2023 INSC 33

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 8550 of 2022
ARISING OUT OF SLP (C) No. 28161 of 2016

THE CHIEF ENGINEER,
WATER RESOURCES DEPARTMENT & ORS. ....APPELLANT(S)

VERSUS

RATTAN INDIA POWER LIMITED
THROUGH ITS DIRECTOR & ORS. ...RESPONDENTS(S)

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. The short question which arises for our consideration in the present case relates to whether a party to a contract is entitled to question the amount of consideration after signing the contract. By adverting to the facts of the case, we have held that Respondent No.1 is estopped from doing so because the Appellant, in all its communications, had sought for an amount of Rs.1,00,000 as irrigation restoration charges i.e., consideration for diversion of water for industrial use, which was earlier reserved for irrigational purposes. Even the contract entered into between the parties

prescribed the same amount. In fact, Respondent No.1 agreed to the pay the consideration by issuing an undertaking on the date of signing of the contract. In any case, this contractual dispute concerning the reduction of irrigation restoration charges, was contested by the parties in an earlier Writ Petition before the High Court of Judicature at Bombay, and the High Court by its order dated 22.11.2012 had dismissed the challenge. This is the second round of litigation on the same issue.

2. This appeal by the State of Maharashtra is against the judgment of the Division Bench of the High Court of Judicature at Bombay at Nagpur[1], whereby the High Court has reduced the 'irrigation restoration charges' which the Respondent herein has contracted to pay, from Rs.1,00,000 per hectare to Rs.50,000 per hectare. This has the effect of reducing the total liability of the Respondent towards irrigation restoration charges from Rs. 232.18 Crores to Rs.116.09 Crores.

3. The matter before us concerns the levy of 'irrigation restoration charge' by the Appellant as per Government Resolution dated 01.03.2009. The Respondent and other similarly placed

[1] In WP No. 4968 of 2015 dated 05.05.2016.

companies use water for industrial purposes, which is otherwise reserved for irrigation of agricultural land. The usage of water for industrial purposes is seen as loss of water for irrigation, and in order to compensate for the same, the said charge is levied and collected by the Appellant. These charges are levied after taking into account the total number of hectares which will be deprived of irrigation due to the diversion of water for industrial use.

4. The other cost levied by the Appellant is the 'capital expenditure charge'. This charge is used towards the construction and maintenance of dams. The payment of this charge is optional. Therefore, in the present case, we are not concerned with the levy and payment of the 'capital expenditure charge'.

Facts:

5. On 21.02.2004, the Irrigation Department of the State of Maharashtra came up with a circular wherein it was prescribed that when water is diverted for non-irrigation purposes, then the entity using such water shall pay a sum of Rs.50,000 per hectare as irrigation restoration charges. The circular stated that no water shall be diverted unless an agreement is entered into between the concerned industry and the government.

6. Sophia Power Company Ltd.[2], the predecessor of Respondent No.1 herein, intended to set up a 2640MW thermal power plant. For that purpose, a communication dated 12.12.2007 was sent by SPCL to the Maharashtra Industrial Development Corporation to confirm the availability of 240 million liters of water per day to facilitate the smooth running of the thermal power plant. Pursuant to the application made by SPCL, a high-powered committee constituted by the State of Maharashtra in its meeting held on 21.02.2008, granted in-principle approval for the usage of water by SPCL. This in-principle approval was subject to SPCL paying capital contribution and irrigation restoration charges. The high-powered committee named the Appellant herein as the implementing agency.

7. On 25.07.2008, the Vidarbha Irrigation Development Corporation granted final approval for the usage of water by SPCL's thermal power plant, subject to SPCL paying a sum of Rs.549.98 Crores comprising of Rs.317.8 Crores as capital costs and Rs.232.18 Crores as irrigation restoration charge. Irrigation restoration charge stood at Rs.232.18 Crores since the total number of hectares which would be deprived of irrigation due to

[2] hereinafter referred to as 'SPCL'.

the diversion of water to SPCL's thermal power plant was 23219 hectares. This essentially meant that SPCL was directed to pay Rs.1,00,000 per hectare as irrigation restoration charge, as against the prevalent rate of Rs.50,000 per hectare. Be that as it may, on 16.08.2008, the Appellant informed SPCL that it would be reserving the required quantity of water, subject to SPCL paying a sum of Rs.549.98 Crores. A demand letter to that effect was also issued by the Appellant on 26.09.2008.

