

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2030 OF 2022

[arising out of SLP (CIVIL) No. 4843 OF 2022]

[DIARY NO. 41870 OF 2019]

**BIHAR INDUSTRIAL AREA DEVELOPMENT
AUTHORITY & ORS.**

... APPELLANTS

v.

RAMA KANT SINGH

... RESPONDENT

J U D G M E N T

ABHAY S. OKA, J.

Delay condoned. Leave granted.

1. The first appellant, the Bihar Industrial Area Development Authority, has been constituted under the provisions of the Bihar Industrial Area Development Act, 1974. A tender was invited by the executive engineer of the first appellant to carry out the drainage work in an industrial area. The respondent offered a bid which the first appellant accepted. Accordingly, an agreement was executed on 15th

December 2007 by and between the first appellant and the respondent. After issuing a notice, the first appellant terminated the agreement and forfeited the security deposit of the respondent.

2. Under the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 (for short “the 2008 Act”), the Bihar Public Works Contract Disputes Arbitration Tribunal (for short, “the Arbitration Tribunal”) has been constituted for dealing with and deciding the disputes between the parties to a works contract. Clause (a) of Section 2 of the 2008 Act defines what is meant by a works contract.

3. Under sub-section (1) of Section 9 of the 2008 Act, when any dispute arises between the parties to the contract, irrespective of the fact whether such contract does or does not contain an arbitration clause, either party can refer the dispute in writing in the prescribed form to the Arbitration Tribunal. The dispute can be referred within one year from the date on which the dispute has arisen. The respondent filed a reference to the Arbitration Tribunal on 21st March 2013. The dispute was regarding the termination of the agreement made on 8th June 2010. The Arbitration Tribunal made an award on 15th September 2014. One of the

contentions raised by the first appellant before the Arbitration Tribunal was that the respondent did not refer the dispute to the Arbitration Tribunal within one year from the date on which the dispute had arisen as provided under subsection (1) of Section 9 of the 2008 Act. The Arbitration Tribunal held that Article 137 of the Limitation Act, 1963 (For short, "the 1963 Act") was applicable. Hence, it was held that the reference made to the Arbitration Tribunal on 21st March 2013, raising a dispute about the termination order dated 8th June 2010, was not barred by limitation. The Arbitration Tribunal held that the respondent was entitled to a refund of the earnest money and the security deposit. It was held that the respondent was entitled to unpaid dues in the sum of Rs. 27,94,990/- (Rupees twenty-seven lakh ninety-four thousand nine hundred ninety only). The Arbitration Tribunal held that the respondent is entitled to Rs.22,42,269/- (Rupees twenty-two lakh forty-two thousand two hundred and sixty-nine only) towards the security deposit. In addition, the Arbitration Tribunal held that the respondent is entitled to the amounts of Rs.6,22,476/- (Rupees six lakh twenty-two thousand four hundred seventy-six only) and Rs.50,000/-

(Rupees fifty thousand only) deducted towards the penalty by the first appellant. Even the amount of provisional deduction in the sum of Rs.3,68,400/- (Rupees three lakh sixty-eight thousand four hundred) was ordered to be refunded to the respondent. The Tribunal granted simple interest at the rate of 10% per annum on the amounts mentioned above. Except on the amount of Rs.22,42,269/-, interest was made payable from 29th July 2010. On the amount of Rs.22,42,269/-, interest at the same rate was made payable from 1st February 2011.

4. Being aggrieved by the award, the appellants filed a revision petition before the High Court by invoking Section 13 of the 2008 Act. By the impugned judgment, the High Court dismissed the revision petition. The High Court also held that Article 137 of the 1963 Act was applicable and, therefore, the dispute raised by the respondent was not barred by the limitation.

5. Shri Rajiv Dutta, the learned Senior Counsel appearing for the appellants submitted that under sub-section (1) of Section 9 of the 2008 Act, a reference to the Arbitration Tribunal was maintainable provided it was made within one

year from the date on which the dispute had arisen. He pointed out that the dispute arose on 8th June 2010, when the agreement was terminated, and the respondent's earnest money and security deposit were forfeited. He pointed out that by the said order, the respondent was blacklisted. He further pointed out that the reference to the Administrative Tribunal was made belatedly on 21st March 2013. He urged that the reference application filed by the respondent proceeds on the erroneous footing that it was filed within limitation. He invited our attention to sub-section (2) in Section 29 of the 1963 Act. He submitted that the 2008 Act is a local law which describes a period of limitation different from the period prescribed by the Schedule to the 1963 Act and, therefore, Section 5 of the 1963 Act will not apply. Moreover, Article 137 of the 1963 Act will have no application as sub-section (1) of Section 9 of the 2008 Act prescribes the period of limitation of one year. He submitted that as the respondent was blacklisted, the earnest money and security deposit paid by the respondent was rightly forfeited.

