



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. 1127 OF 2017

**M/S BHARAT UDYOG LTD.
(FORMERLY KNOWN AS M/S JAI HIND
CONTRACTORS PVT. LTD.)**

...PETITIONER(S)

VERSUS

**AMBERNATH MUNICIPAL COUNCIL
THROUGH COMMISSIONER & ANR.**

...RESPONDENT(S)

J U D G M E N T

1. This special leave petition arises out of the final judgment and order¹ passed by the High Court of Judicature at Bombay in exercise of jurisdiction under Section 39 of the Arbitration Act, 1940. By the said order, the High Court allowed the appeal filed by the respondent no. 1, Ambernath Municipal Council (hereinafter 'Municipal Council') and quashed and set aside the award as well as the judgment of the Civil Court², making the award a rule of the Court and dismissing the objections of the Municipal Council. For the reasons to follow, we have held that there is neither an arbitration agreement between the parties

¹ First Appeal No. 94 of 2001 dated August 4, 2016.

² Judgement of the Joint Civil Judge, Senior Division, Kalyan, dated September 22, 2000, in Misc. Application No. 196/1996.

nor an informed consent of the Municipal Council for resolution of the dispute through arbitration. We have therefore upheld the decision of the High Court and dismissed the special leave petition.

2. Facts relevant to the present special leave petition are that the Municipal Council is constituted under the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. In March 1994, while exercising powers conferred under Section 143-A of the 1965 Act, the Municipal Council issued a tender for the collection of octroi for a period of one year, beginning on 1 April 1994 and ending on 31 March 1995. The tender notification provided for a reserve price with the term that any offer lower than Rs. 6,74,00,000/- may not be considered and would be rejected. The other tender conditions were of earnest money of Rs. 1,00,000/- in the form of call deposit and a security deposit in the form of bank guarantee of a nationalized or scheduled bank for Rs. 1,07,92,000/-.

3. The petitioner participated in the tender along with other bidders and was declared successful, having submitted its bid for an amount of Rs. 6,75,00,000/-. The Municipal Council accepted the petitioner's bid and entered into an agreement with the petitioner, dated 30 March 1994, for the said octroi collection contract.

4. The petitioner, after execution of the agreement, commenced the work with effect from 1 April 1994. However, on 2 May 1994 petitioner

addressed a letter to the Chief Officer of the Municipal Council requesting that the amount of Rs. 6,74,00,000/- fixed as a minimum reserve price/ bid amount be reduced by Rs. 40,78,517/- on the ground that the same was contrary to the norms to determine the minimum reserve price. This representation of the petitioner was rejected by the Chief Officer of the Municipal Council in his letter dated 27 May 1994, informing that the minimum reserve price for the said tender was fixed as per the guidelines issued by the Government of Maharashtra.

5. Being aggrieved by this decision, the petitioner approached the High Court in Writ Petition No. 3598 of 1994. However, the petitioner later sought leave to withdraw the Petition, with liberty to adopt appropriate proceedings. By an order dated 26 September 1994, the High Court disposed of the writ petition as withdrawn to enable the petitioner to adopt appropriate proceedings.

6. After withdrawing the writ petition, the petitioner approached the Urban Development Department of the Government of Maharashtra by its letter dated 5 October 1994, purportedly on the basis of the leave granted by the High Court to avail alternative remedy, requesting the State Government to appoint an arbitrator to resolve the dispute as raised by petitioner under its letter dated 2 May 1994 to reduce the minimum reserve price from Rs. 6,74,00,000/- to Rs. 6,33,71,483/-.

7. The State Government, though unconnected with the said contract, responded favourably and by a Government Resolution dated 14 November 1994 issued under the signature of the Joint Secretary in the Urban Development Department appointed Commissioner, Konkan Division, as an Arbitrator to arbitrate the said dispute. This Government Resolution records that the same was issued by the State Government in pursuance of the powers conferred under Section 143-A(3) of the said Act and that the same was issued as a special case. Another significant aspect is that the Arbitrator so appointed was required to submit an arbitration report to the State Government within one month. It was also provided that the arbitration be conducted in accordance with the provisions of the Arbitration Act, 1940.