8. Notably, on 01.03.2009, the Water Resources Department of the Government of Maharashtra increased the irrigation restoration charges from Rs.50,000 to Rs.1,00,000 per hectare. This circular came into effect from 01.04.2009.

9.1 On 25.01.2011, Respondent No.1 for the first time issued a letter to the Minister, Water Resources Department, Government of Maharashtra, in protest against the levy of Rs.1,00,000 as irrigation restoration charges. It was of the view that since many other power manufacturers were given exemption from paying the capital contribution charge and the irrigation restoration charge, it may also be exempted from paying the said charges. Pending consideration of this request, Respondent No.1 requested that they may be allowed to enter into an agreement for supply of water as

mandated by the circular dated 21.02.2004. Without entering into an agreement, they could not have drawn water from the dam.

9.2 Respondent No.1 again sent a letter on 25.02.2011, where it stated that they may be allowed to pay irrigation restoration charge at Rs.50,000 per hectare in five equal instalments because, when the in-principle allocation was made and when the final approval was given, the prevalent rate of irrigation restoration charge was Rs.50,000. A similar letter was again sent by Respondent No.1 to the Appellant on 01.06.2011, whereby in addition to the aforesaid request, Respondent No.1 also asked for an extension to enter into an agreement. In response, through its letter dated 08.06.2011, the Appellant granted extension till 31.05.2012 to execute an agreement. However, the Appellant made no commitments on the other request raised by Respondent No.1 – waiver/reduction of the irrigation restoration charge.

10. Since Respondent No.1 did not receive any reply on the request concerning waiver/reduction of the irrigation restoration cost, it sent a fresh communication on 10.05.2012 seeking reduction of the said charge and also seeking permission to pay the same in 5 equal instalments. The Appellant responded to this request on 17.05.2012, by stating that there shall be no reduction

in the irrigation restoration charge. That said, the option of paying the said charge in 5 equal instalments was granted.

11. Ultimately, on 22.05.2012, the Appellant and Respondent No.1 entered into a water supply agreement. Notably, this agreement states that Respondent No.1 shall pay a sum of Rs.1,00,000 as irrigation restoration charge. This agreement indicates *consensus ad idem* on the amount to be paid towards irrigation restoration. In fact, on the same day, Respondent No.1 also issued an undertaking to deposit the irrigation restoration charge at the rate of Rs.1,00,000 per hectare in 5 equal instalments.

12. Six months after signing the water supply agreement, Respondent No.1 initiated writ proceedings before the High Court of Judicature of Bombay challenging the communicated dated 16.08.2008 and the demand letter dated 26.09.2008. By its order dated 22.11.2012, a division bench of the Bombay High Court refused to quash the communications on the ground that the Respondent No.1 had accepted its liability to pay irrigation restoration charge at the rate of Rs.1,00,000 per hectare by signing the agreement dated 22.05.2012. The High Court was of the view that it could not pass any order which would obviate compliance

of the agreement. However, the High Court held that Respondent No.1's plea for reduction of the irrigation restoration charge shall be decided within a period of 8 weeks, and if the same is decided favorably, then it would be open for Respondent No.1 to pursue appropriate remedies in law – to seek a refund or adjust the excess amount paid.

13. In compliance of the order passed by the High Court, the Water Resources Department of the State of Maharashtra considered the request of Respondent No.1 for reduction of the irrigation restoration charge, and through its order dated 29.01.2013, rejected the said request. The reason given by the Department was that the State had never committed to any reduction and also that Respondent No.1 itself had signed the agreement dated 22.05.2012, which stipulated Rs.1,00,000 per hectare as the irrigation restoration charge. Immediately thereafter, the Appellant also issued a demand letter.

