uber India System
- The State of Jharkhand v. Shailendra Kumar Rai
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- Vadilal Industries Ltd (Appellant)

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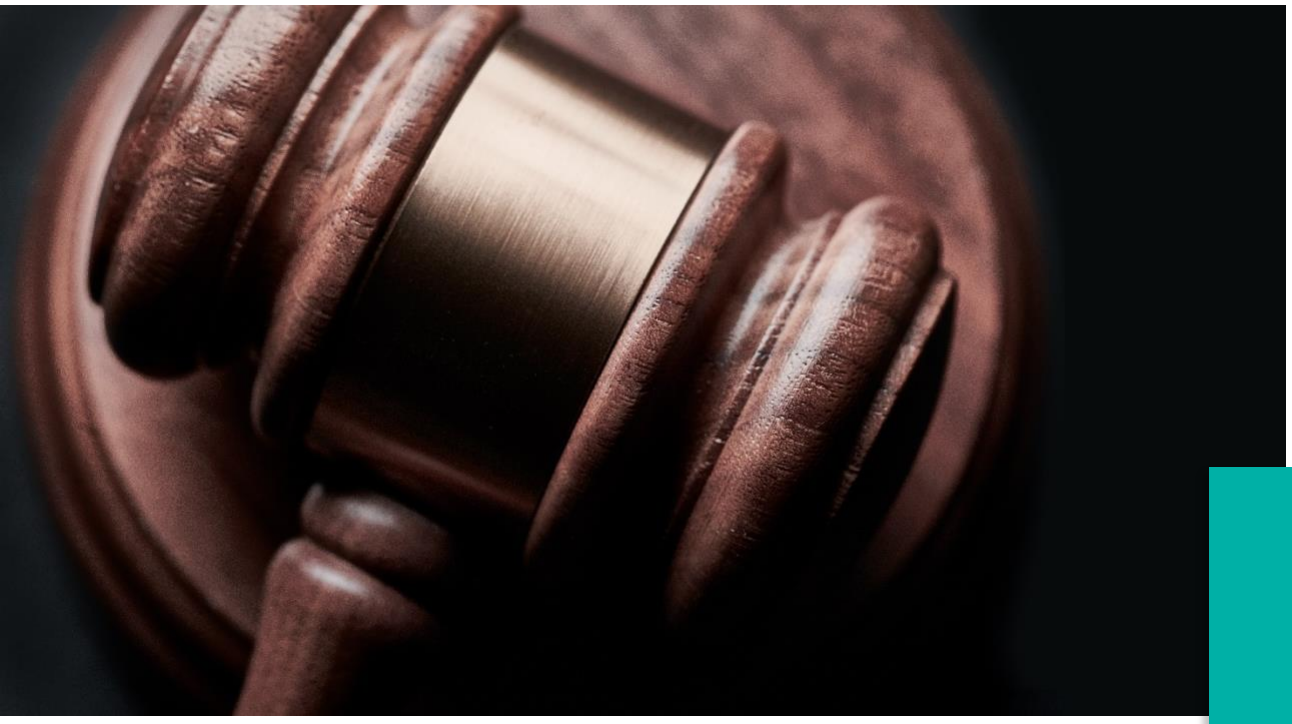
DISPUTE RESOLUTION AND ARBITRATION UPDATE



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Consulting Engineers Group Ltd v. National Highways Authority of India (NHAI)

