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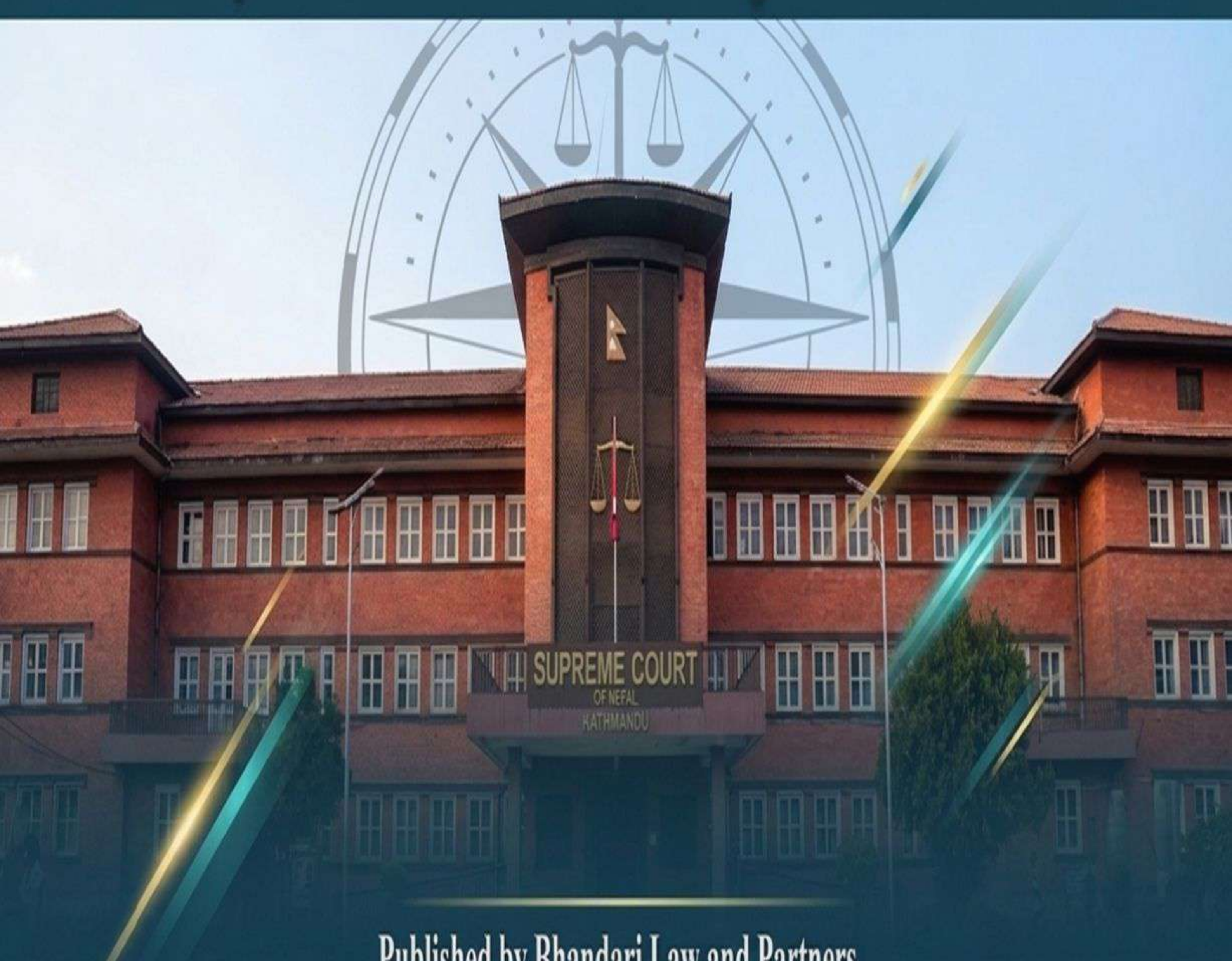
Landmark Arbitration Precedents in Nepal: Key Decisions of the Supreme Court



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This document summarizes landmark arbitration cases decided by the Supreme Court of Nepal, highlighting the key facts, legal issues, decisions, and principles established by the Court. It examines how the Supreme Court has interpreted and applied Nepal's arbitration laws, particularly in relation to arbitration agreements, jurisdiction of arbitral tribunals, appointment of arbitrators, court intervention, setting aside and enforcement of arbitral awards, and other important procedural and substantive issues, providing practical insight into the development of arbitration jurisprudence in Nepal. Following are the case list which are summarized in below mention document:

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1. *Kanchanjangha Tamang Joint Venture v. Patan Appellate Court et al. (Decision Number: 11322)*

I. Case Details

Decision Number: 11322 **(**NKP 2081, Part 66, Year 2081, Month Kartik, Issue 7**)**

Court: Supreme Court of Nepal, Division Bench

Judges: Hon. Justice Kumar Regmi and Hon. Justice Sunil Kumar Pokhrel

Decision Date: 2080/11/17

Case No.: 072-WO-1125

Type of Case: Certiorari and Mandamus

Weblink: https://nkp.gov.np/full_detail/10417

II. Parties

Petitioner: Kanchanjangha Tamang Joint Venture, Basundhara, Kathmandu

Respondents: Patan Appellate Court, Lalitpur and others (including the Department of Roads)

III. Facts of the case

a) **The Contract:** A contract was signed on July 10, 2010, between the Petitioner (Kanchanjangha Tamang JV) and the Respondent (Department of Roads) for road widening and improvement of the Jorpati–Sankhu–Melamchi road.

b) **The Dispute:** A payment dispute arose following project completion. Although the contract (SCC Clause 25.4) mandated arbitration, the Department of Roads initially ignored the proceedings, leading the petitioner to seek a court-appointed arbitrator.

c) **Arbitration Proceedings:** Both parties eventually agreed to arbitration and the appointment of an arbitrator. The Arbitral Tribunal issued a unanimous award on 2072/06/12 BS, directing the Department of Roads to pay the petitioner NPR 1,37,55,366.96.(i.e. Principal amount: NPR 1,31,97,208.21, Interest: NPR 5,58,158.75)

d) **Appellate Court Decision:** The Department of Roads challenged the award before the Patan Appellate Court, arguing that the tribunal exceeded its jurisdiction and applied the principle of equity without a basis. The Appellate Court set aside the award, ordering a re-decision because it believed the tribunal had acted outside its mandate under Section 30(2)(c) of the Arbitration Act.

IV. Issues that need to be decided by Court

a) Under what circumstances can an arbitrator's award be set aside?

b) Whether an order as prayed for in the petition can be issued or not?

V. Decision of the court

The Supreme Court quashed the decision of the Appellate Court (certiorari issued).The original arbitration award is restored. A mandamus order is issued directing the Department of Roads to: Pay the awarded amount to the contractor

VI. Legal Principles Established

The court established following principles in this case:

a) An arbitral award may be set aside when:

- *The decision is biased/partial*
- *It violates prevailing law and established legal norms*
- *There is a direct/patent error of law*
- *The decision is unclear, meaningless, or defective*
- *It contradicts a term specified in the agreement between the parties*
- *The decision adopts a wrong legal principle*

b) Once a party has accepted - at the appropriate time - that the arbitral tribunal has jurisdiction, and has not raised any objection during proceedings, that party cannot challenge the tribunal's jurisdiction after seeing an unfavorable award, without objectively demonstrating that the conditions under Section 30(2)(c) of the Arbitration Act exist.

c) The fundamental purpose of the Arbitration Act, 2055 (1998) is to resolve disputes through arbitration as an alternative process. Arbitral awards are binding on parties except in cases of serious legal error. When high court sets aside or orders re-decision of an award, it must clearly specify which provision under Section 30(1) of the Arbitration Act applies. The appellate court's jurisdiction is summary/supervisory in nature — it may not act as if hearing a full appeal on the merits.

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2. ***Department of Roads, Babarmahal v. Arbitral Tribunal comprising of Mr. Sureshman Shrestha, Ms. Kamala Upreti and Mr. Narendra Kumar Shrestha et al., (Decision No: 10586)***

I. Case Details

Decision Number: 10586

Case Number: 069-WO-0646

Court: Supreme Court of Nepal, Division Bench (Hon. Justice Harikrishna Karki and Hon. Justice Hariprasad Phuyal)

Part 62, Year 2077, Month Magh, Issue 10

Decision Date: 2076/03/30 BS

Subject: Writ of Certiorari and Mandamus

Applicable Laws: Arbitration Act, 2055; Evidence Act, 2031; Interim Constitution of Nepal, 2063

Weblink: https://nkp.gov.np/full_detail/9647

II. Parties

Petitioner: Government of Nepal, Ministry of Physical Planning and Works, Department of Roads, Babarmahal, Kathmandu

Respondents: Nepal Arbitration Council (NEPCA) Secretariat, along with the arbitral Tribunal consisting of chief Arbitrator, **Suresh Man Shrestha,** and Arbitrators **Kamala Upreti** and **Narendra Kumar Shrestha.**

III. Facts of the Case

a) **Contractual Background:** On February 16, 2005, the Department of Roads (DoR) entered into a contract with Lumbini Mainachuli Joint Venture for the Damak–Gauriganj Road project for approximately NPR 3.84 crore. The project was completed by June 30, 2007, with a revised cost of approximately NPR 4.06 crore.

b) **The Pre-Bid Meeting:** Prior to the contract, a meeting was held on August 6, 2004. Point No. 19 of the minutes stated that while time extensions would be granted for *bandha* (strikes) exceeding 15 days, no financial compensation would be payable for such extensions. These minutes were physically attached to the final Contract Agreement and signed by both parties.

c) **The Dispute:** After completion, the contractor claimed NPR 2, 24 23, 065 for idle equipment and manpower due to prolonged *bandhas*. The DoR rejected the claim, citing Point 19 of the minutes.

d) **Procedural History:** The dispute moved from an Adjudicator to an Arbitral Tribunal, which issued a second award on 2067/09/09 BS, granting the contractor NPR 16, 17, 000 plus interest.

e) **Appellate Court Interference:** The Patan Appellate Court set aside this award on 2068/10/04 BS, ruling that the Pre-Bid Minutes were not part of the contract because they were not issued as a formal "Addendum" under the bidding clauses. The DoR then approached the Supreme Court.