14. Aggrieved by the rejection of its representation, Respondent No.1 preferred a writ petition before the High Court of Judicature of Bombay at Nagpur challenging the decision dated 29.01.2013. The High Court by the impugned order, allowed the writ and directed Respondent No.1 to pay irrigation restoration charges at

Rs.50,000 per hectare. The High Court came to this conclusion by holding that the rate prevailing on the date on which the in-principle approval was granted by the high-powered committee would determine the cost of irrigation restoration charge. The High Court was of the view that since the total quantity of water used and total loss of water for irrigation was calculated on the date of grant of in-principle approval, it would be appropriate for the rate prevailing as on that date to govern the irrigation restoration charge. It is this order which is impugned before this Court.

Submissions of the parties:

15. Shri Chander Uday Singh, learned Senior Counsel appearing for the Appellant contended that the impugned order is in the teeth of the agreement dated 22.05.2012 entered into between the Appellant and Respondent No.1. It is his case that the after accepting Rs.1,00,000 as irrigation restoration charges, Respondent No.1 is not entitled to challenge it. The substance of his argument was that a contract is sacrosanct and it must be respected.

16. Shri Gopal Jain, learned Senior Counsel appearing for Respondent No.1 contended that – (i) it is the rate prevailing on the date of grant of in-principle approval by the high-powered

committee which would govern Respondent No.1. It is his case that the irrigation restoration charge is directly linked to the date of approval/sanction, and on the relevant date, since the circular dated 21.02.2004 was applicable, the Appellant could have only levied Rs.50,000 per hectare as irrigation restoration charges; (ii) a few similarly placed companies were given the relief which Respondent No.1 was seeking; (iii) the undertaking given by Respondent No.1 after signing the agreement was not an unconditional one. This undertaking was subject to the outcome of the numerous representations made by Respondent No.1 for reduction of the irrigation restoration charge; (iv) the Government Circular dated 01.03.2009 will apply prospectively and will not apply to ongoing contracts. Shri Jain contended that if the said circular is given retrospective effect, then it would undermine certainty.

Analysis

17. In the present case, the Appellant and Respondent No.1 had entered into an agreement on 22.05.2012. This agreement categorically stated that Respondent No.1 would pay a sum of Rs.1,00,000 per hectare towards irrigation restoration charge. Therefore, the Respondent No.1 is not justified in challenging the

levy of Rs.1,00,000 when it itself had agreed to the same. In fact, on the same day, Respondent No.1 had also issued an undertaking that it would pay the stipulated sum within a specific period of time. We may note here that right from the very beginning i.e., in the sanction order, the demand notice and in all its letters, the Appellant had stipulated a sum of Rs.1,00,000 per hectare as irrigation restoration charges. All these communications get subsumed in the agreement dated 22.05.2012. Therefore, we are of the view that signing the agreement and issuing an undertaking would estop Respondent No.1 from challenging the levy of Rs.1,00,000 as irrigation restoration charges.

18. We are not impressed with the argument of Shri Gopal Jain that it is the rate prevailing on the date of grant of in-principle approval which would govern Respondent No.1. The rights and liabilities of the parties stand crystallized on the date of entering into the agreement, which is 22.05.2012. Therefore, the rate prevailing on 22.05.2012 would govern the parties.

19. On the aspect of differential treatment, Respondent No.1 alleges that it has been discriminated when compared to eight other companies. This allegation is denied by the Government and they have explained this aspect in their rejoinder filed before this

Court and also in the counter and sur-rejoinder filed before the High Court. By referring to these records, we have noted that in as many as four power generators are concerned, the in-principle approval granted in their favor has itself been cancelled as they had failed to execute an agreement with the Appellant. A Central Government undertaking was given an exemption since the power produced by the said company was to be used for public benefit. One company was charged Rs.50,000 since the agreement was entered into on 22.09.2008, and as on that date, the prevalent rate was Rs.50,000 per hectare. Further, one other power generator was given an exemption because there was no loss of irrigation potential due to diversion of water. Another company was charged Rs.50,000 per hectare since the water to be diverted in favor of the said company was minimal and more importantly, that particular area was not a water deficit area. In comparison, Respondent No.1 is drawing a high amount of water from an area where water is a scarce resource. This is a reasonable and sufficient explanation.

