

SUPREME COURT OF INDIA

Eastern Coalfields Ltd.

Vs.

Sanjay Transport Agency

C.A.No.753 of 2007

(Dr. Mukundakam Sharma J.)

22.05.2009

JUDGEMENT

Dr.Mukundakam Sharma, J.

1. This appeal is directed against the order dated 9 th January, 2006 whereby the Calcutta High Court referred the dispute arising between the parties herein to the sole arbitration of Hon'ble Mr. Justice D.K. Basu a retired Judge of Calcutta High Court, with a request to him to adjudicate upon and decide the dispute between the parties. The aforesaid order came to be passed on an application filed by the respondents herein under Section 11 (6) of the *Arbitration and Conciliation Act, 1996* (hereinafter referred to as 'the Act'). By filing the said application, the respondents prayed for appointment of an arbitrator relying on the alleged arbitration agreement being clause No. 14.

2. The parties entered into an excavation contract whereby the respondents undertook to carry out certain works on behalf of the appellant herein. In the contract signed by the parties there is a clause being clause No. 14 with the caption "Settlement of Disputes/Arbitration". Part of the said clause which is relevant to the context of this case is reproduced hereunder :

“.....It is incumbent upon the contractor to avoid litigations and disputes during the course of execution.

However, if such disputes take place between the contractor and the department, effort shall be made first to settle the disputes through committees at different levels made for this purpose by the company.”

3. The aforesaid clause 14 in the Agreement, however, was scored out and the same was replaced by another clause being clause No. 14.

“When the parties entered into the agreement and signed the agreement what remains in the agreement was clause No. 14 with the caption "Arbitration with regard to the

commercial disputes between the Public Sector Enterprises inter se and Public Sector Enterprises and Government Departments." It reads as follows :

"ARBITRATION WITH REGARD TO THE COMMERCIAL DISPUTES BETWEEN THE PUBLIC SECTOR ENTERPRISES INTER SE AND BETWEEN THE PUBLIC SECTOR ENTERPRISES AND GOVERNMENT DEPARTMENTS."

"In the event of any dispute of difference relating to the interpretation and application of the provisions of the commercial terms of the contract such dispute or difference shall be referred by either party to the arbitration, to one of the arbitrators in the Department of Public Enterprises, to be nominated by the Secretary to the Government of India incharge of the BUREAU OF PUBLIC ENTERPRISES.

The *Arbitration Act, 1940* shall not be applicable to the arbitration under this clause. The award of the arbitrator shall be binding upon the parties to the dispute, provided however, any party aggrieved by such award, may make further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference, the dispute shall be decided by the Law Secretary or the Special Secretary/Additional Secretary when so authorised by the Law Secretary, whose decision shall bind the parties finally and conclusively. The parties to the dispute will share equally the cost of arbitration, as intimated by the arbitrator."

4. The aforesaid clause No. 14 relates to disputes of commercial nature arising between the Public Sector Enterprises inter se and between the Public Sector Enterprises and Government Departments. The text that follows also makes the said position clear which provides that after the award is given by the arbitrator in the department of public sector enterprises, reference for setting aside or revision of the award is to be made to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. The said clause, therefore, concerns the commercial disputes arising between the Public Sector Enterprises inter se and between such enterprises and Government Departments. The said clause will have no application to an agreement which is entered into between the appellant and the respondents, one of whom is a private party. Since that arbitration clause is not applicable to the case in hand, therefore, the appointment of the arbitrator by the Calcutta High Court exercising jurisdiction under Section 11 (6) of the Act was improper.

5. It is well settled rule of interpretation that the section heading or marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of any provision and to discern the legislative intent.

“The section heading constitutes an important part of the Act itself, and may be read not only as explaining the provisions of the section, but it also affords a better key to the constructions of the provisions of the section which follows than might be afforded by a mere preamble.

The said interpretation can well be applied to understand and construct the various clauses of an arbitration agreement also, which is in the realm of commercial contract. While interpreting so, the Court may not depend only on the text but context as well in order to fully comprehend the context and the meaning of the clause.”

6. We, accordingly, set aside the said order and give liberty to the respondents to approach the Civil Court for adjudication and resolving the disputes and lis between the parties arising out of the said contract.

“Needless to say that the respondents herein will be entitled to get the benefit of Section 14 of the Limitation Act.”

7. Accordingly, the appeal stands disposed of to the aforesaid extent.