IV. Issues that need to be decided by Court

a) **Scope of Jurisdiction:** Whether the Patan Appellate Court exceeded its limited jurisdiction under Section 30(2) of the Arbitration Act, 2055 by re-examining the factual merits and contractual interpretations of the arbitral award.

b) **Contractual Status of Minutes:** Whether Pre-Bid Meeting Minutes form an integral part of a contract if they are physically attached to the signed Agreement, even if not explicitly listed in the standard "priority of documents" hierarchy.

V. Decision of the Court

The Supreme Court quashed the Patan Appellate Court's order via a writ of certiorari. It held that the lower court had acted beyond its jurisdiction by entering into a factual dispute regarding the status of the minutes. Furthermore, the Supreme Court issued a writ of mandamus directing the enforcement of the Arbitral Tribunal's award dated 2067/09/09 BS.

VI. Legal Principles Established

The court established following principles in this case:

a) ***Limited Judicial Review:*** *Under Section 30(2) of the Arbitration Act, courts can only set aside or remand an award on specific procedural or jurisdictional grounds (e.g., incapacity of a party, lack of notice, or exceeding the scope of submission). Courts cannot review the merits or factual findings of the tribunal.*

b) ***Status of Attached Documents:*** *A document physically attached to a contract and signed by both parties is an integral part of the agreement. Interpreting such a document as "purposeless" or "non-binding" is contrary to the principles of legal interpretation.*

c) ***Doctrine of Estoppel:*** *Under Section 34(1) of the Evidence Act, 2031, a contractor who attends a pre-bid meeting, signs the minutes, and signs a contract with those minutes attached is* ***estopped from later denying*** *their legal validity.*

d) ***Finality of Arbitration:*** *The legislative intent of the Arbitration Act is the swift, final resolution of disputes by experts. Repeated remands by courts based on merits review undermine this objective.*

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3. ***Hanil Engineering & Construction Co. Ltd. v. Patan Appellate Court et al., (Decision No. 10138)***

I. Details of the case

Decision No. 10138

Type of Case: Certiorari / Mandamus

Court: Supreme Court of Nepal

Bench: Division Bench

- Justice Harikrishna Karki
- Justice Tank Bahadur Moktan

Decision Date: 2074/09/11

Part 60, Year 2075, Month Falgun, Issue 11

Case No: 067-WO-0419

Weblink: https://nkp.gov.np/full_detail/9190

II. Parties

Petitioner: Hanil Engineering & Construction Co. Ltd., registered in Seoul, South Korea (represented through legal counsel in Nepal)

Respondents: Patan Appellate Court and others

III. Facts of the Case

a) **The parties:** The petitioner is Hanil Engineering & Construction Co. Ltd., a company registered in South Korea. The respondent is Koneko Pvt. Ltd., a joint-venture company established under Nepali law by Korean and Nepali citizens.

b) **The Contract**: There was a contract between Hanil Engineering And construction Co. Ltd and Melamchi Water Supply Development Committee for the "Melamchi Adit Access Roads" construction project for Rs. 45,61,82,153. On October 10, 2002 (2059/06/24), Hanil sub-contracted this work to Koneko for Rs. 43, 33, 73,045.

c) **The Dispute:** Koneko allegedly failed to start the work despite repeated reminders. Consequently, the Melamchi Water Supply Development Committee forfeited Hanil's performance bonds and advance payment bank guarantees, totaling over USD 1.7 million and millions in Nepali Rupees.

d) **Arbitration**: Citing Clause 10 of their agreement—which stated the contract was "governed by the laws of the Republic of Korea"—Hanil initiated arbitration through the Korean Commercial Arbitration Board (KCAB).

e) **The Award:** On July 20, 2009(2066/04/05), the KCAB awarded Hanil compensation including Korean Won 2.047 billion and USD 1.758 million plus 6% annual interest.

f) **Procedural History**: Hanil applied to the Appellate Court Patan to enforce this foreign award in Nepal. The court refused to enforce it on March 30, 2010 (2066/12/17). Hanil then filed a writ petition at the Supreme Court seeking to overturn that refusal.

IV. Issues that needs to be decided by Court

The Supreme Court identified several key legal issues to determine if the award could be enforced under Section 34 of the Arbitration Act, 2055 and the New York Convention 1958:

a) **Legality of Appointment:** Was the appointment of arbitrators in Korea consistent with the agreement between the parties and relevant laws?

b) **Procedural Compliance:** Was the arbitration process followed in accordance with the contract's specific requirements?

c) **Governing Law Interpretation:** Does a general clause stating "the contract is governed by Korean Law" automatically apply to the *procedure* for appointing arbitrators?

d) **Right to be Heard :** Was Koneko given proper notice and a fair opportunity to present its case during the Korean proceedings?

V. Final Decision

The Supreme Court dismissed Hanil's petition, ruling that the Korean award failed to meet the procedural and notice requirements of Nepali law and the New York Convention.

VI. Principles Established

The Supreme Court established several fundamental principles regarding the recognition of foreign arbitral awards:

a) ***Doctrine of Severability (Separability):*** *An arbitration clause (or Dispute Resolution Clause) is treated as a separate and independent agreement from the main contract. The status or validity of the main contract does not automatically affect the arbitration clause.*

b) ***Autonomy of Procedural Law:*** *Choosing a substantive law for the contract (e.g., "Korean Law") does not mean the parties have automatically chosen that country's procedural law for arbitrator appointments. Unless explicitly stated, the procedure for appointment requires mutual consent.*

c) ***Requirement of Mutual Consent:*** *Arbitration is a consensual process. One party cannot unilaterally appoint a board or arbitrator without an agreement on the process or applying to a court for appointment if they cannot agree.*

d) ***Mandatory Amicable Settlement:*** *If a contract contains an "Amicable Settlement Clause" requiring parties to resolve disputes in good faith first, this is an obligatory step. Arbitration started without a genuine attempt at such a settlement is considered "premature".*

e) ***Standards for Official Notice:*** *Proper notice for the appointment of arbitrators and the proceedings must be served to the official company. Serving notice to a director who has a personal conflict of interest in the case does not constitute valid notice to the company itself.*

f) ***Natural Justice:*** *An award made without providing a party a sufficient opportunity to be heard (Clean Hearing) is a violation of natural justice and is unenforceable.*

4. *Yakshadhwoj Karki v. High Court Patan et al., (Decision No.: 10369)*

I. Case Details

Decision No.: 10369

Year/Month/Issue: 2076 B.S., Magh, Part 61, Issue 10

Case Type: Writ of Certiorari (Utpreshan)

Decision Date: 2076/02/30

Case No. 074-WO-0214

Bench: Honorable Justice Bishowambhar Prasad Shrestha and Honorable Justice Anil Kumar Sinha

Weblink: https://nkp.gov.np/full_detail/9435

II. Parties

Petitioner: Yakshadhwoj Karki on behalf of Anak Sky J.V.

Respondent: High Court Patan and others

III. Facts of the Case

a) The petitioner, a Class 'A' construction company, entered into a contract with the Postal Service Department on 2067/03/30 to construct a building.

b) The work was to be completed within 2 years (by Ashoj 2069), but the deadline was extended multiple times until Mangsir 2071 due to various reasons like fuel shortages, earthquake and strikes.

c) Despite extensions, the work remained incomplete. The respondent (Postal Service Department) initiated a process to terminate the contract and blacklist the petitioner via a notice in Gorkhapatra on 2073/02/17.

d) The petitioner proposed appointing an arbitrator to resolve the dispute, but the respondent did not respond. Consequently, the petitioner moved the High Court Patan under Section 7 of the Arbitration Act, 2055, to appoint an arbitrator.

e) The High Court refused to appoint an arbitrator, leading the petitioner to file a writ at the Supreme Court seeking to quash that decision.

IV. Issues that needs to be decided by Court

a) Whether the High Court's refusal to appoint an arbitrator was lawful and justified.

b) Whether the court can appoint an arbitrator when the contract does not explicitly contain an arbitration clause.

c) Whether a contract can be deemed amended or modified based on the unilateral behavior or correspondence of one party.

d) Whether the Department's decision to terminate the contract and blacklist the company should be quashed.

V. Decision of the Court

The Supreme Court dismissed the writ petition. The court upheld the High Court's decision, ruling that an arbitrator cannot be appointed if there is no such provision in the contract. As a result, the interim order that had stayed the blacklisting and termination process was vacated.

VI. Principles Established by the Court

a) ***Judicial Restraint in Contracts:*** *Courts cannot add new terms to a contract (such as an arbitration clause) if they were not explicitly agreed upon by the parties.*

b) ***Amendment of Contracts:*** *A contract's terms cannot be assumed to have changed based on a party's behavior, general correspondence, or a unilateral proposal unless there is clear evidence of mutual amendment.*

c) ***Pre-requisite for Arbitration:*** *For a court to appoint an arbitrator under the Arbitration Act, there must be a pre-existing arbitration agreement or a separate independent agreement to resolve disputes through arbitration.*

d) ***Incomplete Clauses:*** *If a contract mentions "Adjudication" but fails to specify the procedure or the board (Dispute Adjudication Board), such a clause is considered incomplete or* ***unenforceable****.*

e) ***Free Consent:*** *Courts cannot force a party to enter into or renew a contract against their will, as free consent is a fundamental element of any agreement.*

5. *Yashasvi Shumsher JBR v. Bhaivers Developers Pvt. Ltd., (Decision No.: 9847)*

I. Details of the Case

Decision No.: 9847.