Delhi High Court | OMP(I) (COMM) 244/2022 & IA 12741/2022

Background facts

- A notice inviting tender dated March 15, 2018 was issued by the National Highways Authority of India (**NHAI/Respondent**), in order to provide consultancy services as its Engineer, for supervision of construction of 8 Lane Dwarka Expressway from Delhi-Haryana Border to start of rail over bridge in Gurugram, Haryana. As per the tender document, bidders could apply either as a sole firm or by forming joint venture with other consultants.
- In order to participate in the aforesaid tender process and to provide consultancy services, Aecom Asia Company Ltd (**Aecom**) and Consulting Engineering Group Ltd (**Petitioner**) agreed to form a consortium wherein Aecom was the lead partner and the Petitioner was the associate partner. Accordingly, a Memorandum of Understanding (**MOU**) dated May 14, 2018 was entered into between the Petitioner and Aecom. Thereafter, the Petitioner entered into the bidding process as a joint venture with Aecom and it is Aecom who submitted the Technical and financial bids, which bids were required for participation in the tender process.
- Subsequently, a Letter of Award dated October 22, 2018 (**LOA**) was issued by NHAI to the consortium of Petitioner and Aecom. It is pertinent to note that the LOA was specifically addressed to Aecom being the lead partner and authorized representative of the consultants.
- On December 05, 2018, a Consultancy Agreement was entered into between the consortium of the Petitioner and Aecom as a joint venture on the one hand and the Respondent on the other hand. It is pertinent to note that Clause 8 of the said Consultancy Agreement under the General Conditions of Contract provided for amicable settlement of disputes between the parties thereunder.
- The Contract for construction of 8 lane Dwarka Expressway was awarded to Larsen and Toubro Ltd (**EPC Contractor**). The consortium of the Petitioner and Aecom was engaged as consultant to act on behalf of Respondent as the Authority's Engineer for supervision of the said construction work.

- Thereafter, on March 28, 2021 an accident occurred in the construction site. Subsequent thereto, the Respondent constituted an Expert Committee to carry out a detailed technical analysis in order to bring out the reasons of failure leading to accident.
- The Expert Committee constituted by the Respondent and the Ministry of Road Transport and Highways of India (**MoRTH**) submitted its Report in September 2021, which inter alia concluded that there was laxity in monitoring of quality control measures by the EPC Contractor and the Authority's Engineer; lack in coordination and formal communication amongst the EPC Contractor, Authority's Engineer and designer and proof check consultants relating to deviations in construction related activities, etc..
- Subsequently, NHAI sent a Show Cause Notice dated September 16, 2021 to the Petitioner and the EPC Contractor, citing the findings and observations of the Expert Committee. In response to the same, the Petitioner submitted its representation and appeared for a personal hearing before NHAI, as well.
- Thereafter, the Respondent passed an Order against the EPC Contractor, thereby levying penalty to the tune of INR 6,67,00,000 along with self-imposed disciplinary measure from participating in bids of NHAI/MoRTH for three months. On August 02, 2022, the Petitioner received an Order passed by the NHAI, thereby debarring it from participating in all the tenders floated by the Respondent and other executing agencies of MoRTH, for a period of three months and also levying a penalty of INR 20,00,000. (**Order**).
- Being aggrieved by the said Order, the Petitioner filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (**Act**) before the Delhi High Court, seeking interim reliefs.

Issue at hand?

- Whether a member of a joint venture can invoke the Arbitration Clause under the Consultancy Agreement, in its individual capacity?

