

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 679 OF 2017

(Arising from SLP(C) No.37709/2013)

Ultratech Cement Limited

..Appellant

versus

Rajasthan Rajya Vidyut Utpadan Nigam Limited

..Respondent

WITH

CIVIL APPEAL NO. 678 OF 2017

(Arising from SLP(C) No.37702/2013)

CIVIL APPEAL NO. 680 OF 2017

(Arising from SLP(C) No.1130/2014)

CIVIL APPEAL NO. 681 OF 2017

(Arising from SLP(C) No.2420/2014)

CIVIL APPEAL NO. 682 OF 2017

(Arising from SLP(C) No.3628/2014)

CIVIL APPEAL NO. 683 OF 2017

(Arising from SLP(C) No.6512/2014)

CIVIL APPEAL NO. 684 OF 2017

(Arising from SLP(C) No.7012/2014)

CIVIL APPEAL NO. 685 OF 2017

(Arising from SLP(C) No.2128/2017)

@ cc No. 8835/2014

O R D E R

Civil Appeal @ SLP(C) No. 37709/2013

Leave granted.

2. The appellant - Ultratech Cement Limited, and the respondent - Rajasthan Rajya Vidyut Utpadan Nigam Limited, entered into an agreement in 2004. The respondent allowed the appellant to take away fly ash, without any payment, for a period of 5 years. It is not a matter of dispute, that the agreement commenced effectively in the year 2007, and as such, free supply of fly ash would continue up to the year 2012. The agreement, which was for a

period of 10 years, allowed the respondent to raise a charge for taking away fly ash, after the initial period of 5 years.

3. In order to determine the commercial value of fly ash, the respondent issued notice, inviting tenders for the sale of fly ash, in the year 2011. Since the dispute between the parties was arbitrable, an application was filed by the appellant, under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act'), with the following prayers:

"Therefore, filing application along with affidavit, it is humbly prayed that allowing the application of the applicant company the respondent may be restrained by way of interim injunction that till adjudication of the dispute arises between the parties by appointing Arbitrator by the applicant as per Clause No.9 of the Agreement dated 15.10.2004 signed by and between the applicant and the respondent, passing of the award by the Arbitrator and also till enforcement of the said Award, the respondent may be restrained not to cancel the agreement dated 15.10.2004 and not to invite NIT in pursuance to the NIT No. SE (CAM) TN-3692 published on 24.8.2011, not to organize proposed pre-bid meeting on 26.9.2011, not to open the NIT on 10.10.2011, not to do any other act in this regard, not to create any hurdle or obstruction in utilization and disposal of fly ash generated in Unit No. 4 & 5 of Kota Thermal Power Station by the applicant company and also not to do any such act contrary to the terms and conditions mentioned in the Agreement dated 15.10.2014 and also not to do such act through his agent, servant, representative etc."

(emphasis is ours)

4. The District Judge, before whom that application came to be filed, passed an order dated 18.02.2012, accepting the prayer made by the appellant. Dissatisfied with the order passed by the District Judge, the respondent raised a challenge before the High Court of Rajasthan, by preferring S.B.Civil Miscellaneous Appeal

No. 1859/2012. The High Court, by its order dated 18.11.2013, reversed the order passed by the District Judge on 18.02.2012.

5. Order dated 18.11.2013 was assailed by the appellant before this Court. This Court passed two orders, which are relevant for the present controversy, dated 13.12.2013 and 14.03.2014. Order dated 13.12.2013 is reproduced below:

"Taken on Board.

Application seeking exemption from filing official translation is allowed.

Issue notice returnable by the 2nd week of January, 2014.

Dasti service, in addition, is permitted.

In the meanwhile, the respondent-Nigam will not finalise the tenders pursuant to the Notice Inviting Tender dated 24th August, 2011."

Likewise, order dated 14.03.2013 is extracted hereunder:

"Heard learned counsel for the parties.

By interim order passed by this Court on 31st January, 2014, we had directed that there shall be no sale of fly ash without leave of this Court. In modification of the said order, we direct that the respondent-Nigam will sell fly ash to the petitioners at the rate of Rs.250/- per metric tonne. The question as to whether the petitioners will be entitled to refund of the said Rs. 250/- per MT or any lesser amount will be considered at a later stage.

