

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
ARBITRATION APPEAL NO.05 OF 2017

The Government of Maharashtra,
Water Resource Department,
(Irrigation Department), through
the Executive Engineer,
Jayakwadi Irrigation Division (North),
Paithan, District Aurangabad.

Appellant

Versus

S.S.Deshmukh,
Government Registered Contractor,
Dnyanai, Plot No.25,
2, Saraswati Colony, Georai,
District Beed.

Respondent

WITH
ARBITRATION APPEAL NO.06 OF 2017

The Government of Maharashtra,
Water Resource Department,
(Irrigation Department), through
the Executive Engineer,
Jayakwadi Irrigation Division (North),
Paithan, District Aurangabad.

Appellant

Versus

S.S.Deshmukh,
Government Registered Contractor,
Dnyanai, Plot No.25,
2, Saraswati Colony, Georai,
District Beed.

Respondent

WITH
ARBITRATION APPEAL NO.07 OF 2017

The Government of Maharashtra,
Water Resource Department,
(Irrigation Department), through

the Executive Engineer,
Jayakwadi Irrigation Division (North),
Paithan, District Aurangabad.

Appellant

Versus

S.S.Deshmukh,
Government Registered Contractor,
Dnyanai, Plot No.25,
2, Saraswati Colony, Georai,
District Beed.

Respondent

Mr.V.C.Solshe, advocate for the appellant.
Mr.Amol K. Gawali, advocate for the Respondent.

CORAM : ROHIT B. DEO, J.

DATE : 23rd January, 2020.

ORAL JUDGMENT :

1 These appeals are preferred under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, “the Act of 1996”), assailing three separate orders dated 22.02.2016, rendered by the Principal District Judge, Aurangabad, in M.A.R.J.I. Nos.594/2013, 595/2013 and 596/2013, whereby and whereunder the applications under Section 34 of the Act are rejected.

2 The petitioner-State preferred three applications under Section 34 of the Act of 1996, being aggrieved by three separate awards made by the learned Arbitrator.

3 Concededly, each award allows four claims in favour of the Respondent-Contractor.

4 Surprisingly, there is absolutely no discussion in the orders impugned and indeed there is not even a reference to Claim Nos. 2 to 4 and all that is considered is, whether Claim no.1 is rightly granted. That apart, there is no application of mind to the seminal issue, which was, whether the State has made out a case for setting aside the arbitral award. It is trite law that the learned Principal District Judge was not acting as the appellate Court and was expected to test the validity of the award strictly on the touchstone of Section 34 of the Act of 1996.

5 In this view of the matter, learned Counsel for the petitioner states and the learned Counsel for the Respondent-Contractor fairly agrees that the orders impugned can be set aside and the matter can be remitted to the learned Principal District Judge, Aurangabad, for deciding Section 34 Applications afresh and in accordance with law.

6 The orders impugned are set aside. The Section 34 Applications are remitted to the Principal District Judge, Aurangabad, for fresh decision, in accordance with law.

7 The parties shall appear before the Principal District Judge, Aurangabad on 12.02.2020 and the Applications shall be finally disposed of within ninety days from the date of appearance. No separate notice shall be necessary. The amount deposited by the State, in this Court, shall be remitted to the Court of the Principal District Judge, Aurangabad. The Contractor has already withdrawn 50% of the amount deposited. The undertaking given by the Contractor to reimburse the said amount, if necessary, shall continue to operate till the disposal of the Section 34 Applications.

8 These appeals are partly allowed in the aforestated terms.

9 Pending Civil Applications do not survive and stand disposed of.

 Authenticated copy of this order be issued to the learned Counsel for respective parties.

ROHIT B. DEO
JUDGE

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