



ARBITRATION AND CONCILIATION

Supreme Court Confirms: No Arbitration Without Agreement, Participation Does Not Confer Jurisdiction

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PUBLISHED 4 May 2026

The Supreme Court has upheld a Bombay High Court decision setting aside an arbitral award, reaffirming foundational principles of arbitration law: jurisdiction cannot be unilaterally imposed, participation in defective proceedings does not cure jurisdictional nullity, and state authorities lack power to foist arbitration on parties governed by concluded contracts. The judgment in *M/s Bharat Udyog Ltd. v. Ambernath Municipal Council* offers critical guidance on the interpretation of dispute resolution clauses, the limits of statutory intervention, and the doctrine of estoppel in arbitration.

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Factual Background

In March 1994, the Ambernath Municipal Council (Municipal Council), a statutory body constituted under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, issued a tender for the collection of octroi for one year commencing 1 April 1994. The tender specified a reserve price of Rs. 6,74,00,000, below which offers would not be considered.

The petitioner, M/s Bharat Udyog Ltd. (formerly M/s Jai Hind Contractors Pvt. Ltd.), participated in the tender process and was declared the successful bidder with a bid of Rs. 6,75,00,000. A contract was executed on 30 March 1994, and the petitioner commenced work from 1 April 1994.

On 2 May 1994, barely a month into the contract, the petitioner wrote to the Chief Officer of the Municipal Council requesting a reduction of the reserve price by Rs. 40,78,517, alleging that the reserve price was contrary to applicable norms. The Municipal Council rejected this request on 27 May 1994, stating that the reserve price had been fixed in accordance with Maharashtra Government guidelines.

The petitioner then approached the Bombay High Court in Writ Petition No. 3598 of 1994. However, it subsequently sought and obtained leave to withdraw the petition with liberty to pursue alternative proceedings. On 5 October 1994, the petitioner directly approached the Urban Development Department of the Maharashtra State Government, requesting the appointment of an arbitrator.

On 14 November 1994, the State Government issued a Government Resolution appointing the Commissioner, Konkan Division, as arbitrator. The resolution purported to rely on Section 143-A(3) of the 1965 Act and described the appointment as a “special case.” Significantly, the arbitrator was required to submit a report to the State Government within one month and to conduct proceedings under the Arbitration Act, 1940.

At the relevant time, the Municipal Council was functioning under an Administrator appointed by the State Government. Notice of arbitration was served on the Municipal Council on 3 December 1994, with a hearing scheduled for 9 December 1994. The Administrator filed a reply on 8 December 1994, defending the reserve price and asserting that the petitioner could not challenge the price after voluntarily bidding above the reserve and executing the contract. The arbitrator delivered his award on 26 December 1994, reducing the reserve price to Rs. 6,20,89,843.

The petitioner filed a Miscellaneous Application under Sections 14 and 17 of the 1940 Act to make the award a rule of court. The Municipal Council objected, asserting that the State Government lacked jurisdiction to appoint an arbitrator and that the award was a nullity. The Civil Judge dismissed the objections on the ground of limitation and made the award a rule of court on 22 September 2000.

On appeal, the Bombay High Court reversed the Civil Judge's decision and set aside the award on 4 August 2016, holding that there was no valid arbitration agreement and that the State Government lacked authority to impose arbitration.

Issues Before the Supreme Court

The special leave petition raised the following core issues:

1. Whether Clause 22 of the contract constituted an arbitration agreement within the meaning of Section 2(a) of the Arbitration Act, 1940.
2. Whether the State Government had jurisdiction under Section 143-A(3) of the 1965 Act to appoint an arbitrator.
3. Whether the Municipal Council was estopped from challenging the arbitral award by reason of its participation in the arbitral proceedings.
4. Whether the arbitral proceedings and award were a nullity (*coram non iudice*).

The Court's Reasoning

No Valid Arbitration Agreement Under Section 2(a)

The Supreme Court examined Clause 22 of the contract, which provided:

"In case of any dispute, the same shall be referred to the Collector and his decision shall be final and binding on the Agent and the Council. Appeal against the decision of the Collector in case of any dispute shall lie first before the Divisional Commissioner and finally before the Government in Urban Development Department."

The Court held that Clause 22 did not constitute an arbitration agreement. Instead, it established a departmental dispute resolution mechanism involving a hierarchical appeal process within the governmental structure. The clause did not contemplate resolution through arbitration but rather through a quasi-administrative process.