The contempt proceedings are dropped. The supplies of the fly ash in terms of the interim order passed today will be commenced immediately."

Under the above order, the appellant was allowed to purchase fly ash from the respondent - Nigam at the rate of Rs.250/- per metric tonne.

6. We are informed, that pending proceedings before this Court, the arbitration award was delivered on 18.02.2015. We are also informed, that a supplementary award dated 17.5.2015 was also

passed. Both the above awards, we are informed, have to be read collectively. We are further informed, that the arbitral awards allowed the appellant to carry away fly ash for another period of 5 years from 2012 to 2017, at the rate of Rs.245/- per metric tonne. This is lower than the sale price determined under Section 9 (by way of an interim arrangement) of the Act. The arbitral awards also provided for an extension of the period of commercial activities between the parties for another 5 years, i.e., up to the year 2022.

7. The question, that arises for adjudication before us is, as to whether the proceedings initiated under Section 9 of the Act, (whilst the arbitral proceedings were pending) survive, after the arbitral proceedings come to a closure. Insofar as the instant aspect of the matter is concerned, the answer thereto has to emanate from Section 9 of the Act. The above provision is extracted hereunder:

"9. Interim measures, etc. by Court.— (1)A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any

question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the court to be just and convenient,

and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious."

A perusal of the above provision reveals, that interim measures can be allowed in favour of a party (who moves an application under Section 9 of the Act), either before the commencement of the arbitration proceedings, or during the pendency of the arbitral proceedings, and even after the making of the arbitral award "... but before it is enforced in accordance with section 36...". It is therefore apparent, that an interim arrangement, can be made under Section 9 of the Act, not only before and during the pendency of the arbitral proceedings, but also after the arbitral award has been pronounced.

8. As to whether the orders passed by the different Courts, which culminated in the two orders, extracted hereinabove, dated 13.12.2013 and 14.03.2014, would continue even after the passing of the arbitral award, in our considered view, would depend on the nature of the prayer made by the appellant, when the application under Section 9 was filed, before the concerned Court. We have extracted hereinabove the prayer made by the appellant in its section 9 application. A perusal thereof reveals, that the interim injunction was sought "...till adjudication of the dispute arises between the parties by appointing the arbitrator by the applicant as per Clause 9 of the agreement dated 15.10.2004 signed by and between the applicant and the respondent, passing of the award by the arbitrator, and also till enforcement of the said award...". It is therefore apparent, that the interim prayer made by the appellant under Section 9 of the Act in the very first instance was till the enforcement of the award. It is undoubtedly apparent from a perusal of Section 9 of the Act, extracted above, that the enforcement of the award can be effected only under Section 36 of the Act. The aforesaid stage has not yet emerged. The stage presently is of the interregnum, between the passing of the award, and the enforcement of the award under Section 36 of the Act.

9. We are of the view, that the prayer made by the appellant clearly included the period, after the pronouncement of the award by the arbitral Tribunal. In the above view of the matter, it is not possible for us to hold, that the proceedings pending before this Court, have been rendered infructuous. In any case, it is now imperative for us to determine whether or not the impugned interim

order, should continue till the proceedings under Section 34 of the Act (presently pending before the District Judge) are concluded. We are satisfied in directing, that the appellant shall, with effect from the date of the commencement of the arbitral award, pay for the fly ash taken by it from the respondent at the rate of Rs.245/- per metric tonne (i.e., in consonance with the arbitral award), till the determination of the proceedings under Section 34 of the Act. We however clarify, that in case, for any reason, the arbitral award is set aside or modified, as prayed for by the respondent - Nigam, the appellant would be liable to pay the higher amount, as the respondent would have been able to procure, as disclosed by the auction already held in 2011 (for the period with effect from 2012). Likewise, in case the appellant before this Court succeeds, and is held to be entitled to pay a lesser amount, the payment with effect from 2012 would be regulated by the said determination.

10. The instant appeal stands disposed of in the aforesaid terms.

Civil Appeal @ SLP(C) No.37702/2013, Civil Appeal @ SLP(C) No.1130/2014, Civil Appeal @ SLP(C) No.2420/2014, Civil Appeal @ SLP(C) No.3628/2014, Civil Appeal @ SLP(C) No.6512/2014, Civil Appeal @ SLP(C) No.7012/2014 and Civil Appeal @ SLP(C) No.2128/2017 @ CC No. 8835/2014

Permission to file the special leave petition is granted in SLP(C) No.2128/2017 @ CC No. 8835/2014.