Court: Supreme Court of Nepal, Division Bench.

Judges: Hon. Justice Kedar Prasad Chalise and Hon. Justice Anil Kumar Sinha.

Decision Date: 2074/03/26 BS

Year/Month/Issue: 2074 B.S., Kartik, Part 59, Issue 7

Subject: Recovery of Amount as per Contract.

Weblink: https://nkp.gov.np/full_detail/8898

II. Parties

Respondent / Plaintiff: Bhaivers Developers Pvt. Ltd.

Appellant / Defendant: Yashasvi Shumsher J.B.R.

III. Facts of the Case

In 2064/6/18 BS, the plaintiff company entered into a sale agreement with the defendant for the sale of land and house (totaling 2-3-2-0 Ropani) in Kathmandu. The defendant's share was approximately 0-5-3-2.50 Ropani, with an agreed sale price of Rs. 23, 00, 000 per Ana.

The plaintiff paid an advance (Baina) of Rs. 2, 00,000, with the remaining balance to be paid and the property registered within 6 months. However, the registration did not occur within the stipulated timeframe. The plaintiff sued for the return of the advance plus compensation, alleging a breach of contract.

The defendant argued that she had prepared the necessary documents (name transfer, tax payment, road certification) but the plaintiff failed to come forward with the balance. The contract had no provision for compensation. Therefore, the claim should be dismissed.

The Kathmandu district court stated the defendant failed to fulfill contractual obligations. The court ordered: Refund of NRs. 200,000, Additional 15% compensation. The court denied the claim for full additional compensation equal to the advance. The appellate Court upheld the District Court decision.

IV. Issues that needs to be decided by Court

a) **Arbitration vs. Negotiation:** Did Clause 12 of the contract, which stated parties should "sit together and resolve disputes," constitute a valid arbitration agreement that required exhausting ADR before filing suit?

b) **Breach of Contract:** Which party was responsible for the failure to execute the contract within the 6-month period?

c) **Restitution and Compensation:** Is the plaintiff entitled to a refund of the advance and the 15% additional compensation awarded by lower courts under the Doctrine of Unjust Enrichment and the Contract Act?

V. Decision of the Court

The Supreme Court upheld the decisions of the Kathmandu District Court and the Appellate Court Patan, ruling in favor of the plaintiff.

a) **On Arbitration:** The Court held that a mere agreement to "discuss" or "sit together" does not meet the legal definition of an arbitration agreement under Section 3 of the Arbitration Act, 2055 BS.

b) **On Breach:** The Court found the defendant (seller) in breach. It ruled that the seller has a primary obligation to achieve saleable title and then formally notify the buyer to proceed with the balance payment—a step the defendant failed to prove.

c) **On Recovery:** The Court ordered the defendant to refund the Rs. 2, 00,000 advance plus a 15% additional amount as reasonable compensation.

VI. Principles Established

a) ***Sequential Obligations:*** *In land sale contracts, the seller must first fulfill preparatory legal obligations (like title transfers) and then notify the buyer before they can claim the buyer failed to perform.*

b) ***Doctrine of Unjust Enrichment:*** *A party cannot legally retain an advance payment while also refusing to transfer the property; such conduct is unconscionable.*

c) ***Earning Power of Money:*** *Money has value simply because it is available now. If someone receives an advance payment, they can use, invest, or earn interest on that money. Therefore, if the contract is not carried out, it would be unfair for that person to keep both the advance money and any benefit (such as interest or profit) earned from it.*

d) ***Definition of Arbitration:*** *For an arbitration clause to be binding, it must clearly express an intent to submit to a neutral third-party for a binding decision. Social courtesies like "sitting together with witnesses" are not arbitration.*

6. *Kalika Swachhanda Kanchanjangha JV v. Ministry of Physical Planning and Construction, Department of Roads et al., (Decision No: 8437)*

I. Case Details

Decision No: 8437

Subject: Including writ of certiorari

Court: Supreme Court of Nepal, Division Bench.

Bench: Hon'ble Justice Khilraj Regmi and Hon'ble Justice Bharatraj Upreti.

Writ No.: 2779 of 2062 BS.

Decision Date: 2067/02/24 BS

NKP **Year:** 2067 (B.S.), **Part:** 52**, Month:** Mangsir, **Issue No.:** 8

Weblink: https://nkp.gov.np/full_detail/3529

II. Parties:

Petitioner: Kalika Swachchhanda–Kanchanjunga JV, located at Ward No. 4, Maharajgunj, Kathmandu Metropolitan City, Kathmandu District

Respondents: Ministry of Physical Planning and Works, Department of Roads, and others

III. Facts of the Case

a) **The contract:** On April 18, 2001, the Department of Roads entered into a contract with Kalika Swachhanda Kanchanjangha JV for the Goru Singhe–Sandhikharka road maintenance and development project.

b) **The dispute:** A dispute arose regarding payments, which was initially referred to an Adjudicator who ruled in favor of the contractor (the petitioner). Dissatisfied, the Department initiated arbitration.

c) **Arbitration Proceedings:** The Department appointed its own arbitrator and requested the contractor to appoint theirs. The contractor refused, raising jurisdictional objections.

Consequently, the Department petitioned the Appellate Court, Patan, to appoint an arbitrator under Section 7(1) (b) of the Arbitration Act, 2055 BS. The Appellate Court appointed two arbitrators—Chitradev Bhatt and Khemnath Dallakoti—relying on Section 7(3) of the Act.

The contractor then filed a writ of certiorari in the Supreme Court to quash this appointment, arguing that since the contract adopted UNCITRAL Rules, the appointment should have been handled through the Permanent Court of Arbitration (PCA) at The Hague.

IV. Issues that needs to be decided by Court

a) What is the nature of UNCITRAL Arbitration Rules, and under what circumstances do they apply?

b) Do these Rules govern the procedure and authority for appointing arbitrators in this specific case?

c) Is there a conflict between Nepal's national law and the UNCITRAL Rules regarding appointments, and if so, which prevails?

d) Did the Appellate Court have jurisdiction to appoint arbitrators in this dispute?

e) Was the Appellate Court's decision to appoint two specific arbitrators legally valid?

V. Decision of the Court

The Supreme Court quashed the Appellate Court's order to appoint two arbitrators but upheld its jurisdiction to appoint one.

a) **Jurisdiction Upheld:** The Court ruled that the Appellate Court had the authority to intervene because the agreed appointment procedure had failed and the contract specified Nepal law as the governing law.

b) **Appointment Quashed:** The Court found that the Appellate Court exceeded its jurisdiction by appointing *two* arbitrators. Under both the Arbitration Act and UNCITRAL Rules, the court should only have appointed the second arbitrator on behalf of the non-cooperating party; those two would then appoint a third.

c) **Mandamus Issued:** The Court issued a writ of mandamus directing the Appellate Court to appoint exactly one arbitrator on behalf of the petitioner.

VI. Principles Established

a) ***Consensual Nature of UNCITRAL Rules:*** *These rules do not automatically apply as national law; they derive their binding force solely from contractual agreement.*

b) ***Permissive Nature of the Hague Mechanism:*** *The language in UNCITRAL Rule 7(2) (b) stating a party "may" request the PCA to designate an appointing authority is permissive, not mandatory.*

c) **_Supremacy of Mandatory National Law:_** *According to Article 1(2) of the UNCITRAL Rules, if a rule conflicts with a mandatory provision of the applicable national law, the national law prevails.*

d) **_Doctrine of Waiver:_** *A party that is aware of its right to appoint an arbitrator but fails to do so upon request is deemed to have waived that right and cannot later compel the other party to use a specific international mechanism like The Hague.*

e) **_Limited Judicial Intervention:_** *When a court assists in constituting a panel, it can only fill specific vacancies and cannot appoint more arbitrators than necessary to complete the agreed-upon structure.*

7. ***Umakant Jha, Director General of the Department of Irrigation (on behalf of Mahakali Irrigation Project) vs. Appellate Court, Patan, et al., (Decision No:8156)***

I. Case Details

Decision No.: 8156

Date of Decision: 2066/01/14 BS

Court: Supreme Court of Nepal – Division Bench

Judges: Hon. Justice Tahir Ali Ansari and Hon. Justice Prakash Basti

Writ No.: 3320 of 2063 BS

Subject: Certiorari Mixed Mandamus

Weblink: https://nkp.gov.np/full_detail/2641

II. Parties:

Petitioner: Umakant Jha, Director General, Department of Irrigation (on behalf of Mahakali Irrigation Project)

Respondent: Appellate Court, Patan, and others (including Swachhanda Nirman Sewa Pvt. Ltd.)

III. Facts of the Case

On June 12, 1996, a contract agreement was signed between the Mahakali Irrigation Project and Swachhanda Nirman Sewa Pvt. Ltd. for the construction of tertiary canals. The construction deadline was eventually extended to December 10, 1997, and the contractor received a final bill payment of NPR 3, 58, 19, 274.44 on July 14, 1998. A Work Completion Certificate was issued on July 30, 1998 (2055/4/14 BS).

Subsequently, a dispute arose regarding additional payments for extra work, such as site clearance and topsoil stripping. When the dispute could not be resolved through initial contractual procedures, the contractor sought arbitration. The Arbitral Tribunal awarded the contractor a total of NPR 1, 66, 29, 589 (including principal and interest). The Tribunal argued the claim was within the limitation period because a "Defects Liability Certificate" had never been issued. The Appellate Court, Patan, upheld this award on November 30, 2005 (2062/8/15 BS), finding no grounds to set it aside under the Arbitration Act. The Mahakali Irrigation Project then filed a writ petition in the Supreme Court.