8. At the relevant time, the Municipal Council was functioning under an “Administrator” appointed by the State Government. After the appointment of the learned Arbitrator, immediately on 3 December 1994, an intimation came to be issued to the Municipal Council, calling upon to attend a hearing fixed by the Arbitrator on 9 December 1994. It was recorded that a reply be filed by 9 December 1994 and a hearing would be held before the Arbitrator on 14 December 1994 at 2.30 p.m. The Administrator of the Municipal Council submitted a reply vide his letter dated 8 December 1994, indicating the statutory and regulatory processes followed for granting the contract in favour of the petitioner.

The reply also indicated that the procedure contemplated was strictly followed, and, as such, there is no avenue to reduce the minimum reserve price. It was also stated that, having participated in the process by submitting its bid at Rs. 6,75,00,000/-, which was Rs. 1 lakh above the minimum reserve price of Rs. 6,74,00,000/-, it was not possible for the petitioner to dispute the same after the contract is executed. It was also stated that the reserve price was fixed in accordance with the Government of Maharashtra's guidelines.

9. The learned Arbitrator delivered his award on 26 December 1994 by holding that the minimum reserve price of Rs. 6,74,00,000/- as fixed by the Municipal Council was not correct and that the minimum reserve price ought to have been Rs. 6,20,89,843/-. In this view of the matter, the arbitrator declared the minimum reserve price as Rs. 6,20,89,843/-. The petitioner thereon proceeded to file a Miscellaneous Application No. 292 of 1995 before the Court of Civil Judge Senior Division, Thane, under Section 14 read with Section 17 of the 1940 Act, seeking that the award be made a rule of the Court.

10. Apparently, the Municipal Council woke up to the unilateral decision appointing the arbitrator on 14.11.1994 and then the arbitrator proceeded to deliver his award on 26.12.1994 within forty two days, and on 10 April 1995 addressed a letter to the Minister, Urban Development Department, inter alia, complaining that the Government Resolution

dated 14 November 1994 appointing the learned Arbitrator was unilaterally issued. It was pointed out that there was no provision under the contract under which the State Government could appoint an Arbitrator to resolve the dispute between the parties. The Municipal Council also approached the Collector, requesting that the appointment of the Arbitrator be cancelled.

11. The Municipal Council, having received service of the Miscellaneous Application on 31 March 1995 filed by the petitioner, appeared before the learned Civil Judge by filing objections to the Miscellaneous Application. Accordingly, a prayer was made that the application of the petitioner for a decree in terms of the award be dismissed. The relevant portion of the objections raised by the Municipal Council is as follows:

"1. The Respondent No. 1 states that the Respondent No. 2 viz. Revenue Commissioner has passed this Award on 26.12.1994 in the above proceedings. The Revenue Commissioner, Konkan Division Shri G.D. Pingulkar has passed the said Award. This Respondent has already filed its say and objection to the main Petition under Section 30 and 33 of the Arbitration Act, 1940 in the month of April, 1995 itself. This Respondent repeats and reiterates that they rely on the said objections as raised under Section 30 and 33 of Arbitration Act, 1940. The Petitioners are disentitled from getting and/or seeking any relief in this Petition either for the alleged decree in terms of Award or any other reliefs. Infact the so called Award dated 26.12.1994 delivered by the Respondent No. 2 is nonest and is null and void and is unenforceable in law in any manner whatsoever, and on this count itself the said Award is liable to be ignored and discarded.

2. The Respondent No. 1 states that the State of Maharashtra had no jurisdiction of any nature whatsoever under any of the provisions of Arbitration Act and/or in any other clauses of contract under which such an arbitrator could have been

appointed by the State of Maharashtra in relation to the alleged dispute between the Petitioners and the Respondent No. 1 in relation to the Octroi contract for the period from 01.04.1994 to 31.03.1995.”

12. The learned Civil Judge noted the submission of the Municipal Council that arbitration was impermissible, but did not return a finding on the said issues and proceeded to hold that the objection was barred by limitation. The learned Judge vide the judgment and order dated 22 September 2000, allowed the Miscellaneous Application and directed that a decree be drawn up in terms of the arbitral award.