Decision of the Court

- At the outset, the Court observed that as per the terms of the tender document issued by the Respondent, it was clearly stated prospective bidders could apply either as a sole firm or by forming a joint venture.
- The Hon'ble Court further observed that in order to participate in the tender process, the Petitioner entered into the MOU with Aecom. As per the said MOU, the Petitioner formed a consortium with Aecom in order to provide services to the Respondent as the Authority's Engineer. As per the MOU, Aecom is the lead partner while the Petitioner herein is the associate partner.
- Further, the Court observed that as per the Consultancy Agreement between the joint venture/Consortium and the NHAI, it was not the Petitioner in its individual capacity, but the consortium of the Petitioner and Aecom, who were referred to as the 'Consultants' under the said Consultancy Agreement.
- Subsequently the Court also observed that the Consultancy Agreement was signed by the lead partner, i.e., Aecom and the LOA as well as the Show Cause Notice dated September 16, 2021 was specifically addressed to Aecom, being the lead partner and authorized representative of the Consultants.
- The Court also observed that MOU does not confer any express and/or implied authority on the Petitioner to pursue the contractual matters, which include invocation of dispute resolution clause, in individual capacity without the participation or approval or authorization or consent from the lead member i.e. Aecom.
- The Court held that as per the terms of the Consultancy Agreement and MOU, it was clear that the Petitioner is not a party to the Consultancy Agreement in its individual capacity. The Court was of the view that it is the 'Consultants' and not the Petitioner in its individual capacity who are referred to as 'parties' in the arbitration agreement contained in the Consultancy Agreement. Therefore, the Petitioner not being a party to the arbitration agreement in its individual capacity, cannot take recourse to the thereto in its individual capacity, or approach the Hon'ble Court in its individual capacity.
- Furthermore, the Court relied on its decision in the matter of ***Geo Miller & Co Pvt Ltd v. Bihar Urban Infrastructure Development Corporation Ltd & Anr***[1] whereby it held that when the agreement is with a consortium, it is never the intention that one of the members of the consortium separately invokes the arbitration agreement.

HSA
Viewpoint

A joint venture is a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit. In the present scenario, both the Petitioner and Aecom, were jointly awarded the LOA and they jointly executed the Consultancy Agreement with the Respondent. Therefore, the Court has rightfully held that in the event of any disputes which arose under the aforesaid Agreement, it would be the joint venture, and not the individual members thereof, which would have the authority/be legally entitled to invoke arbitration. The only exception to the aforesaid scenario would be if there is a specific clause in the Agreement, whereby an individual member of the joint venture would be entitled to invoke arbitration, by itself.

[1] 2016 SCC Online Del 6248

- The Court placed its reliance on the decision of the Supreme Court in the matter of ***Gammon India Ltd v. Commissioner of Customs, Mumbai***[2] whereby it was held that a joint venture is a legal entity and that action by only one of the parties to the joint venture could not be construed as action on part of the joint venture. It was further held action by only one of the constituents of the joint venture was not held acceptable and legally tenable.
- Lastly, the Court relied upon the decision of the Bombay High Court in the matter of ***Maharashtra State Electricity Distribution Company Ltd v. Godrej and Boyce Manufacturing Company Ltd***[3] 3 wherein it was held since the joint venture agreement does not provide that the respondent alone was entitled to invoke arbitration agreement on behalf of the joint venture or to make any other claim on behalf of the joint venture upon the petitioner in any Court of law, hence such an individual cannot invoke arbitration.

Kavita S Sharma v. Uber India System

Thane Additional District Consumer Disputes Redressal Commission | Consumer Complaint No. 61/2021

Background facts

- The Complainant is an Advocate by profession and her work requires her to frequently travel outside Mumbai. On June 12, 2018, the Complainant was required to board a flight from the Airport of Mumbai to travel to Chennai for attending an important meeting. The Departure of the flight from the Airport of Mumbai was at 05:50 pm. The Complainant upon taking into consideration the traffic situation and the tentative travel time required for her to reach the Airport of Mumbai from her residence, used the Uber mobile application and booked a cab at around 03:29 pm.
- The Complainant during her cab ride faced the following difficulties:
  - Driver arrived at the Complainant's location 14 minutes late
  - Driver was on a phone call when he arrived and he refused to start the cab till he finished his phone call
  - Driver did not follow the route as advised by the maps
  - Since fuel of the vehicle was low the Driver ventured out in search for a fuel station with the Complainant on-board
  - The fuel station where the Driver refuelled the cab was in a remote area where another 15-20 minutes were wasted
  - The distance from Complainant's residence to the Airport is of 36 km, however the Uber app showed that a distance of 46 km was travelled by the cab. The Cab travelled this extra distance of 10 km because the Driver and the Complainant was made to pay increased fare.
- Due to all the above reasons, the Complainant missed her flight and was therefore compelled to take the next flight at her own cost.
- When the Complainant returned from Chennai, she made complaints to the Opposite Party. The Opposite party bluntly stated that the Opposite party is not responsible for the actions of the Drivers and merely refunded INR 139 to the Complainant for the increased fare.
- Therefore, the Complainant filed the present Complaint for deficiency of service against the Opposite Party.