IV. Issues that needs to be decided by Court

The Court framed four primary issues for resolution:

a) **Maintainability:** Whether a writ petition under extraordinary jurisdiction is maintainable against an Appellate Court decision regarding an arbitral award.

b) **Limitation:** Whether the claim submitted to the Arbitral Tribunal was within the contractual limitation period.

c) **Legal Soundness:** Whether the Appellate Court's decision to uphold the award was legally sound.

d) **Remedy:** Whether the writ petition should be allowed.

V. Decision of the Court

The Supreme Court allowed the writ petition and issued the following orders:

A Writ of Certiorari was issued to set aside the Arbitral Tribunal's decision (dated 2062/3/17 BS) and the Appellate Court, Patan's order (dated 2062/8/15 BS).

A Writ of Mandamus was issued directing the respondents not to implement those decisions.

The Court concluded that the contractor's claim was time-barred under the contract and the Appellate Court had erred in its supervisory role by not setting aside the flawed award.

VI. Principles Established

a) ***Government Standing:*** *Every right available to citizens is also available to the government, as it represents the collective national institution and its people; therefore, the government can invoke the court's extraordinary jurisdiction.*

b) ***Sanctity of Contractual Terms:*** *No party may use surrounding circumstances to indirectly render inactive or purposeless any written term, condition, or obligation of a contract.*

c) ***Survival of Legal Questions:*** *A legal question (such as limitation) remains "alive" until it is properly resolved on its merits. A prior dismissal of a writ due to non-appearance does not constitute a final resolution of the underlying legal issue.*

d) ***Corrective Jurisdiction:*** *The court's jurisdiction over arbitral awards is corrective and supervisory, intended to ensure the award is tested against the standards of the law.*

8. ***Varun Beverages Pvt. Ltd. vs. National Marketing & Sales Pvt. Ltd. et al., (Decision No: 8097)***

The case of Varun Beverages Pvt. Ltd. vs. National Marketing & Sales Pvt. Ltd. centers on the finality of arbitral awards and the legal doctrine of conduct estoppel.

I. Details of the Case

Decision No: 8097

Writ Number: Writ No. 3028 of 2059 BS.

Part: 51, Year: 2066 (B.S.), Month: Ashadh, Issue: 3

Decision Date: 2065/11/19 BS

Court: Supreme Court of Nepal

Bench: Division Bench of Hon. Justice Ram Prasad Shrestha and Hon. Justice Mohan Prakash Sitaula.

Subject: Certiorari and Mandamus

Weblink: https://nkp.gov.np/full_detail/7584

II. Parties

Petitioner: Varun Beverages Pvt. Ltd., located at Ward No. 35, Kathmandu Metropolitan City, Kathmandu District

Respondents: National Marketing and Sales Pvt. Ltd., located at Ward No. 25, 8/303, New Road, Kathmandu Metropolitan City, Kathmandu District, and others

III. Facts of the Case

In February 1995, Barun Beverages (the petitioner) entered into a distribution agreement with National Marketing & Sales (the respondent). To facilitate distribution, two supplementary vehicle agreements were made in 2052 BS, providing a truck and three Trax vehicles to the respondent.

A dispute arose when the petitioner alleged the respondent misused the vehicles and violated the contract, leading to the termination of the agreement in July 1996. Both parties agreed to refer the dispute to arbitration. On 2055/2/31 BS, the arbitrator ruled largely in favor of the respondent, awarding compensation for vehicle expenses, lost profits, and off-season office expenses totaling a substantial sum.

The petitioner appealed to the Appellate Court, Patan, which upheld the arbitral award in 2057 BS. The petitioner then filed for a re-hearing (dohoryaai) at the Supreme Court, which was rejected in 2058 BS. Following this, the petitioner voluntarily deposited the judgment amount (Rs. 1,696,976.67) at the Kathmandu District Court to release their attached vehicles, and the respondent collected the payment. Despite this execution of the judgment, the petitioner filed a writ petition in 2059 BS seeking to quash the award and the subsequent court rulings.

IV. Issues that need to be decided by Court

a) **Jurisdiction:** Did the arbitrator exceed his authority by ruling on the vehicle agreements, which allegedly lacked specific arbitration clauses and were claimed to be independent of the main distribution contract?

b) **Maintainability/Estoppel:** Can a petitioner challenge a judgment through an extraordinary writ after they have already acknowledged and fulfilled that judgment through the payment of the decretal amount?

V. Decision of the Court

The Supreme Court dismissed the writ petition, denying the orders of certiorari and mandamus. The court found that the arbitrator did not exceed his jurisdiction because the vehicle agreements were integral and supplementary to the main distribution agreement. Most importantly, the court ruled that the petitioner's conduct—voluntarily paying the amount and ending the execution proceedings—rendered the writ petition baseless and without merit.

VI. Principles Established

a) ***Doctrine of "Approbate and Reprobate":*** *A party cannot simultaneously accept the benefits of a judgment (such as getting attached property released by paying the award) and challenge the validity of that same judgment. Such conduct constitutes a waiver of the right to challenge the decision.*

b) ***Unity of Supplementary Contracts:*** *If secondary agreements (like the vehicle contracts) are made specifically to facilitate the execution of a main contract and cannot exist independently of it, they are considered integral parts of the main agreement and are covered by its arbitration clause.*

c) ***Finality of Legal Processes:*** *Once a case has moved through arbitration, an appellate review, and a final rejection of a re-hearing petition by the Supreme Court, the factual questions are settled and cannot be re-opened via extraordinary writ jurisdiction, especially after the judgment has been executed.*

9. ***The Oriental Insurance Company Ltd. vs. Ram Krishna Rawal, (Decision No: 8078)***

This case is a landmark judgment regarding the primacy of arbitration clauses in commercial disputes, particularly within the insurance sector in Nepal.

I. **Case Details**

Decision No.: 8078.

Case No.: 8692 of 2060 B.S.

Bench: Supreme Court division Bench consisting of Hon. Justice Balram K.C. and Hon. Justice Damodar Prasad Sharma.

Decision Date: 2063/01/04 B.S.

Subject: Receipt of insurance amount and compensation as per contract.

Weblink: https://nkp.gov.np/full_detail/2655

II. **Parties:**

Appellant / Defendant: The Oriental Insurance Company Ltd., located at Ward No. 23, Kantipath, Kathmandu Metropolitan City, Kathmandu District

Respondent / Plaintiff: Ram Krishna Rawal, resident of Siddharthanagar Municipality–6, Gallamandi, Rupandehi District

III. **Facts of the Case**

The plaintiff, Ram Krishna Rawal, had taken a loan of Rs. 9, 80, 880 from Nepal Bank Limited, pledging textiles as collateral. To protect this collateral, he took out a fire insurance policy for Rs. 11, 00, 000 with The Oriental Insurance Company. On 2048/4/2 B.S., a fire destroyed the warehouse where the cloth was stored.

The insurance company offered only Rs. 3, 02, 078 based on a surveyor's assessment, which the plaintiff refused. Instead of following the dispute resolution process in the policy, the plaintiff filed a lawsuit under the Contract Act, 2023, seeking the full insured amount plus interest on his bank loan. Both the District Court (2055/8/6 BS) and the Appellate Court, Butwal (2058/2/29 BS) ruled in the plaintiff's favor, ordering the insurance company to pay Rs. 9, 80, 880 (the value of the destroyed goods) plus the bank-loan interest accrued until payment.

The insurance company then filed a case-review petition (mudda dohoryaune) at the Supreme Court under Section 12(1)(a)–(b) of the Administration of Justice Act, 2048, which the Court admitted on jurisdictional-error grounds.

IV. Issue that needs to be decided by Court

The main question before the Supreme Court was whether regular civil courts were allowed to hear the case, since the insurance policy already included an arbitration clause.

The Court had to decide whether Condition No. 18 in the policy, which required disputes about how much money should be paid to go to arbitration, meant that the courts were no longer allowed to deal with the case.

V. Decision of the Court

The Supreme Court overturned the lower courts' decisions, ruling that they had acted in excess or lack of jurisdiction. The Court found that:
The relationship between the parties was strictly contractual, Condition No. 18 of the policy was a clear "Agreement to Arbitrate" that the parties had entered into voluntarily and consciously. Under Section 13 of the Arbitration Act, 2038 B.S., no case can be filed in court on a matter that the parties agreed to resolve through arbitration.

Final Order: The Court directed both parties to resolve their dispute through arbitration as per the insurance policy's conditions rather than through the court system.

VI. Principles Established

The case established several important legal principles regarding commercial arbitration:

a) ***Ousting Court Jurisdiction:*** *When parties agree to resolve disputes via arbitration, they effectively oust the jurisdiction of the court for those specific disputes.*

b) ***Principle of Estoppel:*** *Filing a court case contrary to an existing arbitration agreement constitutes estoppel and is considered a breach of contract.*

c) ***Judicial Duty of Scrutiny:*** *Courts must examine contract terms and the law before registering a complaint to ensure they have the authority to hear the matter.*

d) ***International Alignment:*** *Commercial, investment, and insurance disputes are best handled by expert arbitrators rather than traditional courts to ensure efficiency, neutrality, and speed.*

This case provides a significant interpretation of the Arbitration Act, 2055 (1998), specifically regarding the finality of arbitral awards and the limited scope of judicial review in technical contract disputes.