13. The Municipal Council challenged the said order, and vide the order impugned before us, the High Court of Bombay has reversed this decision and set aside the award. The High Court held that the dispute-resolution clause in the contract did not constitute a valid “arbitration agreement” under the law, but rather provided for a departmental dispute-resolution mechanism. The Court found that the State Government lacked jurisdiction to “foist” arbitration on a concluded contract and that the petitioner was estopped from challenging the tender price after voluntarily participating in and winning the bid. The Court characterised the process as a “back door method” to tinker with public tender conditions. In this view of the matter, the High Court proceeded to allow the appeal under Section 39.

14. Aggrieved by the said decision of the High Court, the present petition has been preferred before us. We heard Mr. P. B. Suresh,

learned senior counsel for the petitioner and Mr. Vinay Navare, learned senior counsel for the respondent no. 1, at length.

15. Mr. P.B. Suresh, learned senior counsel appearing for the petitioner would submit that the present case is a case of waiver and acquiescence and as the Municipal Council actively participated in the arbitral proceedings without any demur, cannot raise jurisdictional questions. In support of his submission, he relied on the decision of this Court in *N Chellappan v. Secretary, Kerala State Electricity Board and Anr.*³ and *Inder Sain Mittal v. Housing Board, Haryana and Ors.*⁴. He has brought to our notice the express consent of the Municipal Council to abide by the decision taken and also the outcome of the arbitral proceedings. He has also submitted that the Municipal Council has admitted to the existence of the arbitration clause. Apart from issues relating to estoppel, Mr. Suresh has submitted that the objections to the award were barred by limitation. He would conclude by submitting that the intention of the parties to refer the dispute to arbitration is evident, and therefore, even if the contract does not use the expression “arbitration”, the court should not have interfered with the arbitral award that came into existence.

³ (1975) 1 SCC 289.

⁴ (2002) 3 SCC 175.

16. Mr. Vinay Navare, learned senior counsel appearing for the Municipal Council, on the other hand, supported the reasoning in the judgment and order passed by the High Court and reiterated the submission that there exists no arbitration agreement between the parties and that the Municipal Council has raised jurisdictional questions challenging the award at the appropriate stage.

17. We have given our anxious consideration, particularly in view of the fact that the award has already been delivered and the same was upheld by the Civil Court. It is in this context that the exercise of jurisdiction of the High Court in appeals under Section 39 of the Arbitration Act, 1940 requires close scrutiny.

18. At the outset, we note that the parties to the contract are the petitioner and the Municipal Council. The Municipal Council is a statutory authority, a body corporate with perpetual seal and succession. It takes its own decision for the matters with respect to which it has power, jurisdiction and functions to perform. As it is argued that the intervention of the government to superimpose arbitration between the Municipal Council and agent under the octroi policy can be sourced to Section 143A, we will commence with examining the said provision, extracted below for ready reference:

“143A. Farming of Octroi or appointment of Agent for collection thereof:

(1) Notwithstanding anything contained in this Act, it shall be for a Council to lease by public auction the collection of octroi for any period not exceeding one year at a time or to appoint an agent for the collection thereof.

(2) Where the collection of octroi has been so leased, or where an agent is so appointed, any person employed by the lessee or the agent shall, subject to the conditions of the lease, or as the case may be, the agreement of agency, exercise the powers and perform the duties conferred and imposed on the officers and employees of the Council authorized to collect octroi under this Act or the rules:

Provided that, no property seized under the provisions of sub sections (1) and (2) of Section 141 may be sold, except under the order of the Chief Officer.

(3) Subject to the directions, if any, issued from time to time, by the State Government, by any general or special order in this behalf, the Council shall regulate the collection of octroi either through such lessee or agent in such manner and procedure as it may deem fit having regard to the provisions of the Act."

(emphasis supplied)

19. Relying on above referred sub-section (3) of Section 143A, it is argued that the government can issue directions to the Municipal Council. The said submission must be rejected at the outset for the reason that the general or special order that the State Government may issue under the sub-section relates to regulating the collection of octroi and the procedure that it may adopt. The power to collect octroi and to prescribe the method and manner of such collection is within the province of the Municipal Council. All that Section 143A(3) prescribes is that the State Government can issue policy directions with respect to the manner and procedure by which the power is to be exercised. Under no circumstances can such a power be extended to appoint an arbitrator

unilaterally, notwithstanding the statutory or contractual relationship that may exist between the Municipal Council and its agent.