Issue at hand?

- Can Opposite Party be responsible for the wrongs done by its Drivers on the ground that it merely provides a platform for connecting the passengers to the drivers?

Decision of the Commission

- The Consumer Disputes Redressal Commission observed the following while deciding the case:
  - That the Complainant used the Uber app which sends out the transportation request of the Complainant to the driver. This app is controlled by the Opposite party.
  - The payment towards the travel fare was also paid by the Complainant to the Opposite party.
  - Also, all the transaction and the services provided by the Uber app is also controlled by the Opposite party.

HSA
Viewpoint

This order is a definitive and a classic example of 'Caveat Venditor' (let the seller beware) whereby it has re-established that the days of Laissez-Faire (behaving/acting as per one's whims) are over, and the Service Providers like the Opposite Party cannot behave in an unsupervised and an arbitrary manner. In the present case the justice has not just been truly delivered but also timely delivered, i.e. in a span of about 1 year.

[2] (2011) 12 SCC 499
[3] 2019 SCC Online Bom 3920

- Therefore, it was clear that the Complainant is a 'Consumer' of the Opposite Party and the drivers are merely the agents of the Opposite party.
- Since the Opposite party had already admitted that the Complainant suffered deficiency in service and attempted to resolve the grievance of the Complainant by refunding her INR 139, it was clear that the Opposite party is responsible for the deficiency in service and is liable to pay compensation as well as the expenses incurred by the Complainant.

The State of Jharkhand v. Shailendra Kumar Rai

Supreme Court of India | Civil Appeal No. 1441 of 2022

Background facts

- Shailendra Kumar Rai (**Respondent**) entered the house of the victim and deceased in Narangi village, on the afternoon of November 07, 2004 and committed rape upon her, while threatening to kill her if she sounded an alarm. At the time when the victim called out for help, the Respondent poured kerosene on her and set her on fire with a matchstick. Upon hearing the victim's cries for help, her grandfather, mother, and a resident of the village came to her room. However, the Respondent fled the scene upon seeing them.
- The victim's family along with the villagers extinguished the fire and took her to Sadar Hospital, Deoghar, where she was admitted and underwent treatment for the injuries sustained by her. The victim was then subjected to two-finger test by the Medical Board. The station in-charge received information regarding the incident and recorded the victim's statement on the same day. In the victim's statement, she narrated the entire incident.
- Thereafter, an FIR was registered against the Respondent on the basis of the statement of the victim and the investigation commenced. Upon the completion of the investigation, the Investigating Officer submitted a charge-sheet under Section 173 of the Code of Criminal Procedure 1973 for offences under Sections 307, 341, 376 and 448 of the Indian Penal Code, 1860 (**IPC**).
- However, the victim died on December 14, 2004, leading to the submission of a supplementary charge-sheet against the Respondent, with reference to Section 302 of the IPC. To which, the Respondent denied his guilt.
- During the trial, the prosecution examined twelve witnesses in support of its case and the defence examined three witnesses. Vide Judgment dated October 10, 2006, the Trial Court concluded that the dying declaration was voluntary, credible, and did not suffer from any infirmities. Thus, the Trial Court held that the prosecution had proved its case beyond reasonable doubt, and convicted the Respondent of offences under Sections 302, 341, 376 and 448 of the IPC. Vide its Order dated October 11, 2006, the Trial Court sentenced the Respondent to rigorous imprisonment for life for the offence punishable under Section 302 of the IPC and rigorous imprisonment for 10 years for the offence punishable under Section 376 of the IPC. These sentences were directed to run concurrently. A separate sentence was not deemed to be required for the offences punishable under Sections 341 and 448 of the IPC.
- Aggrieved by the decision of Trial Court, the Respondent preferred an appeal before the High Court of Jharkhand (**HC**). Vide its judgment dated January 27, 2018, the HC held that the prosecution had failed to prove the charges against the Respondent beyond reasonable doubt and, therefore, set aside the judgment of the Trial Court and acquitted the Respondent.
- Aggrieved by the decision of the HC, the victim invoked the jurisdiction of the Supreme Court (**SC**) under Article 136 of the Constitution of India and challenged the decision of the HC.