10. Department of Roads et al. v. Waiba Construction Company Pvt. Ltd. et al, (Decision No: 8479).

I. Case Details

Decision No.: 8479

Part: 52, **Year:** 2067 B.S., **Month:** Magh, **Issue:** 10

Decision Date: 2067/02/24

Court/Bench: Supreme Court of Nepal, Division Bench of Hon. Justice Khilraj Regmi and Hon. Justice Bharatraj Upreti

Writ No.: 2961 of 2062

Weblink: https://nkp.gov.np/full_detail/3447

II. Parties

- **Petitioner:** Department of Roads and others
- **Respondents:** Waiba Construction Company Pvt. Ltd., Samakhusi, Kathmandu, and others

III. Facts of the Case

On July 5, 2001, the Department of Roads and Waiba Construction Company entered into a contract for road construction on the Kalikot–Jumla Road Project. During construction, the contractor encountered hard rock that required blasting. However, due to the Maoist insurgency and the prevailing state of emergency, the contractor could not easily obtain, transport, or store explosives. Consequently, the contractor was forced to perform manual excavation, which significantly increased costs and caused delays.

The contractor sought a new rate and a time extension, leading to a dispute. An Adjudicator ruled in favor of the contractor, and this decision was subsequently upheld by a sole arbitrator (Deepak Bhattarai), who classified the rock as "medium" for compensation purposes. The Department of Roads appealed to the Patan Appellate Court, which upheld the arbitral award on August 17, 2005. Exhausting ordinary remedies, the Department filed a writ of certiorari in the Supreme Court to quash these decisions.

IV. Issues that needs to be decided by Court

The Court identified two primary questions:

a) What standard should courts apply when reviewing arbitral awards?

b) On what specific grounds can an arbitral award be set aside under Section 30(2) of the Arbitration Act, 2055?

V. <u>Decision of the Court</u>

The Supreme Court dismissed the writ petition, upholding the decisions of the Adjudicator, Arbitrator, and the Patan Appellate Court. The Court found that:

a) The questions raised were factual rather than legal.

b) The court found that the previous decisions were legally fine, so there was no valid reason under the law to overturn them.

c) The Arbitrator's decision was not contrary to the contract terms.

VI. <u>Principles Established</u>

a) ***Limited Judicial Review:*** *Courts do not have the authority to conduct a factual review of an arbitrator's decision; the law provides only for setting aside awards on grounds of serious legal error as listed in Section 30(2) of the Arbitration Act.*

b) ***Arbitrator as "Last Judge" of Fact:*** *The arbitrator is the most competent and final decision-maker for examining facts, especially in technically complex contracts involving measurements and engineering judgments.*

c) ***Practical Reality in Contract Performance:*** *During crisis situations, courts should be practical and look at reality, not just strict contract wording.*

d) ***Writ Jurisdiction Constraints:*** *A writ court cannot act as a court of first instance to evaluate evidence or resolve factual disputes that fall within an arbitrator's jurisdiction.*

11. Manjit Singh vs. Kankai Irrigation Project, Department of Irrigation et.al (Decision No: 8397)

I. Case Details

Decision Number: 8397

Part: 52, **Year:** 2067 B.S., **Month:** Ashoj, **Issue:** 6

Decision Date: 2066/09/13 BS

Court: Supreme Court of Nepal

Bench: Division Bench of Hon. Justice Prem Sharma and Hon. Justice Bharatraj Upreti.

Writ No. 3221 of the year 2059 B.S.

Subject: Certiorari, etc.

Weblink: https://nkp.gov.np/full_detail/3690

II. Parties

Petitioner: Manjeet Singh, acting on behalf of Bakhtawar Singh (Proprietor of Dhat Company)

Respondents: Kankai Irrigation Project, Department of Irrigation, and others

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III. Facts of the Case

Bakhtawar Singh, operating B.S. Dhat Company, had entered into a construction contract with the Kankai Irrigation Project in 1981, but after failing to complete the work within the agreed time (i.e 1st May 1983) and being denied an extension, he was removed from the project in 1984.

This led to a dispute, which he took to arbitration. In 1996, the arbitrators gave a majority decision in his favor, awarding him a significant amount of money and ordering the release of his bank guarantee. However, a major legal issue arose because during the arbitration process, he had introduced a much larger revised claim in 1995—about nine years after his original claim filed in 1986.

When the matter reached the Appellate Court in 1999, the court quashed the arbitral award, holding that accepting such a delayed claim violated the strict limitation period provided under the Arbitration Act, 2038, which required claims to be filed within a short, mandatory timeframe.

The petitioner then approached the Supreme Court, requesting a writ of mandamus to compel the Appellate Court to decide the dispute on its merits instead of simply cancelling the award and sending it back to arbitration.

IV. Issues that needs to be decided by Court

The Court identified two primary legal questions:

a) Whether it was lawful for arbitrators to accept a new, additional claim under ICC Arbitration Rules (Rule 16) after the mandatory limitation period specified in Section 11 of the Arbitration Act, 2038 had expired.

b) Whether the Appellate Court, while hearing a petition to set aside an award under Section 21 of the Act, has the authority to decide the dispute itself on the merits (using Muluki Ain, Procedure No. 192) rather than just quashing the award.

V. Decision of the Court

The Supreme Court dismissed the writ petition, upholding the Appellate Court's decision. The court ruled that:

a) The arbitrators' decision to accept a claim nine years after the initial filing was contrary to Section 11 of the 1981 Act.

b) The Appellate Court correctly quashed the award but was not empowered to decide the case itself because it lacked full appellate jurisdiction over arbitral awards.

VI. Principles Established

a) ***Supremacy of Statute over Contract:*** *Rules for international commercial disputes (such as ICC rules) cannot replace, override, or nullify mandatory Nepali statutory law.*

b) ***Mandatory Limitation Periods:*** *Section 11(1) of the Arbitration Act, 2038 is a "standalone" and absolute provision. Unlike the later 1999 (2055) Act, the 1981 Act did not allow parties to agree to different limitation periods in their contracts.*

c) ***Strict Jurisdiction of Courts in Arbitration:*** *They can only quash an award on limited grounds (Section 21) and refer the matter back for fresh arbitration.*

d) ***Non-applicability of General Civil Procedure:*** *General procedural laws (like Muluki Ain No. 192) cannot be used to grant a court powers that the specific governing statute (the Arbitration Act) has explicitly withheld.*

12. ***Agricultural Inputs Corporation (Krishi Samagri Sansthan) v. Sumit Prakash Asia Pvt. Ltd. et al., (Decision No: 8128)***

I. Case Details

Case Number: Writ No. 2805 of 2059.

Decision Number: 8128

Part: 51, Year: 2066 (B.S.), Month: Shrawan, Issue: 4

Decision Date: 2065/10/06 (January 2009).

Bench: Supreme Court Joint Bench consisting of Hon. Justice Balram K.C. and Hon. Justice Damodar Prasad Sharma.

Weblink: https://nkp.gov.np/full_detail/8074

II. Parties

Petitioner: Agricultural Inputs Corporation, Central Office, Kuleshwor, represented by its General Manager, Krishna Chandra Jha

Respondents: Dinesh Bhakta Shrestha (authorized representative of Summit Prakasa Asia Pte. Ltd., Singapore) and others.

III. Facts of the Case

On August 4, 1995, a contract (KP-185) was signed between AIC and Summit Prakasa Asia Pte. Ltd. for the supply of 10,000 metric tons of urea fertilizer. The contract required AIC to open an Irrevocable Letter of Credit (LC), which it did. However, the supplier (respondent) refused to ship the goods, claiming the LC was not "workable" because it was not opened or confirmed through Rabo Bank in Singapore, even though the contract was silent on specifying a particular bank.

The dispute went to an Arbitral Tribunal, which, by a majority decision, ordered AIC to pay USD 125,945.00 in compensation to the Summit Prakasa Asia Pte. Ltd and ruled that the Performance Bond of the same amount should not be forfeited. AIC challenged this in the Appellate Court, Patan, which upheld the arbitral award. AIC then filed a writ of certiorari before the Supreme Court under the extraordinary jurisdiction of Article 88(2) of the then Constitution.

IV. Issues that need to be decided by Court

a) **Workability of the LC:** Does an Irrevocable LC opened through a reputable bank constitute a "workable" LC if the contract does not specify a particular bank?

b) **Contractual Amendments:** Can an unauthorized letter from a minor staff member (the August 9, 1995 letter) legally amend the terms of a corporate contract?

c) **Jurisdictional Limits of Arbitrators:** Did the tribunal act in excess of jurisdiction by awarding compensation that was not provided for in the contract?

d) **Performance Bond Forfeiture:** Is a Performance Bond forfeitable if a supplier fails to deliver goods according to the contract?

e) **Extraordinary Jurisdiction:** Can the Supreme Court review the merits of an arbitral award via a writ petition after statutory remedies are exhausted?

V. Decision of the Court

The Supreme Court quashed both the arbitral award and the Appellate Court's decision. The Court found that the Arbitral Tribunal acted in excess of its jurisdiction by awarding compensation and preventing the bond forfeiture, both of which were contrary to the explicit terms of the contract. The Court ruled that the LC opened by AIC was workable and that the respondent had failed to perform its obligations. The Court allowed the respondent the option to seek a fresh resolution through a new arbitral tribunal.

VI. Principles Established

a) ***Arbitrators are Bound by the Contract:*** *An arbitrator derives authority solely from the contract and cannot issue an award that goes beyond its terms; doing so constitutes an excess of jurisdiction.*

b) ***Nature of Letters of Credit:*** *An* ***Irrevocable LC is inherently workable****; its purpose is to ensure payment through the banking system, and a supplier cannot demand a specific bank unless explicitly stated in the contract.*

c) ***Authority to Amend Contracts:*** *Amendments to contracts involving corporate or state entities can only be made by the Board of Directors or a fully authorized officer; unauthorized staff cannot bind the institution.*

d) ***Writ Jurisdiction in Private Law:*** *While writ petitions are permissible after exhausting statutory remedies, they should ideally focus on the decision-making process rather than re-examining the facts of private contractual disputes.*

13. Krishi Samagri Company Ltd. v. Appellate Court, Patan et.al (Decision 7905)

I. Case Details

Decision Number: 7905

Part: 49, **Year:** 2064 (B.S.), **Month:** Falgun, **Issue:** 11

Date of Decision: 2064/09/01

Bench: Division Bench of Hon. Justice Kalyan Shrestha and Hon. Justice Pawan Kumar Ojha.