20. In view of the above, we have no hesitation in affirming the following findings arrived at by the Division Bench of the High Court.

“22.... Moreover, as noted above the Government Resolution specifies that the same has been issued in pursuance of the power under Section 143-A(3) (supra) of the Municipal Council Act and that the arbitrator is being appointed as a special case. On a perusal of the said provision as we have noted above, we do not find that any such power is vested in the State Government under subsection(3) of Section 143-A, to foist arbitration on parties who are governed by a concluded contract between them. What is significant is that in this entire process of appointing an arbitrator it is solely at the instance of Respondent No.1, there is not a slightest role played by the Appellant. There is nothing on record to show that the Government had taken concurrence of the Appellant or to stretch it little further, that a particular clause in the agreement / contract between the Appellant and the Respondents permitted the Government to make an appointment of an arbitrator. Thus, the basic requirement of an arbitration agreement namely of mutuality and/or the parties being adidem for reference of the disputes to arbitration is completely absent...”

21. It is also argued that there is, in fact, an arbitration agreement between the parties as is provided in clause 22 of the Contract. Clause 22 is as follows:

“Clause 22: Disputes: In case of any dispute, the same shall be referred to the Collector and his decision shall be final and binding on the Agent and the Council. Appeal against the decision of the Collector in case of any dispute shall lie first before the Divisional Commissioner and finally before the Government in Urban Development Department....”

22. Yet again, a simple, plain reading of clause 22 would reveal that the parties have not agreed upon resolving the existing disputes between them through arbitration. All that it provides is that a dispute shall be referred to the Collector and his decision shall be final and

binding on the parties. Further, the clause enables the parties to file an appeal against the decision of the collector to the Deputy Commissioner and thereafter to the Urban Development Department. In fact, clause 22 leaves no space for resolution of disputes through an alternative dispute resolution methodology. This is for the reason that octroi is an important source of income, and the power to impose and collect octroi is integral to the jurisdiction and functioning of Municipal bodies under Part IXA of the Constitution. It is for this reason that the power to resolve disputes is kept within the fold of the governmental hierarchy. In this case, access to justice of an agent of the government in a contract for collection of octroi could be through judicial review, civil or statutory remedies if any.

23. Dealing with this very aspect, the High Court returned the following findings;

“23. Despite the above legal position, Respondent No.1 would contend that as the Appellant participated in the proceedings before the learned Arbitrator the award is valid and cannot be set aside. We do not agree. In our opinion considering the facts and circumstances of the case and more particularly clause 22, it was wholly impermissible for Respondent No.1 to approach the State Government directly and make a unilateral request to make an appointment of an arbitrator. In taking all these steps, Respondent No.2 (Arbitrator) was not oblivious of the fact that the Appellant-Municipal Council was working under the Administrator appointed by the Government of Maharashtra and that certainly the Administrator was the officer subordinate firstly to the State Government as also to the Revenue Commissioner, Konkan Division who came to be appointed as Arbitrator. Interestingly the facts relating to the conduct of the arbitration proceedings are writ large. The learned Arbitrator called upon the Appellant to submit a reply by 9 December 1994 and to appear before the learned Arbitrator on 14 December 1994 at 2.30 p.m. Accordingly, on 14 December 1994 the learned Arbitrator heard the parties and closed the matter for an award to

be passed and soon thereafter on 26 December 1994 delivered his award holding that the minimum reserve price was required to be fixed at Rs. 6,20,89,843/- which was surprisingly lesser than the demand of Respondent No. 1 which was Rs. 6,33,21,483/- (i.e. Rs. 6,74,50,000 minus Rs. 40,78,517/0). Admittedly, it was the administrator who represented on behalf of the Appellant and justified the fixation of the minimum reserve price of Rs. 6,74,50,000/-. This was the nature of participation of the administrator as the record reveals. We thus cannot agree with the submission as made on behalf of Respondent No.1 that the Administrator having purportedly participated, there is estoppel against the Appellant to challenge the validity of the arbitration agreement and the jurisdiction of the arbitrator to pass the award (...)"