Issues at hand?

- Whether the statement of the deceased is relevant under Section 32(1) of the Indian Evidence Act, 1872?
- Whether the prosecution has proved the charges against the Respondent beyond reasonable doubt?
- Whether the two-finger test conducted by medical practitioners on rape victims is legally valid?

Decision of the Court

- At the outset, SC relied upon the decision in ***Moti Singh v. State of Uttar Pradesh***[4], wherein the victim's statement was not considered a statement as to the cause of his death or any of the circumstances of the transaction which resulted in his death, under Section 32(1) of the Indian Evidence Act, 1872. The SC held that the reliance upon the decision in Moti Singh is misplaced,

[4] AIR 1964 SC 900

since in the instant case, the post-mortem report establishes that the victim died as a result of septicaemia caused by her burn injuries. Therefore, SC held that the statement of the victim is indeed a statement relevant as to the cause of her death and in regard to the circumstances which eventually resulted in her death.

- SC then examined Section 32(1) of the Indian Evidence Act, 1872 which deals with the relevancy of dying declarations. The SC held that the victim's statement satisfies the conditions laid down Section 32(1) as it relates to both, the cause of death as well as to the circumstances of the transaction which resulted in death. Thus, SC held that it is a relevant fact under the Indian Evidence Act, 1872 and shall be considered to be a dying declaration for the purpose of adjudicating the Appeal.
- Thereafter, SC placed reliance upon the decision in ***Khushal Rao v. State of Bombay***[5], wherein the Court formulated yardstick against which dying declaration may be evaluated. SC also relied upon the judgments in ***Ram Bihari Yadav v. State of Bihar***[6] and ***Surinder Kumar v. State of Punjab***[7], wherein it was held that the dying declarations in the form of questions and answers does not impact either its admissibility or its probative value. Upon considering the facts of the instant case, SC arrived at the conclusion that the dying declaration made by the deceased was voluntarily in nature and is true.
- SC noted that although certain witnesses including the family members of the victim were declared hostile, the same is insufficient to cast doubt upon the prosecution's case. The SC further observed that the prosecution proved its case beyond reasonable doubt before the Sessions Court.
- Regarding the third issue, SC noted that the 'two-finger test' was conducted by the Medical Board while examining the victim to determine whether she was habituated to sexual intercourse. SC observed that it has repeatedly deprecated the use of this regressive and invasive test in cases alleging rape and sexual assault. SC held that this test has no scientific basis and neither proves nor disproves allegations of rape, but instead re-victimizes and re-traumatizes women who may have been sexually assaulted and is an affront to their dignity. Therefore, it held that the 'two-finger test' or pre-vaginum test must not be conducted.
- SC relied upon the case of ***Lillu v. State of Haryana***[8], wherein SC held that the 'two-finger test' violates the right to privacy, integrity, and dignity. SC opined that whether a woman is 'habituated to sexual intercourse' or 'habitual to sexual intercourse' is irrelevant for the purposes of determining whether the ingredients of Section 375 of the IPC are present in a particular case. Thus, the test is based on the incorrect assumption that a sexually active woman cannot be raped and thus, SC opined that a woman's sexual history is wholly immaterial while adjudicating whether the accused raped her.
- SC further noted that the legislature explicitly recognized the fact that the probative value of a woman's testimony does not depend upon her sexual history, when it enacted the Criminal Law (Amendment) Act 2013 which inter alia amended the Evidence Act to insert Section 53A. In terms of Section 53A of the Evidence Act, evidence of a victim's character or of her previous sexual experience with any person shall not be relevant to the issue of consent or the quality of consent, in prosecutions of sexual offences.
- In view of the above, SC directed the Union Government as well as the State Governments to (a) ensure that the guidelines formulated by the Ministry of Health and Family Welfare are circulated to all government and private hospitals; (b) conduct workshops for health providers to communicate the appropriate procedure to be adopted while examining survivors of sexual assault and rape; and (c) review the curriculum in medical schools with a view to ensuring that the 'two-finger test' or per vaginum examination is not prescribed as one of the procedures to be adopted while examining survivors of sexual assault and rape.

