

**(1994) 09 SC CK 0129**

**In the Supreme Court Of India**

**Case No :** Civil Appeals Nos. 4643-53 Of 1985 With Nos. 4261-62 Of 1983,  
2177-2180 Of 1993

Nav Bharat Construction Co.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

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**Date of Decision :** 07-09-1994

**Acts Referred:**

**Citation :** (1996) 7 SCC 83

**Hon'ble Judges :** P. B. Sawant, J; Faizan Uddin, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## **Judgement**

1. WE have heard Shri Mool Chand Loharia who is a partner of the appellant-firm. He has brought to our notice various decisions of this court as well as of the various High courts. The firm had entered into in all 17 written agreements with the State government in respect of various works in three irrigation projects. The language of all the agreements was the same. The relevant clauses of the agreement which have given rise to the present controversy between the firm and the State government are clauses 22 and 23 which read as follows:

"22. All work to be executed under the contract shall be executed under the direction and subject to the approval in all respect of the Chief Engineer of the "Government of Rajasthan" for the time being, who shall be entitled to direct at what point or points and what manner they are to be commenced, and from time to time carried on.

DECISION of the Chief Engineer to be final

23. Except where otherwise specified in the contract the decision of the Chief Engineer of Rajasthan for the time being shall be final, conclusive and binding on all parties to the contract upon all questions, relating to the meaning of the specifications, designs, drawings, and instructions hereinbefore mentioned and as to the quality of workmanship, or material used on the work or as to any

other question, claim, right, matter, or things whatever in any way arising out of or relating to the contract, designs, drawings, specifications or estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same, whether arising during the progress of works or after the completion or abandonment thereof or the contract by the contractor shall be finally conclusive and binding on the contractor."

His contention is that these clauses spell out an agreement to refer the dispute to the arbitration of the Chief Engineer, and the Chief Engineer, as an arbitrator, is supposed to follow the provisions of the Arbitration Act and give an award under the said Act. For that purpose, the firm had made an application to the Chief Engineer. Since the Chief Engineer did not accept that the provisions of the said clauses spelt out an agreement for arbitration, he did not respond to the said application. Therefore, the firm filed a suit in the District court for requiring the court to refer the matter to arbitration under Section 20 of the Arbitration Act. The District Judge by his decision of 20/9/1982 dismissed the application relying upon the decision of this court in *State of U.P. v. Tipper Chand* wherein a clause identical to the present clause 23 was the subject-matter of a similar controversy between the parties and this court has held that it did not spell out an agreement to refer the dispute to arbitration. The firm's revision before the learned Single Judge was rejected on the same ground and it is against the said decision of the learned Single Judge dated 19-1-1983 that the present appeals, viz., CAs Nos. 4261-62 of 1983 have been preferred

2. The three learned Judges of this court in *Tipper Chand* case after taking note of the clause which is identical in language to the present clause 23 on which reliance is placed on behalf of the appellant for spelling out an arbitration agreement, have held that the clause does not spell out an agreement for arbitration of the disputes. No doubt there is a subsequent decision of this court of two learned Judges in *Rukmanibai Gupta v. Collector* which has constructed a clause which fell for consideration there as a provision for referring the disputes to arbitration. That clause reads as follows:

"15. Whenever any doubt, difference or dispute shall hereafter arise touching the construction of these presents or anything herein contained or any matter or things connected with the said lands or the working or non- working thereof or the amount or payment of any rent or royalty reserved or made payable hereunder the matter in difference shall be decided by the lessor whose decision shall be final

3. The language of the above clause which found place in the agreement of mining lease between the appellant and the government which was being considered there is no *pari materia* with the language of the present clause 23. What is further, as pointed out herein above, a bench of the three learned Judges while interpreting the clause which is identical with the one which is before us has held that it does not provide for arbitration of the dispute. Hence the said decision which on all fours and of a larger bench is binding on us and cannot be

disregarded in favour of the aforesaid judgment of this court

4. NO doubt the learned Single Judge of the High court of orissa in Praharaj Partners v. State of orissa and the High court of Calcutta in State of W.B. v. Haripada Santra have taken a different view of the matter. But for obvious reasons those decisions have to be disregarded. We are, therefore, of the view that the view taken by the High court in the present case relying upon the decision in Tipper Chand case, is a proper one

5. HAVING said this, we are of the view that the Chief Engineer in the present case ought to have decided the matter as per the terms of clause 23 of the agreement. He may not decide it as an arbitrator under the Arbitration Act. since he has not been appointed as such under the said clause. But he was duly-bound to decide the firm's claims after hearing it. As provided for in the said clause 23, whatever decision he gives is binding on the parties

6. WHILE dismissing these appeals we, therefore, direct the Chief Engineer of the State to decide the claims made by the appellant as early as possible, provided the claims are made within four months from today. In the circumstances of the case there will be no order as to costs. The penalty proceedings which are adopted by the State shall be subject to the final outcome of the decision of the Chief Engineer in all the claims that the appellants will make before the Chief Engineer. The stay granted by this court in Civil shall stand vacated