

Prabartak Commercial Corporation Ltd.

Vs

Chief Administrator Dandakaranya Project and Another

Civil Appeal No. 1023 of 1975

(Dr. T.K. Thommen, R.M. Sahai JJ)

14.12.1990

JUDGMENT

THOMMEN J

1. This appeal arises from the judgment of the High Court of Madhya Pradesh at Jabalpur dated 6-8-1974 in First Appeal No. 146 of 1969. The appellant entered into a contract with the respondents for the supply of 'hard granite chips' for the construction of NH/43 at four reaches. Since 'hard granite chips' were not available, it was agreed between the appellant and the respondents that the appellant would supply 'hard stone chips' instead of 'hard granite chips'. The payment was agreed to be paid in terms of the Schedule of Rates of the Dandakaranya Project., Dispute arose between the parties in respect of the rate of Payment. The appellant contended that it was entitled to be paid the rates prescribed under the contract for 'hard granite chips' and not the rates under the Schedule for 'hard stone chips'.

2. The dispute between the parties was referred by the Court in terms of S. 20 of the Arbitration Act, 1940. The reference was made, notwithstanding the objections on the part of the respondents. The respondents contended that the matter in dispute was outside the scope of the arbitration clause. That objection was rejected by the learned Additional District Judge. An advocate was appointed as an arbitrator. The arbitrator entered upon the reference and submitted awards on 16-12-1968 and on 30-9-1969. A preliminary decree was directed to be drawn up despite the objections filed by the respondents under S. 33 of the Act.

3. In an appeal filed in the High Court under S. 39(J)(vi), the respondents contended that the dispute regarding rates came within the ambit of Cl. 13A of the agreement and that clause provided "in the event of a dispute the decision of the Superintending Engineer of the circle shall be final". The respondents pointed out that the arbitration agreement was contained in Cl. 14 and that clause specifically excluded any dispute arising under Cl. 13A. Disputed rates were matters which came within the ambit of clause 13A. Such disputes were not covered by the arbitration agreement. The awards were, therefore, made without jurisdiction and were void.

4. The learned judge of the High Court held that clause 14 containing the arbitration agreement had no application to the dispute in question which fell under clause 13A and, therefore, the arbitrator had no jurisdiction in the matter. He held that the reference of the dispute to the arbitrator was invalid and the entire proceedings before the arbitrator including the awards made by him were null and void.

5. We are in complete agreement with the reasoning of the learned judge. The appeal is accordingly dismissed with costs throughout.

Appeal dismissed.

</html