Writ No. 3543 of the year 2063 (B.S.)

Subject: Certiorari and Mandamus.

Weblink: https://nkp.gov.np/full_detail/3922

II. Parties

Petitioner: Agricultural Inputs Company Limited, Central Office, Kathmandu

Respondents: Appellate Court, Patan, Lalitpur, and others

III. Facts of the Case

Krishi Samagri Company Ltd. invited a tender in 1995 to supply urea fertilizer, and Bridgeline Corporation submitted an offer asking for a transferable Letter of Credit (L/C). The company accepted the price but made it clear that the terms of the tender document would apply, and the respondent even agreed that no extra conditions would be added. When the final contract was signed in 1996, it only mentioned an "irrevocable at sight L/C" and did not say anything about transferability.

Later, when Bridgeline failed to supply the fertilizer, Krishi Samagri forfeited its performance bond. However, the arbitration tribunal sided with Bridgeline, saying that the earlier offer (which required a transferable L/C) was part of the contract, so the forfeiture was not proper. After going through multiple stages in the Appellate Court first cancelling and then upholding the award, the dispute eventually reached the Supreme Court.

IV. Issues that needs to be decided by Court

a) **Extraordinary Jurisdiction:** Whether the Supreme Court can review arbitral awards through writ jurisdiction when ordinary appellate jurisdiction is unavailable.

b) **Contract Interpretation:** Whether the Full Corporate Offer was an integral part of the final written contract.

c) **Arbitral Authority:** Whether the arbitrator violated Section 21(2) of the Arbitration Act, 2038 by going beyond the contract terms and awarding an illegal interest rate.

d) **Appellate Oversight:** Whether the Appellate Court failed in its duty by providing superficial reasoning when upholding the award.

V. Decision of the Court

The Supreme Court quashed the Appellate Court's decision through an order of certiorari. It found that the arbitral award was contrary to the parties' agreement, contrary to law, and based on wrong principles. The Court issued a writ of mandamus directing the Appellate Court to arrange for a fresh arbitration under Section 21(3) of the Arbitration Act, 2038.

VI. Principles Established

a) ***Judicial Restraint:*** *Courts should not interfere in factual questions when parties have agreed to resolve disputes through arbitration.*

b) ***Justiciability of Legal Errors:*** *If an arbitrator interprets a contract beyond its stipulated terms, it creates a justiciable legal question.*

c) ***The "Four Corners" Rule:*** *In written contracts, the intentions of the parties are expressed in writing. Pre-contractual correspondence can only be used for interpretation if the written contract is silent on a matter; it cannot be used to override or add to explicit terms.*

d) ***Limits of Arbitral Authority:*** *Arbitrators cannot go beyond the scope of the disputes submitted to them or create new contractual obligations.*

e) ***Interest Rates:*** *Arbitrators cannot award interest rates (such as 17.25%) that exceed the limits set by prevailing law for non-banking parties.*

14. ***Sunsari Morang Irrigation Development Committee v. Kathmandu District Court & Larsen & Toubro Limited, (Decision No: 7836)***

I. Case Details

Decision Number: 7836

Part: 49, **Year:** 2064 (B.S.), **Month:** Shrawan, **Issue:** 4

Court: Supreme Court of Nepal, Division Bench

Honorable Justices: Hon. Justice Anupraj Sharma and Hon. Justice Sharadaprasad Pandit.

Decision Date: 2063/09/25 BS

Subject: Application for a writ of certiorari combined with mandamus under Article 88(2) of the Constitution of the Kingdom of Nepal, 2047

Weblink: https://nkp.gov.np/full_detail/3812

II. Parties

Petitioner: Ministry of Water Resources, Sunsari Morang Irrigation Development Committee, on behalf of the Sunsari Morang Irrigation Development Project, represented by the authorized Project Chief, Anil Kumar Pokharel

Respondents: Kathmandu District Court, and others

III. Facts of the Case

The case started from a construction contract for the Sunsari Morang Headworks Project between a government body and Larsen & Toubro Limited. After a dispute, the arbitrators awarded Larsen & Toubro about Rs. 40,706,799.17 on 2057/5/7 BS.

Both parties challenged this award at the **Appellate Court Patan** under Section 30 of the Arbitration Act. On 2059/8/5 BS, nearly two years later, the Appellate Court upheld the original award.

Subsequently, the Respondent filed for execution at the Kathmandu District Court on 2059/9/29 BS. The Petitioner argued that this execution was time-barred under Sections 31 and 32 of the Arbitration Act because it was not filed within 75 days of the original award date (2057/5/7 BS).

Furthermore, the Petitioner argued execution should be stayed because they had filed a writ at the Supreme Court challenging the Appellate Court's decision.

IV. <u>Issues that need to be decided by Court</u>

The Court identified three primary questions for determination:

a) Does the obligation to execute an arbitral award begin from the date of the original award or from the date the Appellate Court issues its decision on a challenge?

b) Is an execution petition filed within 75 days of the award becoming "final" (post-Appellate Court confirmation) legally permissible?

c) Should the Court issue the requested orders to quash the execution proceedings?

V. <u>Decision of the Court</u>

The Supreme Court dismissed the writ petition, allowing the execution to proceed. It ruled that the execution petition filed by Larsen & Toubro was within the lawful limitation period because the window for execution only begins once the award achieves finality.

VI. <u>Principles Established</u>

a) ***Harmonious Interpretation:*** *The provisions for challenging an award (Section 30) and executing an award (Sections 31 and 32) are interconnected and interrelated, not mutually exclusive.*

b) ***Finality requirement:*** *The Court held that an arbitral award is not truly "final" while it is still being challenged under Section 30, so execution should only start after the dispute is finally decided to ensure legal certainty.*

c) ***Start of limitation period:*** *The 75-day time limit for execution (including both voluntary and court-assisted execution periods) begins only when the award becomes final, meaning when the Appellate Court confirms it or when the parties are officially informed of that decision.*

d) ***Avoiding unfair results:*** *If the time limit were calculated from the original arbitral award while an appeal is still pending, it would make the right to challenge meaningless, because a party would be forced to both challenge and execute the award at the same time.*

15. ***Rajendraman Sherchan (Vijay Construction Pvt. Ltd.) v. Patan Appellate Court et al., (Decision No: 7823)***

This case is a landmark ruling regarding the limitation period for initiating arbitration proceedings in Nepal.

I. Case Details

Decision No: 7823

Part: 49, **Year:** 2064 (B.S.), **Month:** Ashad, **Issue No.:** 3

Writ Number: 2760 of the year 2062 BS

Decision Date: 2064/02/15 BS

Bench: Division Bench of Hon. Justice Meenbahadur Rayamajhi and Hon. Justice Tahir Ali Ansari

Subject: Writ of Certiorari with Mandamus

Weblink: https://nkp.gov.np/full_detail/3794

II. Parties

Petitioner: Vijaya Construction Pvt. Ltd., having its office located at Ward No. 16, Thamel, Kathmandu Metropolitan City, Kathmandu District; represented by its Chairman and Managing Director, Mr. Rajendra Man Sherchan

Respondents: Patan Appellate Court, and others

III. Facts of the Case

Contract: On March 16, 1993, Vijay Construction entered into a contract with the Council for Technical Education and Vocational Training (CTEVT) to build its central office for Rs. 3,46,42,444.68.

Dispute: Disputes arose regarding price escalation, taxes, and delayed payments, leading the petitioner to claim an additional Rs. 2,46,59,042.38 in 2058/8/5 BS.

Chronological events:

a) **2053/03/05:** CTEVT's 42nd Board Meeting rejected the petitioner's claims,

b) **2054/02/08:** The petitioner received final bill payment with a notation that no further claims would be made,

c) **2054/12/10:** The petitioner collected his security deposit,

d) **2060–2061 BS:** The petitioner proposed an arbitrator, but CTEVT failed to appoint one,

e) **Appellate Court Action:** The petitioner filed a petition under Section 7 of the Arbitration Act, 2055 at the Patan Appellate Court, which was dismissed on the grounds of being time-barred (limitation),

IV. Issues that needs to be decided by Court

The primary issues before the court were:

a) Whether the Appellate Court must determine if a claim is time-barred *before examining the merits of the underlying dispute*

b) Determining the exact date when the "cause for resolving the dispute through arbitration" arose.

c) Whether a party can still use Section 7(1) to request court assistance in appointing an arbitrator if they have already missed the 3-month limitation period under Section 6(1) of the Arbitration Act.

V. Decision of the Court

The Supreme Court of Nepal dismissed the case and agreed with the lower court. It said the dispute ended on 2054/12/10, when the petitioner took back his security deposit. From that date, he had 3 months to start arbitration.

He missed that deadline, so he lost the right to seek court help later. The court rejected his claim that the time should start from 2060, since he had already accepted the settlement earlier.

VI. Principles Established

a) ***Mandatory time limit:*** *The 3-month period in Section 6(1) is strict, failing to act within this time, your claim becomes invalid.*

b) ***Limitation comes first:*** *Courts must check the time limit issue before looking at the actual dispute, because it is a crucial first step.*

c) ***Link between Section 6 and 7:*** *Only when Section is followed on time, then only court- assisted arbitrator appointment can be done.*

16. *Suman Prasad Sharma (Executive Director, Melamchi Drinking Water Development Committee) v. Lasunoula Khimti Construction Pvt. Ltd et al., (Decision No: 7699)*

I. Case Details

Decision Number: 7699.

