

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

CIVIL APPEAL NO(s). 10216 OF 2003

M/S. BHARAT DRILL.&FOUND.TREAT.PVT.LTD. Appellant (s)

VERSUS

STATE OF JHARKHAND & ORS. Respondent(s)

(With appln(s) for exemption from filing O.T. And permission to place addl. documents on record)

WITH Civil Appeal NO. 10217 of 2003

(WITH APPLN.(S)for exemption from filing O.T. And permission to place addl. Documents on record)

Civil Appeal NO. 10214 of 2003

(With Appln.(s) for permission to place addl. Documents on record)

Date: 20/08/2009 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU

HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Appellant(s) Mr. P.S. Mishra, Sr. Adv. (NP)
Mr. Rakesh Dwivedi, Sr. Adv.
Mr. S.B. Upadhyay, Sr. Adv.
Mr. Santosh Mishra, Adv.
Mr. Manoj Kumar, Adv.
Mr. S. Chandra Shekhar, Adv.

For Respondent(s) Mr. Ashish Mohan, Adv.
Mr. B.B. Singh, Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard learned counsel for the parties.

For the reasons stated in the signed order, the common impugned judgment and order of the High Court is set aside and the Awards passed by the learned Arbitrator are restored.

The appeals are allowed. No order as to the costs.

(Ajay Kr. Jain)
Court Master

(Indu Satija)
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10216 OF 2003

Bharat Drilling & Foundation Appellant
Treatment Pvt. Ltd.

Versus

State of Jharkhand & Ors. Respondents

WITH

O R D E R

Heard learned counsel for the parties.

These appeals have been filed against the common impugned judgment and order dated 14.7.2003 of the Jharkhand High Court whereby the Arbitration Appeals filed by the State of Jharkhand have been partly allowed. Since, these appeals arise of the common impugned judgment and order, the same are being disposed of by this common order.

The facts in detail have been given in the impugned judgment and order of the High Court and hence we need not repeat the same here. The case relates to the Arbitration & Conciliation Act, 1996.

It appears that there was a dispute between the parties to the contract and the matter was referred to an arbitrator, who gave three different Awards since three contracts were involved in the dispute. The said Awards are dated 30.9.2000. The said Awards were made Rule of Court by orders dated 8.1.2002 of the Sub-Judge, Hazaribagh. Against the said orders dated 8.1.2002 of the Sub-Judge, Hazaribagh, three appeals were filed before the High Court under Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter for short referred to as 'the Act'), which have been partly allowed by the common impugned judgment and order. Aggrieved against the said judgment, these appeals have been filed by special leave.

Shri Rakesh Dwivedi, learned senior counsel appearing for the appellant in all these appeals submitted that the High Court has based its judgment on the reasoning that the claims which were allowed by the Arbitrator were barred by the contract clause 1.21. The relevant sub-clauses thereof are as follows:-

"1.21.1 Payments for any additional items of work shall be given by clause 11(Eleven) of P.W.D.

Form F-2 of the contract.

1.21.2 No claim for idle labour, idle machinery etc. on any account will be entertained.

1.21.3 No claim shall be entertained for business loss or any such loss.

1.21.4 No claim shall be entertained for delays in communicating decision drawing or specifications by the Department. The Department may however

consider the grant of extension of time in completion of work. If there is any such genuine reason of it.

In case it is not possible for the Department to make

the entire site available on the award of the work

the contractor bill have to arrange his working programme accordingly. No claim what-so-ever for not

giving the site on gradually will be entertained

however, suitable extension of time may be given at

the discretion of the Engineer-in-Charge considering

the merits of the case."

The arbitration clause under the contract between the parties is clause 1.22.2, which reads as under :-

"1.22.2 In case any dispute or difference shall arise between the parties or either of them upon any question relating to the meaning of the specification, design, drawings and instruction or as to the quality of workmanship or materials used on the work or to any question, claim, rights or liabilities of the parties or any other thing what-so-ever to any way arising out of or relating to the contract, designs, specifications, estimates, instruction or orders otherwise concerning the work or the execution, failure to execute the same, whether arising during the progress of work or after the completion or abandonment thereof or as to break

of this contract, then either party shall
forthwith give to the other notice of such
dispute or differences and such dispute or
differences shall referred to the Superintending
Engineer of the Circle under clause 23 of F-2
agreement and his decision thereon shall be
final, conclusive and binding on all parties.
Such references shall be to be a reference under
Indian Arbitration Act, 1940."

Shri Dwivedi, submitted that the bar in clause 1.21 is only a
bar on the Department and not a bar on the arbitrator in respect
of the matters mentioned therein. He further submitted that
admittedly the Department was not possessed of the land in
question nor had funds for the contract while the appellant was
asked to work and it placed the machinery, labour etc. on the
spot which was lying idle and because of that reason he suffered
heavy losses. On the facts of the case, he submitted that the
bar under Clause 1.21 will not apply.

In support of his contentions, learned counsel for the
appellant has invited our attention to a decision of this Court
in the case of Board of Trustees for the Port of Calcutta Vs.
Engineers-De-Space-Age (1996) 1 SCC 516 in which it has been
held that a similar clause prohibited the Department from
entertaining a claim for interest but it did not prohibit the
arbitrator from awarding the interest.

On the other hand, Mr. Ashish Mohan, learned counsel
appearing for the respondent-State of Jharkhand invited our
attention to the decision of this Court in the case of Sayeed
Ahmed & Co. Vs. State of U.P & Ors. JT 2009 (9) SC 429 in
support of his submissions.

We have carefully perused the decision in the case of
Syed Ahmed & Co. (supra) and we are of the opinion that the
said decision is distinguishable because it relates to interest
under the Arbitration & Conciliation Act, 1996 and was not in
respect of a claim for the principal amount.

So far as the claim of interest under the Arbitration &

Conciliation Act, 1996 is concerned, Section 31 (7) states that the parties can agree otherwise to the awarding of interest by the arbitral tribunal. Insofar as the case at hand is concerned, it relates to the claim of a principal amount and not to the claim of interest. Hence, the aforesaid decision in the case of Syed Ahmed & Co. (supra) is distinguishable.

It has been held by this Court in the case of Ispat Engineering & Foundry Works, B.S. City, Bokado Vs. Steel Authority of India Ltd., B.S. City, Bokado (2001) 6 SCC, 347 (para 4) that the scope of interference by the Court with a reasoned award is very limited.

For the reasons stated above, the common impugned judgment and order of the High Court is set aside and Awards passed by the learned Arbitrator are restored.

The appeals are allowed. No order as to the costs.

.....J.
(MARKANDEY KATJU)

(ASOK KUMAR GANGULY)

.....J.

NEW DELHI;
AUGUST 20, 2009