HSA
Viewpoint

SC by way of this judgement has taken into consideration the mental and physical stress which the rape victim has to endure during physical examination conducted by the medical professionals to determine if the victim has been raped or not. The SC has rightly observed that the 'two-finger test' is patriarchal and sexist to suggest that a woman cannot be believed when she states that she was raped, merely for the reason that she is sexually active or has gone through physical changes in her body due to physical activities such as gymnastics, cycling, horse riding, athletics etc. Therefore, the 'two-finger test' does not scientifically/medically conclusively determine if the victim has been raped or not. If the victim has split her hymen during her childhood or has already lost her virginity consensually, the same needs to be considered and respected while evaluating the victim's statement. In fact the rape victims need to be respected and provided with a safe space for them to express in detail the traumatic event that she has undergone in order to know the facts of the case and ensure justice is delivered. We are of the opinion that the SC judgment has been the need of the hour since rape victims are usually apprehensive if their statement/oath will have any corroborative value while seeking justice.

Dr. Reba Modak v. Sankara Nethralaya

National Consumer Disputes Redressal Commission | Consumer Case No. 155 of 2001

Background facts

- Sankara Nethralaya in Chennai received a referral for the six-year-old son of the Complainants, Anmitra, due to his squinting eyes. The youngster was checked by Dr. S. Agarkar on June 12, 2000. He suggested a minor surgery to treat the squint and had referred Senior Surgeon Dr. T. S. Surendran for the procedure to be performed on June 14, 2000.

[5] AIR 1958 SC 22
[6] (1998) 4 SCC 517
[7] (2012) 12 SCC 120
[8] (2013) 14 SCC 643

- While conducting procedural tests before the surgery, a slight functional systolic 'murmur' and abnormalities of the chest wall were discovered during the pre-operative studies, blood and urine tests, and clinical examination of the youngster. This was brought to the immediate attention of Dr. S. Bhaskaran, the Senior Cardiologist, who conducted more testing on the child and found no murmur. He also disregarded the need for any additional tests, such as an ECG, ECHO, or chest X-ray, and deemed the child 'Fit for General Anaesthesia.'
- The surgical procedure was scheduled for June 14, 2000, and as instructed, the complainants brought their child to the hospital at 9:00 a.m. on an empty stomach. However, the child wasn't given a bed until about 2:00 p.m. After receiving three injections, the child was taken to the Operation Theatre at around 3:00 p.m.
- Thereafter the parents of the child were informed that their son had passed away on the operating table at around 6:00 pm.
- The parents/Complainants were not informed at all in detail about what transpired during the surgery and were not aware of the Cardiopulmonary Resuscitation (**CPR**). The measures taken by the Doctors to prevent the patient's life were in the operating room were not specifically described in the discharge statement. The opposing parties refused to give the child's full medical history despite repeated requests.
- The Complainants alleged that the required dosage of anaesthetics was not administered to the child on time, and the anaesthetist failed to intubate, which was the cause of death. The complainants further alleged that on the day of the child's operation, Dr. T. S. Surendran had already completed 16 operations and there was no hurry to operate on the child on the very day itself, wherein a high degree of care was needed.
- The Complainants, aggrieved by the gross medical negligence on the part of the opposite parties, filed the present case before the NCDRC and prayed for INR 1 crore as compensation.