24. Apart from the fact that clause 22 does not constitute any arbitration agreement, the circumstances in which clause 22 was taken as an excuse for resorting the matter for arbitration, leading to the award is commented upon by the High Court in the following terms:

"22. Furthermore, it is not a case that the Respondent had invoked Clause 22 and/or as Clause 22 would require, the Collector was not called upon to enter resolution of the dispute. The facts are quite different. As noted above in view of the letter of Chief Officer of the Appellant dated 27 May 1994 refusing to change the reserved price, Respondent No.1 had approached this Court in Writ Petition No.3598 of 1994, which was permitted to be withdrawn with a liberty to adopt appropriate proceedings, by filing a suit or by resorting to arbitration. Considering the High Court's order to mean that it has permitted arbitration, Respondent No.1 approached the State Government by its letter dated 5 October 1994 with a request to appoint an arbitrator to resolve the dispute as regards the minimum reserve price to be lowered from Rs.6,74,00,000/- to Rs.6,33,71,483/-. Favourably responding to this representation of Respondent No.1, the Government in its Urban Development Department issued a Government Resolution dated 14 November 1994 under the signature of the Joint Secretary in the Urban Development Department appointing the Commissioner, Konkan Division, as an Arbitrator to arbitrate the said dispute.....We have therefore no hesitation to observe that neither any of the clauses of the agreement much less clause 20 and 22 as referred above constitute an arbitration agreement nor the State Government had any jurisdiction to appoint an arbitrator in terms of the agreement entered between the parties. In the absence of an arbitration agreement, the learned Arbitrator had no jurisdiction

to enter the arbitration and conduct the arbitration proceedings in question.”

25. We are in agreement with the findings of the High Court as regards the interpretation of clause 22, as well as the unsatisfactory circumstances in which the Municipal Council was compelled to participate in the arbitral proceedings. The High Court also considered the decision relied on by the petitioner for the reason that there is no acquiescence or estoppel in the facts and circumstances of the case.

26. In view of the above analysis, we are of the opinion that the High Court has arrived at the right conclusion on the basis of law and fact. While reiterating the decision of the High Court, we are of the opinion that there is no merit in the special leave petition for the following reasons:

- a) *Absence of a Valid Arbitration Agreement:* There is no written agreement between the parties to submit differences to arbitration as required by Section 2(a) of the Arbitration Act, 1940. Specifically, Clause 20 relates to the position that the parties are to maintain pending the disposal of a dispute resolution. In other words, clause 20 prescribes a measure that the parties would maintain pending resolution. However, that by itself cannot be an arbitration clause. On the other hand, Clause 22 is certainly not an arbitration agreement.
- b) *Lack of Jurisdiction for Appointment:* State Government has no authority under Section 143-A(3) of the Maharashtra Municipal

Councils, Nagar Panchayats and Industrial Townships Act, 1965 to appoint an arbitrator for the agent and the Municipal Council. The exercise of such power by the government cannot be equated to Section 4 of the Arbitration Act, 1940, for there is no such agreement.

- c) *Absence of Mutuality*: The requirement of consensus ad idem for creation of an arbitration agreement as contemplated under Section 2(a) of the Arbitration Act, 1940, was absent.
- d) *Void Proceedings and Nullity of Award*: Since the Arbitrator lacked inherent jurisdiction due to the absence of an arbitration agreement, the entire proceedings were a nullity (coram non iudice) and the resulting award was non-est.
- e) *Participation does not confer Jurisdiction*: There is no estoppel against the Municipal Council for the reason that it had initially participated in the arbitral proceedings. This is for the reason that they were forced into arbitration without consent and contract. At the same time, they challenged the award on jurisdictional grounds before the Civil Court as well as the High Court.
- f) *Propriety of Arbitral Proceedings*: We are in agreement with the conclusions of the High Court that the arbitral proceedings were perfunctory and started and concluded in a short period. Suffice to say that the circumstances relating to the making of the award indicated in the judgment of the High Court do not warrant interference. In any

event, once the award is set aside on the ground of jurisdiction, this issue is not relevant.

27. For the reasons stated above, there is no error in the judgment and order passed by the High Court in First Appeal No. 94 of 2001 dated August 4, 2016. There is no merit in the special leave petition. The special leave petition stands dismissed. The parties shall bear their own costs.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[ALOK ARADHE]

NEW DELHI;
MARCH 24, 2026.