20. We are not satisfied with the approach adopted by the High Court when Respondent No.1 itself has willfully and deliberately entered into an agreement knowing fully well the legal and business consequences. In fact, the relief claimed in this Writ

Petition is similar to the prayer in the Writ Petition which was disposed of on 22.11.2012. Even in that proceeding, Respondent No.1 had raised similar arguments. They were countered by the State by contending that there existed an agreement between the parties which stipulated a sum of Rs.1,00,000 as irrigation restoration charges, and pursuant to this agreement, Respondent No.1 had even issued an undertaking. After taking note of the contentions, the High Court held as follows:

> *"5. The record before the Court would indicate that even prior to the execution of the agreement the Petitioners had by a letter dated 12 May 2010 accepted the liability to pay an amount of Rs. 232.18 crores in five instalments. However, since a representation had been submitted to the Government for charging of irrigation restoration charges at the rate of 50,000/- per hectare instead of Rs.1 lakh per hectare, the Petitioners stated as follows:*
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> > *"Without prejudice to IPL's right made in the representation which is pending with the State Government, it is confirmed that IPL will be willing to execute the agreement before 31st May 2012 on the conditions mentioned at 2 a) & 2 b) above. However, we will like to clarify that in the event of our representation at 1 is decided in our favour, the amount payable towards irrigation restoration charges will stand reduced accordingly and the instalments paid/payable by us will be suitably adjusted/modified."*
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> *6. The agreement which was executed thereafter contemplates that the Petitioners would pay irrigation restoration charges at the rate of Rs. 1 lakh per hectare to Government together with interest and that the decision of the Government on the representation dated 25 January 2011 submitted for the reduction of the irrigation restoration*

charges would bind the parties. The Petitioners have besides the representation dated 25 January 2011, followed up with subsequent representations which are still pending one of which is the representation dated 30 June 2011 (Exhibit "I"). The Petitioners have moved these proceedings virtually at the end of the deadline for the payment of the second instalment which falls due on 21 November 2012. If this petition were to be instituted much before the approaching deadline, directions could have been issued for the disposal of the representation well in time before the approaching deadline for the second instalment. In these circumstances and particularly in a contractual area where the parties are governed by an agreement dated 22 May 2012 in support of which the Petitioners have also tendered an undertaking, it will not be possible for the Court to pass any order which would obviate compliance with the agreement…."

The High Court merely directed the concerned authority to take a decision on the representations made by Respondent No.1 within a period of eight weeks, and if the same came to be decided in the favor of Respondent No.1, then Respondent No.1 could take such measures in law to seek a refund. It is evident that the High Court refrained from granting a stay on the payment of the second instalment. In compliance with the direction of the High Court, the Government considered the matter and it rejected the representation on 29.01.2013. In that view of the matter, we are of the opinion that the High Court committed an error in entertaining a fresh writ petition, which effectively claimed the same reliefs as of the previous one. The High Court committed a mistake in not

only entertaining the writ petition, but also in supplanting its view over that of the contract.

21. As has been noted above, irrigation restoration charges were to be paid by Respondent No.1 in five installments.

S. No.	Due Date	Amount
1st Installment	22.05.2012	Rs.46,43,80,000
2nd Installment	21.11.2012	Rs.60,13,44,725
3rd Installment	21.05.2013	Rs.56,70,98,175
4th Installment	21.11.2013	Rs.53,28,51,625
5th Installment	21.05.2014	Rs.49,85,35,075

Clause 4 of the undertaking dated 22.05.2012 which was issued by Respondent No.1 stated that if there is a delay in making the payment, then penal interest @12% p.a. shall be levied. The records before us indicate that that only two instalments have been paid. Therefore, we direct that the balance amount due and payable towards irrigation restoration charge shall pe paid by Respondent No.1 on or before 30.06.2023. Further, interest @ 12%

p.a. shall be payable from the date the instalment/payment fell due till the date of the impugned order i.e., 05.05.2016.

22. In conclusion, we allow the Civil Appeal No. 8550 of 2022 arising out of SLP (C) No. 28161 of 2016 and set aside the impugned final judgement and order dated 05.05.2016 passed by the High Court of Judicature of Bombay at Nagpur in W.P. No. 4968 of 2015.

23. Parties shall bear their own costs.

.....J.
[S. RAVINDRA BHAT]

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

NEW DELHI;
JANUARY 13, 2023