Issue at hand?

- Whether compensation of INR 1 crore should be granted to Complainants for death of their child due gross medical negligence?

Decision of the Commission

- The Commission, while dealing with the facts of the case, categorically observed that the expected degree of skill required from the Cardiologist was more and a higher degree of care ought to be there, which was found lacking in the instant case.
- Although the Commission did not find any significance as to the submissions made regarding the fasting of the child, it was found that the use of Scoline further precipitated the bradycardia which was already occurred due to Halothane anaesthesia.
- The Commission was of the opinion that the Anaesthetist ought to have warned and cautioned the operating surgeon, and the latter was not aware that any special warnings for the use of Scoline were there in paediatric cases. It was also found that Oculocardiac Reflex (**OCR**) was the reason for the demise, and in the instant case the Intra-Operative diagnosis of OCR was missed, and the child suffered from cardiac arrest.
- The Commission reiterated the Apex Court decision in National Insurance Co Ltd v. Kusum1 wherein the Court had held that payment of compensation to parents for death of a child, including stillborn, ought to be just and not pittance, and observed, '*in our view, no amount can be just and adequate in an absolute sense. By no stretch of imagination, we should award a paltry sum for gross negligence; conversely exemplary compensation need not be awarded in case minimal negligence*'.
- The Commission noted that hospitals are vicariously liable for the acts of negligence committed by their doctors. With the afore-stated observations the Commission held Sankara Nethralaya to be vicariously liable for the acts of omission and commission committed by their doctors and are liable to pay compensation of INR 1 crore to the complainants.

HSA
Viewpoint

It was rightly held by the NCDRC that hospitals are vicariously liable for the acts of negligence committed by their doctors. The Commission while observing the brief facts of the case held Sankara Nethralaya to be vicariously liable for the acts of omission and commission committed by their doctors and held them liable to pay compensation to the complainants. It is true that complacency sets in where matters become a routine procedure or process. In this case no amount of compensation for a routine squint correction of a 6-year-old ends in fatality. Noting that the mother of the deceased child had already undergone hysterectomy and there is no chance to have another child, medical negligence having been conclusively attributed to the treating doctor at Sankara Nethralaya and having regard that the complainants lost their only son, the Commission considered that compensation of INR1 Crore to the complainants is just and fair in our opinion. It is unfortunate that the judicial remedy available to the complainants took 22 years for a verdict to be delivered as no amount of compensation can offer solace to the bereaved parents robbed of their only child and the tribulations they have encountered of a judicial process. It is the need of the hour for a quicker justice delivery system in India.

Vadilal Industries Ltd (Appellant)

Gujarat Appellate Authority For Advance Ruling, Goods And Services Tax I Advance Ruling (Appeal) No. Guj/Gaaar/Appeal/2022/20

Background facts

- The Appellant is a public limited company that produces 8 varieties of parathas and the principal ingredient in all these varieties of parathas is wheat flour. These parathas which are sold by the Appellant in packed condition, are to be placed directly on pre-heated pan or griddle for being heated on medium flame for about 3-4 minutes before being ready for consumption.