6. The learned senior counsel relied upon a decision of this Court in the case of **Hukumdev Narayan Yadav v. Lalit**

Narayan Mishra¹. This decision was relied upon to support the contention that Section 5 of the 1963 Act will not apply. The learned Senior Counsel also relied upon a decision of this Court in the case of the **State of Bihar v. Brahmaputra Infrastructure Limited**². He submitted that as there is no agreement between the parties to conduct the arbitration in accordance with the Arbitration and Conciliation Act, 1996 (for Short “the 1996 Act”), the reference to the Arbitration Tribunal will be governed by the provisions of the 2008 Act. He urged that grant of interest at the rate of 10% per annum is illegal.

7. The learned counsel appearing for the respondent submitted that under Section 18 of the 2008 Act, the Arbitration Tribunal has a power to extend the period of limitation. He, therefore, submitted that there is no infirmity in the finding recorded by the Arbitration Tribunal on the ground of bar of limitation. He submitted that the Arbitration Tribunal has recorded a finding that there was no clause in the agreement providing for the forfeiture of the earnest money and security deposit. He submitted that the Tribunal

¹ AIR 1974 SC 480.

² (2018) 17 SCC 444

also held that there was no power to impose a penalty. He urged that the award of interest at the rate of 10% per annum was justified.

8. We have given careful consideration to the submissions made across the Bar. Sections 8, 9, 13 and 18 of the 2018 Act are relevant which read thus:

"8. Act to be in addition to Arbitration & Conciliation Act, 1996. - *Notwithstanding anything contained in this Act, any of the provisions shall be in addition to and supplemental to Arbitration & Conciliation Act, 1996 and in case any of the provision contained herein is construed to be in conflict with Arbitration Act, then the latter Act shall prevail to the extent of conflict."*

"9. Reference to Tribunal and making of award. - *(1) Where any dispute arises between the parties to the contract, either party shall, irrespective of whether such contract contains an arbitration clause or not, refer, within one year from the date on which the dispute has arisen, such dispute in writing to the Tribunal for arbitration in such form and accompanied by such documents or other evidence and by such fees, as may be prescribed.*

(2) On receipt of a reference under sub-section (1), the Tribunal may, if satisfied after such inquiry as it may deem fit to make, that the requirements under this Act in relation to the reference are complied with, admit such reference and where

the Tribunal is not so satisfied, it may reject the reference summarily.

(3) Where the Tribunal admits the reference under sub-section (2), it shall, after recording evidence if necessary, and after perusal of the material on record and on affording an opportunity to the parties to submit their arguments, make an award or an interim award, giving its reasons therefor.

(4) The Tribunal shall use all reasonable dispatch in entering on and proceeding with the reference admitted by it and making the award, and an endeavour shall be made to make an award within four months from the date on which the Tribunal had admitted the reference.

(5) The award including the interim award made by the Tribunal shall, subject to an order, if any made under Section – 12 or 13, be final and binding on the parties to the dispute.

(6) An award including an interim award as confirmed or varied by an order, if any, made under Section – 12 or 13 shall be deemed to be a decree within the meaning of section – 2 of the Code of Civil Procedure, 1908 of the principal Court of original jurisdiction within the local limits whereof the award or the interim award has been made and shall be executed accordingly.”

(emphasis added)

"13. Revision.- (1) *The High Court may, suo motu at any time or on an application made to it within three months from the date on which the award or interim award is made or reviewed under this Act, by any party aggrieved by the award or interim award so made or reviewed, call for the record of any case in which an award or interim award has*

been made or as the case may be reviewed and if the Tribunal appears-

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.

(2) For the purpose of exercising its powers of revision under this section, the High Court shall have the same powers as it has, and as far as may be, follow the same procedure as it follows, under the Code of Civil Procedure, 1908 while exercising its powers of revision under section-115 of the Code and for that purpose the Tribunal shall be deemed to be a Court subordinate to it.”