Part: 48, **Year:** 2063 (B.S.), **Month:** Bhadra, **Issue No.:** 5

Case Number: Writ No. 3048 of 2062.

Decision Date: 2063/05/14

Court: Supreme Court of Nepal

Bench: Division Bench of Hon'ble Justice Shri Minbahadur Rayamajhi and Hon'ble Justice Shri Pawankumar Ojha.

Subject: Including Certiorari

Weblink: https://nkp.gov.np/full_detail/2640

II. Parties

Petitioner: Melamchi Drinking Water Development Committee, having its office located at New Baneshwor, Ward No. 10, Kathmandu Metropolitan City, Kathmandu District; represented by its authorized Executive Director, Mr. Suman Prasad Sharma

Respondents: Lasunoula Khimti Construction Pvt. Ltd., Ward No. 15/105, Thamel, Kathmandu, and others

III. Facts of the Case

The Melamchi Drinking Water Development Committee (the petitioner) entered into a contract with Lasunoula Khimti Construction (the respondent) for the construction of the Melamchi-Timbu road. A dispute arose regarding compensation for work the respondent claimed to have performed outside the scope of the contract. An Arbitral Tribunal ruled on 2061/11/18, ordering the petitioner to pay Rs. 23, 45, 409.91 in compensation.

The petitioner sought to challenge this award in the Appellate Court, Patan. Under Section 30 of the Arbitration Act 2055, the deadline to file such a petition was 35 days (expiring on 2061/12/22), but the petitioner filed it on 2061/12/25—three days late. The petitioner requested a condonation of delay (extension of time) by citing Section 59 of the Muluki Ain (Civil Code) rather than Rule 14(3) of the Arbitration (Court Procedure) Rules 2059. The Appellate Court initially proceeded with the case but ultimately dismissed it, ruling that the extension was improperly sought under the general Civil Code rather than the specific arbitration rules.

IV. Issues that needs to be decided by Court

a) Whether Section 59 of the Muluki Ain or Rule 14(3) of the Arbitration (Court Procedure) Rules 2059 applies to the extension of limitation periods in arbitration-related court proceedings.

b) Whether a court can deny justice solely because a party cited the wrong legal provision, even if their application substantively fell within the timeframe allowed by the correct provision.

c) The duty of a court when a petitioner presents a petition under an inapplicable law.

V. Decision of the Court

The Supreme Court quashed the decision of the Appellate Court, Patan, through a writ of certiorari. It ruled that while the petitioner cited the wrong law (Section 59), they had actually appeared before the court within the 7-day window allowed by the correct law (Rule 14(3)). The Court issued a writ of mandamus directing the Appellate Court to decide the challenge against the arbitral award on its merits, rather than dismissing it on a technicality.

VI. Principles Established

- ***Special Law Prevails:*** *According to introductory provision No. 4 of the Muluki Ain, when a separate law exists for a specific subject, that special law governs; the general Civil Code applies only when the special law is silent.*
- ***Substance over Form:*** *Justice cannot be denied merely due to a wrong statutory citation if the party acted within the time limits prescribed by the correct applicable law.*
- ***Judicial Duty to Inform:*** *A court is not a mechanical recipient of petitions; if a party cites an inapplicable provision, the court must inform them of the correct legal position at the outset rather than proceeding and later dismissing the case on that ground.*

17. *Director General, Department of Water-Induced Disaster Prevention v. Appellate Court, Lalitpur, and Tilottama Construction Services Pvt. Ltd., (Decision No: 7546)*

I. Case Details

Decision Number: 7546.
Part: 47, **Year:** 2062 (B.S.), **Month:** Bhadra, **Issue No.:** 5
Case Number: Writ No. 3016 of the Year 2058.
Court: Supreme Court of Nepal
Bench: Division Bench (Hon'ble Justice Anupraj Sharma and Hon'ble Justice Rajendrakumar Bhandari).
Date of Judgment: 2062/04/30 BS
Subject: Certiorari and Prohibition

Weblink: https://nkp.gov.np/full_detail/2434

II. Parties

Petitioner: Amodananda Mishra, Director General, on behalf of the Department of Water-Induced Disaster Prevention

Respondent: Patan Appellate Court, Lalitpur, and others

III. Facts of the Case

On February 22, 1999, the petitioner (a government department) and the respondent (Tilottama Construction) entered into a contract for construction work valued at NPR 2,834,456. The contract established a two-tier dispute resolution mechanism: first, a decision by an Adjudicator (within 28 days), and if a party was dissatisfied, the matter would proceed to arbitration. However, the contract contained a structural defect: the Appointing Authority for the Adjudicator was left blank in the Contract Data.

Following completion of the work in June 1999, the respondent claimed NPR 2,073,398.25 for materials. The petitioner informed the respondent that no payment was due and ignored requests to appoint an Adjudicator. Because the first tier was inoperable due to the blank Appointing Authority field and the petitioner's silence, the respondent filed a petition in the Appellate Court seeking the appointment of an arbitrator under the Arbitration Act, 2055. The Appellate Court proceeded with the appointment process, prompting the government to file this writ petition at the Supreme Court to halt the proceedings.

IV. Issues that needs to be decided by Court

The primary legal questions before the Court were:

a) **Jurisdiction:** Whether the Appellate Court had the jurisdiction to appoint an arbitrator under Section 7 of the Arbitration Act, 2055, when the contractual "condition precedent" (the Adjudicator process) had not been exhausted.

b) **Fundamental Rights:** Whether the government department could invoke fundamental rights to equality and freedom (Articles 11 and 12 of the 2047 Constitution) in a contractual dispute.

c) **Remedy for Contractual Deadlock:** Whether the rights and remedies created by an agreement become void if one party's inaction or a defect in the contract prevents a preliminary dispute resolution step.

V. Decision of the Court

The Supreme Court dismissed the writ petition, allowing the arbitration process at the Appellate Court to continue. The Court held that:

a) **Government Inaction:** The petitioner could not use the absence of an Adjudicator as a shield to block arbitration when the petitioner's own indifference caused the failure to appoint one.

b) **Statutory Authority:** Section 7 of the Arbitration Act, 2055, provides a clear legal basis for the court to appoint an arbitrator to ensure that rights and remedies do not remain void.

c) **Constitutional Standing:** The government department, representing the state, cannot claim protection under Articles 11 and 12 of the Constitution, as these are individual/citizen-oriented fundamental rights.

VI. Principles Established

a) ***Prevention Principle:*** *When the appointment of a preliminary dispute-resolver (like an Adjudicator) fails due to the fault or inaction of a party, the rights and remedies established by the contract cannot remain void or in a state of "nothingness".*

b) ***Statutory Safety Net:*** *The Arbitration Act is not silent regarding the enforcement of rights when a preliminary contractual mechanism fails; courts can intervene to appoint an arbitrator to facilitate justice.*

c) ***Judicial Authority Under Section** 7: Section 7 of the Arbitration Act, 2055 clearly empowers courts to appoint an arbitrator; a party cannot argue that the Appellate Court's exercise of this power — proceeding without a completed Adjudicator step caused by the party's own inaction — amounts to a violation of its rights.*

18. *Flora Nepal Pvt. Ltd. and Director Chandrakumar Golchha v. Patan Appellate Court et al., (Decision No: 7516)*

I. Case Details

Decision Number: 7516.

Part: 47, **Year:** 2062 (B.S.), **Month:** Ashad, **Issue No.:** 3

Court: Supreme Court of Nepal

Bench: Division Bench (Hon'ble Justice Anuparaj Sharma and Hon'ble Justice Badrikumar Basnet)

Date of Decision: 2061/03/29 BS

Subject: Certiorari with Mandamus

Weblink: https://nkp.gov.np/full_detail/2352

II. Parties

Petitioner: Chandra Kumar Golchha, Director of Flora Nepal Pvt. Ltd., located at Ward No. 1, Kathmandu Metropolitan City, Kathmandu District, acting on behalf of the company as well as in his own right

Respondents: Patan Appellate Court, among others

III. Facts of the Case

On December 9, 1998, the founders of Flora Nepal Pvt. Ltd. entered into an agreement with Kishore Pradhan (representing the "Chameli" flower firm) to operate a commercial flower business. Clause 9 of this agreement explicitly provided that any disputes between the parties would be resolved through arbitration.

A dispute arose when the petitioner alleged that Kishore Pradhan had diverted a significant portion of the advanced funds—Rs.9,36,249 out of a total Rs.10,72,649—to his personal ventures and family-run firm instead of the agreed business. Although Pradhan reportedly acknowledged the debt in writing and promised repayment, he ultimately failed to settle the accounts.

The petitioner initiated the arbitration process under Section 6 of the Arbitration Act, 2055, proposing an arbitrator. When Pradhan failed to respond or cooperate, the petitioner applied to the Patan Appellate Court under Section 7 of the Act, proposing three names for an arbitrator. However, the Patan Appellate Court refused to appoint an arbitrator, ruling that the agreement did not explicitly state a contractual obligation for Pradhan to provide accounts, and therefore, there was "no basis" for the court to appoint an arbitrator for a dispute it deemed separate from the agreement.

IV. Issues that needs to be decided by Court

The primary legal issue was whether the Appellate Court, while exercising its power to appoint an arbitrator under Section 7 of the Arbitration Act, 2055, had the jurisdiction to examine the merits of the dispute or the substance of the underlying contract. Essentially, the Court had to determine if the Appellate Court's role was ministerial (limited to appointment) or if it could sit in judgment of whether the claims were valid before appointing an arbitrator.

V. Decision of the Court

The Supreme Court quashed the Patan Appellate Court's decision through a writ of certiorari and issued a mandamus directing the Appellate Court to proceed with the appointment of an arbitrator.