2. Leave granted.

3. Learned counsel for the rival parties are agreed, that the controversy involved in the instant appeals is identical to the one, adjudicated upon by this Court in Civil Appeal @ SLP(C) No.

37709/2013 (Ultratech Cement Limited vs. Rajasthan Rajya Vidyut Utpadan Nigam Limited), decided on 19.01.2017. They pray, that these appeals may also be disposed of in the similar terms.

4. Ordered accordingly. Disposed of in the same terms.

.....CJI
[JAGDISH SINGH KHEHAR]

NEW DELHI;
January 19, 2017.

.....J.
{Dr. D.Y. CHANDRACHUD}

ITEM NO.1

COURT NO.1

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 37702/2013

(Arising out of impugned final judgment and order dated 18/11/2013 in SBCMA No. 1862/2012 passed by the High Court Of Rajasthan At Jaipur)

MANGALAM CEMENT LTD

Petitioner(s)

VERSUS

RAJASTHAN RAJYA VIDYUT UTP. NIGAM LTD

Respondent(s)

(with appln(s) for permission ot place additional documents on record, intervention, exemption from filing OT, directions, bringing on record the additional facts, permission to bring on record subsequent event and additional documents)
(for final disposal)

WITH

SLP(C) No. 37709/2013

(With (With (With (With appln.(s) for directions and appln.(s) for permission to file additional documents and appln.(s) for directions and appln.(s) for permission to place addl. documents on record and Interim Relief and Office Report)

SLP(C) No. 1130/2014 (with Interim Relief and Office Report)

SLP(C) No. 2420/2014

(With (With appln.(s) for permission to file additional documents and appln.(s) for permission to file lengthy list of dates and Interim Relief and Office Report)

SLP(C) No. 3628/2014

(With appln.(s) for permission to file additional documents and Interim Relief and Office Report)

SLP(C) No. 6512/2014 (with Interim Relief and Office Report)

SLP(C) No. 7012/2014 (with Interim Relief and Office Report)

S.L.P.(C)...CC No. 8835/2014

(With appln.(s) for permission to file SLP and Office Report)

Date : 19/01/2017 These petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s) Dr. A.M. Singhvi, Sr. Adv.
In SLP 37709/2013 Mr. Amit Pawan, Adv.
Ms. Suruchi Kasliwal, Adv.
Mr. Amit Bhandari, Adv.
Mr. Akshat Shrivastava, Adv.
Mr. Gaurav Singh, Adv.

For Petitioner(s) Mr. Gourab Kr. Banerji, Sr. Adv.
 In SLP 37702/2013 Mr. Amit Pawan, Adv.
 Ms. Suruchi Kasliwal, Adv.
 Mr. Sahil Tagotra, Adv.
 Mr. Akshat Shrivastava, Adv.
 Mr. Gaurav Singh, Adv.

For Petitioner(s) Mr. Amit Pawan, Adv.
 In SLP 2420/2014
 and 3628/2014

For Petitioner(s) Mr. U.A. Rana, Adv.
 In SLP 1130/2014 Mrs. Mrinal Elkar Mazumdar, Adv.
 and 7012/2014 Mr. Himanshu Mehta, Adv.
 for M/s Gagrat & Co.

For Petitioner(s) Mr. V. Shekhar, Sr. Adv.
 In CC 8835/2014 Mr. Praveen Kumar, Adv.

For Petitioner(s) Mr. Praveen Kumar, Adv.
 In slp 6512/2014 Mr. Shantanu Kumar, Adv.
 Mr. Smarhar Singh, Adv.

For Respondent(s) Mr. K.K.Venugopal, Sr. Adv.
 Mr. Ajay Choudhary, Adv.

Mr. Puneet Taneja, Adv.

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

Permission to file the special leave petition is granted
 in SLP...CC 8815/2014.

Leave granted.

The appeals stand disposed of in terms of the signed
 order.

(Renuka Sadana)
 Assistant Registrar

(Parveen Kumar)
 AR-cum-PS

[signed order is placed on the file]