- As per the Appellant the principal ingredients for all varieties is whole wheat flour and other ingredients like aloo, vegetables, mooli, onion, methi etc were added only for the purpose of taste and flavour. Therefore the product is to be treated as a 'paratha' for the purposes of application for advance ruling. The Appellant further compared the likeness of Roti/Chapati with paratha, in all of which wheat flour is the predominant ingredient. In view of the aforesaid, the Appellant submitted, that having close resemblance of roti and chapati would merit classification of Paratha under HSN Code 19059090 attracting GST @ 5%.
- The Gujarat Authority for Advance Ruling (**GAAR**) vide Advance Ruling dated June 30, 2021, observed that Appellant's product i.e. parathas are not ready for consumption product but requires 3-4 minutes of cooking and they are not akin to roti or chapati which are primarily wheat flour product and HSN 19059090 covers already prepared or cooked products.
- The GAAR held that parathas are to be classified under HSN Code 21069099 and not under HSN Code 19059090 as contended by the Appellant. It was further held that Paratha would be covered under entry number 453 of Schedule-lll of Notification No. 1/2017 -CT (Rate) dated June 28 2017 for the period from July 01, 2017 to November 14, 2017 and under entry number 23 of Schedule-lll of Notification No. 1/2017 -CT (Rate) dated June 28, 2017 (as amended by Notification No. 41/2017 -CT (Rate) dated November 14, 2017) with effect from November 15, 2017 is liable to imposition of GST @18%.
- Being aggrieved by the aforesaid Advance Ruling, the Appellant filed the present appeal before the Gujarat Appellate Authority for Advance Ruling (**GAAAR**)

Issue at hand?

- Whether the GAAR rightfully classified parathas under HSN Code 21069099, as well as being amenable to imposition of GST @18%?

Decision of the Authority

- At the outset, the GAAAR stated that classification of goods under the GST regime should be done in accordance with the Customs Tariff Act, 1975, which is basically based on the Harmonised System of Nomenclature (HSN). It was further stated that once an item is classified in accordance with the Customs Tariff Act, 1975, the rate of tax applicable would be arrived at on the basis of notifications issued under GST by the respective Governments.
- The GAAAR observed that Chapter 19 of the Customs Tariff Act, 1975 covers preparation of flour, generally used as food which are made from the products of Chapter 11 and Heading 1905 covers bread, pastries, cakes, etc, which are completely cooked and ready for consumption. Whereas the Appellant's product i.e. various types of parathas require 3-4 minutes of cooking on a pan or griddle before consumption. Basis the aforesaid, the GAAAR held that various types of parathas do not find classification under Heading 1905.
- Upon going through the composition of various types/kinds of parathas which were made by the Appellant, the GAAAR held that the ingredients used in the Appellant's product and roti/chapatti, are very different from each other.
- The GAAR also observed that Rule 3(b) of Rules of Interpretation is not applicable as the paratha does not have any specific essential character and as per Rule 3(c), which states when Rules 3(a) and 3(b) are not applicable goods shall be classified under the heading which occurs last in numerical order, therefore. appellant's paratha falls under HSN 21069099.
- It was further stated that that the only common thread between different varieties of parathas and roti or chapati is usage of wheat flour; however, the percentage of usage of wheat flour used in parathas manufactured by the Appellant ranges from 36% to 62% whereas the ingredients of plain roti or chapatti is only wheat flour (apart from water). Additionally, roti or chapatti is consumed directly but the parathas manufactured and supplied by the Appellant requires the same to be cooked before consumption. The GAAAR therefore held that parathas manufactured by Appellant are not eligible for the concessional rate of 5%.
- Consequently, it was also held that the appropriate classification of parathas would be under Chapter heading 2106 as the parathas manufactured by the Appellant are required to be cooked before they can be cooked.
- In view of the above, the GAAAR held that the aforesaid Advance Ruling dated June 30, 2021, issued by the GAAR was fair and correct and therefore the present Appeal was rejected.

HSA
Viewpoint

Parathas are one of the most common foods consumed in our country. Readymade/frozen roti/chapatis are taxed at a much lower rate in comparison to the paratha, even though all of them are staples in the Indian household. Accordingly, in our opinion, this decision of the GAAR is nothing but a set back to the common consumer.

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AT A GLANCE

FULL-SERVICE CAPABILITIES

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