“18. Extension of period of limitation in certain cases. – *The Tribunal may admit a reference under sub-section (2) or entertain an application for review under sub-section (1) of Section 11 or for revision under sub-section (1) of Section 12 after the period of limitation laid down in sub-section (1) of Section 8, sub-section (2) of section 11 or as the case may be, sub-section (1) of Section 12 if the party satisfies the Tribunal that the party had sufficient cause for not making the reference, or as the case may be, the application for review or revision within such period.”*

9. In this case, admittedly, there is no arbitration clause in the agreement between the parties. Sub-section (1) of Section

9 provides that even if there is no arbitration clause, the dispute arising between the parties to the contract must be referred to the Arbitration Tribunal. The dispute has been defined under Clause (e) of Section 2 of the 2008 Act. It means any difference relating to any claim arising out of the execution or non-execution of the whole or a part of a works contract, including the dispute regarding rescission thereof. Section 22 of the 2008 Act starts with a non-obstante clause which provides that notwithstanding anything contained in any other law, rule, order, scheme, or contract, any dispute as defined under section (e) of Section 2 shall be regulated by the provisions of the 2008 Act in the absence of an arbitration clause in the agreement.

10. In view of Section 8 of the 2008 Act, if any of the provisions of the 2008 Act are in conflict with the 1996 Act, the latter shall prevail to the extent of the conflict. In the present case, as there is no arbitration clause in the agreement between the parties, the provisions of the 1996 Act will have no application. Therefore, the reference to the Arbitration Tribunal will be governed by the 2008 Act.

11. As noted earlier, under sub-section (1) of Section 9 of the 2008 Act, the period of limitation is of one year from the

date on which the dispute has arisen, which date in the present case is 8th June 2010, when the first appellant terminated the agreement.

12. As the 2008 Act provides for a specific period of limitation, Article 137 of the schedule in the 1963 Act will not apply. To that extent, the Arbitration Tribunal has committed an error. Under Section 18 of the 2008 Act, the Arbitration Tribunal has the power to condone the delay. The High Court recorded a finding that as the representation made by the respondent against the order of termination of the contract was kept pending for an inordinately long time and was not at all decided, the delay was explained by the respondent. The High Court, by recording the said finding in paragraph 10 of the impugned Judgment, held that sufficient cause was made out by the respondent for the delay. As observed earlier, the Arbitration Tribunal has the power to condone the delay in making a reference. Therefore, under Article 136 of the Constitution of India, this is not a fit case to interfere with the award on the ground that the reference was barred by limitation.

13. On merits, we find that the Arbitration Tribunal has interpreted various clauses of the agreement between the parties and held that there was no provision therein to forfeit the earnest money as well as the security deposit. The Arbitration Tribunal held that the first appellant had made only a part payment of the 4th bill. The Arbitration Tribunal held that an amount of Rs. 27,94,990/- (Rupees twenty-seven lakh ninety-four thousand nine hundred ninety only) was not paid as per the 4th bill.

14. As can be seen from Section 13 of the 2008 Act, the scope of revision is limited. A perusal of the judgment of the High Court shows that it has considered and interpreted some of the clauses in the agreement between the parties. High Court found that the Arbitration Tribunal had the jurisdiction to make the award and that the award does not suffer from manifest illegality and material irregularity. The High Court rightly found that the scope for interference with the award of the Arbitration Tribunal in revisional jurisdiction was very narrow. In the absence of any perversity, the High Court could not have given a different

interpretation to the clauses in the agreement from the one provided by the Arbitration Tribunal.

15. Though the High Court held that the respondent had explained the delay in approaching Arbitration Tribunal, the delay was of 21 months. Moreover, the respondent's reference petition proceeded on the footing that there is no delay. The Arbitration Tribunal granted interest at the rate of 10% on Rs. 22,42,269/- (Rupees twenty-two Lakhs forty-two thousand two hundred sixty-nine only) from 1st February 2011. On the other claims, the interest was granted from 29th July 2010. In the facts of the case, we do not find any justification for the grant of interest on the claims made by the respondent. To that extent, the award will have to be modified.

16. However, interest will be payable by the appellants on the amounts awarded at the rate of 10% per annum from the date of making the reference to the Arbitration Tribunal, in the event the entire principal amount made payable under the award is not paid to the respondent within three months from today.

17. Hence, the appeal is partly allowed. The impugned award made in Reference Case No.35/2013 is modified only to the extent to which interest at the rate of 10% was allowed on the claims.

18. We direct the appellants to pay only the principal amounts payable as per the award to the respondent within three months from today. On the failure of the appellants to pay the said amounts within three months from today, the appellant shall pay the interest at the rate of 10% per annum on the principal amounts set out in the award with effect from 21st March 2013.

19. The Civil Appeal stands disposed of with the above directions. All the pending applications, if any, also stand disposed of.

.....**J.**
(AJAY RASTOGI)

.....**J.**
(ABHAY S. OKA)

New Delhi;
March 15, 2022.