

(2008) 02 SC CK 0140

In the Supreme Court Of India

Case No : Civil Appeal No's. 4683, 4684, 4685, 4713, 4714 and 4715 of 2004

Bharat Engineering Service Technocrats and Co.

APPELLANT

Vs

Executive Engineer and Others

RESPONDENT

Date of Decision : 26-02-2008

Acts Referred:

Arbitration Act, 1940 — Section 33
Limitation Act, 1963 — Section 5

Citation : (2008) 2 ARBLR 202 : (2008) 1 CLT 666 : (2008) 3 JT 482 : (2008) 3 SCALE 300 : (2008) 3 SCC 302 : (2008) 2 UPLBEC 2027

Hon'ble Judges : Tarun Chatterjee, J;H. S. Bedi, J

Bench : Division Bench

Advocate : Amit Sharma, Anupam Lal Das, Naveen R. Nath, Iletu Arora and Lalit Mohini Bhat, for the Appellant; Sanjay R. Hegde and Anupam Lal Das, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Chatterjee, J.—These appeals are directed against the common final judgment and order dated 12th of September, 2003 passed by the High Court of Karnataka at Bangalore in M.F.A. Nos. 1466-1468 of 1998.

2. The common reasoned award passed by the learned Arbitrator on 23rd of May, 1996 under the Arbitration Act, 1940 (in short "the Act") and made a rule of the court by the Civil Court on 20th of December, 1997 was set aside in its entirety by the High Court only on the ground that the arbitrator had erroneously decided the issue whether the claims preferred by the appellant were barred by limitation. It is on record that the entire matter was remitted by the High Court, despite the lapse of over 10 years since the reference was made, to a different arbitrator for a fresh decision on merits.

3. In our view, the judgment of the High Court is not sustainable in law and the objections filed by the respondent-State against the award ought to have been entertained by the Civil Court despite there being a considerable delay in filing

the same and in spite of the fact that there was, in the first instance, no application for condonation of delay. For this purpose, we have looked into the explanations given in the application for condonation of delay in filing the objection u/s 5 of the Limitation Act. We are of the view that the explanations offered do constitute sufficient cause in filing the objection u/s 33 of the Act. In this view of the matter, we set aside the judgment of the High Court as well as of the trial court and the matter may be remitted back to the trial court for decision on the objection filed u/s 33 of the Act. The objection u/s 33 of the Act shall be decided by the trial Court positively within six months from the date of supply of a copy of this order to it after giving hearing to the parties and after passing a reasoned order in accordance with law.

For the reasons aforesaid, the appeals are allowed to the extent indicated above. There will be no order as to costs.