The Court held that:

a) Under Section 7 of the Arbitration Act, the Appellate Court is obligated to appoint an arbitrator once a party files an application following the failure of the initial appointment process.

b) The Patan Appellate Court exceeded its jurisdiction by entering into the merits of the agreement (deciding whether an obligation to provide accounts existed) instead of confining itself to the appointment of an arbitrator.

c) The determination of whether a specific obligation exists under the contract is the subject of the arbitration itself, not a threshold question for the court at the appointment stage.

VI. Principles Established

a) ***Limited Judicial Role at Appointment Stage:*** *The Appellate Court's function under Section 7 is narrow and ministerial. It must appoint an arbitrator if a valid arbitration agreement exists and the appointment process has stalled; it cannot conduct a merits review.*

b) ***Protection of Party Autonomy:*** *Courts must respect the parties' choice of forum. If parties contractually bargain for arbitration, the court cannot deny them that forum by pre-judging the dispute.*

19. *Yadav Prasad Pokhrel (on behalf of The Bridgeline Corporation) v. Patan Appellate Court et.al, (Decision No: 7508)*

I. Case Details

Decision Number: 7508

Part: 47, **Year:** 2062 (B.S.), **Month:** Ashad, **Issue No.:** 3

Court: Supreme Court of Nepal

Bench: Full Bench (Justices Ram Prasad Shrestha, Sharada Prasad Pandit, and Sharada Shrestha).

Decision Date: 2062/03/16 BS

Subject: Issuance of Certiorari, Mandamus, and any other appropriate orders

Weblink: https://nkp.gov.np/full_detail/2334

II. Parties:

Petitioner: Yadav Prasad Pokharel, aged 55, resident of Battisputali, Ward No. 9, Kathmandu Metropolitan City, Kathmandu District; Managing Director of B.T. Nirman Sewa Pvt. Ltd., acting under the authority of The Bridgeline Corporation (Birtone Savely M.D. 20866)

Respondents: Patan Appellate Court, and others.

III. Facts of the Case

In 1995, the Agricultural Inputs Corporation (AIC) invited bids for the supply of 25,000 metric tons of fertilizer. The Bridgeline Corporation (a US-based company) won the tender and signed a contract in 2 Jan 1996 after arranging a Performance Bond via Nepal Bank Limited.

A dispute arose when AIC failed to open a Transferable Letter of Credit (L/C) as per the agreed proposal, and subsequently unilaterally forfeited Bridgeline's Performance Bond for alleged non-performance. An Arbitration Tribunal unanimously ruled in favor of Bridgeline, finding the forfeiture erroneous.

AIC challenged this award in the Patan Appellate Court under Section 21 of the Arbitration Act, 2038. The Appellate Court treated the petition as a full-blown appeal, set aside the arbitral award, and upheld AIC's forfeiture of the bond. Crucially, the Appellate Court decided the merits itself and granted the parties 35 days to appeal to the Supreme Court. Bridgeline then filed a writ petition in the Supreme Court seeking to quash the Appellate Court's decision. **A** Joint Bench dismissed it on 2058/4/16 BS, holding that an alternative remedy — "revision" under Section 12 of the Administration of Justice Act, 2048 was available and hadn't been used. Bridgeline then sought review of that dismissal under Section 11(1) (b) of the Administration of Justice Act, citing conflicting precedent. The Full Bench granted leave to review on 2059/8/13 BS**.** This very decision (No. 7508) is the Full Bench's ruling on that granted review not a fresh review of the Appellate Court's decision.

IV. Issues that needs to be decided by Court

The Full Bench identified four primary questions:

a) **Legality of Review:** Was the order granting leave to review the earlier 2058 BS dismissal order lawful?

b) **Correctness of Dismissal:** Was the Joint Bench's 2058 BS order dismissing the writ on the grounds of an "alternative remedy" (revision) correct?

c) **Lawfulness of Appellate Court Decision:** Was the Patan Appellate Court's 2056 BS decision lawful regarding its jurisdiction under Section 21 of the Arbitration Act?

d) **Remedy:** Should a writ of **mandamus** be issued to the Appellate Court?

V. Decision of the Court

The Full Bench quashed the Patan Appellate Court's decision and the earlier Joint Bench dismissal.

a) **Quashed Certiorari:** The Court ruled the Appellate Court exceeded its jurisdiction by treating a "correctional" petition as a full appeal and by deciding the merits itself instead of remanding the matter.

b) **Issued Mandamus:** The Supreme Court directed the Patan Appellate Court to re-decide AIC's original petition in accordance with the law (confining itself to the specific grounds in Section 21).

c) **Rejection of Alternative Remedy:** It ruled that "revision" under Section 12 of the Administration of Justice Act was not an applicable remedy for decisions made specifically under the Arbitration Act.

VI. Principles Established

a) ***Statutory Nature of Appeals:*** *The right of appeal is a statutory right, not a natural or fundamental right. Courts cannot assume or create appellate jurisdiction unless expressly granted by a specific law.*

b) ***Correctional vs. Appellate Jurisdiction:*** *The Appellate Court's jurisdiction under Section 21 of the Arbitration Act is "correctional" (सुधारात्मक), not appellate. The court may police procedural fairness but cannot re-evaluate the facts or substitute its judgment for the arbitrator's.*

c) ***Mandatory Remand:*** *Under Section 21(3), if an award is set aside, the court must remand the matter back to arbitration (either the same or a new arbitrator). It has no legal authority to issue a final decision on the merits itself.*

d) ***Extraordinary Jurisdiction as a Safety Valve:*** *When a law provides no ordinary remedy (appeal or revision), the extraordinary jurisdiction of the Supreme Court under Article 88(2) of the Constitution is active to correct jurisdictional excesses.*

20. ***Nepal Government, Ministry of Finance v. Damodar Ropeways and Construction Company et al., (Decision No: 8368)***

I. Case Details

Decision Number: 8368

Writ No. 2898 of 2059 BS

Part: 52, **Year:** 2067 (B.S.), **Month:** Bhadra, **Issue No.:** 5

Court: Supreme Court of Nepal,

Bench: Division Bench (Chief Justice Ram Prasad Shrestha and Justice Prem Sharma)

Date of Decision: 2067/3/23 B.S.

Subject: Including Certiorari

Weblink: https://nkp.gov.np/full_detail/3614

II. Parties

Petitioner: Government of Nepal, Ministry of Finance

Respondents: Damodar Ropeways and Construction Company, and others

III. Facts of the Case

a) **The Primary Contract (1983):** Nepal Orind Magnesite Pvt. Ltd. ("the Employer") contracted with Damodar Ropeways and Construction Company ("the Contractor") on January 14, 1983, to build a 10.5 km, 150 TPH capacity monocable ropeway on a turnkey basis.

b) **The Guarantee Agreement (1983):** On September 16, 1983, the Government of Nepal entered into a Guarantee Agreement with the Contractor, guaranteeing payment for part of the contract value (USD 2,583,646.60), Article 5 of this agreement stated the guarantee applied only to work completed within the time limit and conditions of the construction contract.

c) **The Dispute:** The Contractor claimed the Employer defaulted on payments after six installments. The Employer and the Government argued the work was never completed according to turnkey standards, specifically noting that required Performance Guarantee Tests (120 hours of consecutive operation) were never conducted.

d) **Arbitration and Appellate Review:** A majority arbitral tribunal ruled in favor of the Contractor in 1997, ordering the Government to pay, concluding the work was "substantially completed" based on "assumptions" and certain meeting minutes from 1989. The Appellate Court, Patan, upheld this award in 2002.

e) **Supreme Court Filing:** The Government filed a writ petition to the Supreme Court seeking to quash these decisions.

IV. Issues that needs to be decided by Court

The Court addressed several key legal and factual questions:

a) **Maintainability:** Could the Government of Nepal file a writ of certiorari against an arbitral award and an Appellate Court decision?

b) **Nature of the Project:** Did the contract constitute a "Turnkey Project," and could its nature be changed by the unilateral conduct of a party?

c) **Completion of Work:** Was the ropeway actually completed, and did the 1989 Minutes serve as a valid completion certificate?

d) **Guarantee Conditionality:** Was the Government's guarantee absolute (irrevocable) or conditional upon the contractor's fulfillment of the primary construction contract (Article 5)?

e) **Arbitral Standards:** Was the arbitral tribunal permitted to reach conclusions based on "assumptions"?

V. Decision of the Court

The Supreme Court quashed both the majority arbitral award and the Appellate Court's decision. The Court issued a writ of Mandamus directing the Appellate Court to initiate the appointment of a new arbitral tribunal to decide the claims, citing a lack of confidence in the original tribunal.

VI. Principles Established

The decision articulated several fundamental principles of contract and arbitration law:

a) ***Contract Amendment:*** *A contract cannot be forcefully interpreted as amended based on a party's conduct or an event unless the parties actually execute a formal amendment.*

b) ***Turnkey Completion:*** *In a turnkey project, "substantial completion" is not achieved unless the specific purpose/work for which the contract was made is achieved (e.g., operational status verified by tests).*

c) ***Validity of Completion Certificates:*** *A completion certificate for significant works must be issued by the person designated in the contract (or an authorized representative). Unauthorized signatures on meeting minutes do not constitute a formal completion.*

d) ***Arbitration Standards:*** *Arbitral awards must be based on established facts and corroborating evidence, not "assumptions, suspicions, or imaginary matters".*

e) ***Holistic Interpretation:*** *Contract terms are interrelated. A single clause (like a payment guarantee) cannot be read in isolation from conditional clauses (like completion requirements).*

f) ***Secondary Nature of Guarantees:*** *A guarantee is generally secondary; the guarantor's obligation is triggered only when the principal debtor defaults after the contractor fulfills its own obligations.*

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