The Court affirmed the High Court's finding that the contract left no space for alternative dispute resolution. Octroi collection is a significant revenue function integral to municipal governance under Part IXA of the Constitution. Accordingly, the power to resolve disputes was deliberately kept within the governmental hierarchy, with judicial review, civil remedies, or statutory remedies as the agent's recourse.

State Government Lacked Jurisdiction Under Section 143-A(3)

Section 143-A(3) of the 1965 Act provides:

"Subject to the directions, if any, issued from time to time, by the State Government, by any general or special order in this behalf, the Council shall regulate the collection of octroi either through such lessee or agent in such manner and procedure as it may deem fit having regard to the provisions of the Act."

The petitioner contended that this provision empowered the State Government to appoint an arbitrator. The Court rejected this argument decisively. It held that the power conferred on the State Government under Section 143-A(3) relates solely to regulating the manner and procedure of octroi collection. It does not extend to unilaterally appointing an arbitrator for disputes between the Municipal Council and its agent under a concluded contract.

The Court affirmed the High Court's observation:

"We do not find that any such power is vested in the State Government under subsection (3) of Section 143-A, to foist arbitration on parties who are governed by a concluded contract between them."

The basic requirement of mutuality and consensus *ad idem* for arbitration was entirely absent. The State Government was not a party to the contract and had no contractual basis to impose arbitration.

Participation Does Not Cure Jurisdictional Nullity

The petitioner relied heavily on the principle of estoppel and waiver, citing *N. Chellappan v. Secretary, Kerala State Electricity Board* (1975) 1 SCC 289 and *Inder Sain Mittal v. Housing Board, Haryana* (2002) 3 SCC 175, to argue that the Municipal Council's participation in the arbitral proceedings estopped it from challenging the award.

The Court rejected this submission. It held that where an arbitration agreement is inherently absent, participation in proceedings does not confer jurisdiction. The arbitrator lacked inherent jurisdiction from the outset, rendering the entire proceedings *coram non iudice* and the award non-est.

The Court noted the particular circumstances under which the Municipal Council participated. At the relevant time, it was functioning under a State-appointed Administrator. The arbitrator appointed was the Revenue Commissioner, Konkan Division, a superior officer in the administrative hierarchy. The Municipal Council was served with notice on 3 December 1994, required to file a reply by 9 December 1994, heard on 14 December 1994, and subjected to an award on 26 December 1994. The speed and peremptory nature of the proceedings, combined with the hierarchical position of the arbitrator, indicated that the Municipal Council was effectively compelled to participate.

The Court affirmed the High Court's finding that there was no acquiescence or estoppel where a party is forced to participate in proceedings that are a jurisdictional nullity.

Absence of Mutuality

The Court emphasised that the requirement of consensus ad idem for the creation of an arbitration agreement under Section 2(a) of the Arbitration Act, 1940, was entirely absent. The entire process was initiated unilaterally by the petitioner, enabled unilaterally by the State Government, and imposed on the Municipal Council without its informed consent.

The Court endorsed the High Court's characterisation of the process as a "back door method" to tinker with public tender conditions after the contract was concluded.

Key Holdings

The Supreme Court upheld the Bombay High Court's decision and dismissed the special leave petition on the following grounds:

Absence of a Valid Arbitration Agreement: Clause 22 of the contract did not constitute an arbitration agreement under Section 2(a) of the Arbitration Act, 1940. It established a departmental dispute resolution mechanism, not arbitration.

Lack of Jurisdiction for Appointment: The State Government had no authority under Section 143-A(3) of the 1965 Act to appoint an arbitrator for disputes between the Municipal Council and its agent. The provision relates to the regulation of octroi collection procedures, not dispute resolution.

Absence of Mutuality: The requirement of consensus ad idem for an arbitration agreement was absent. The petitioner unilaterally sought arbitration, and the State Government unilaterally imposed it on the Municipal Council.

Void Proceedings and Nullity of Award: Since the arbitrator lacked inherent jurisdiction due to the absence of an arbitration agreement, the entire proceedings were a nullity (*coram non iudice*) and the award was non-est.

Participation Does Not Confer Jurisdiction: The Municipal Council was not estopped from challenging the award. It was forced into arbitration without consent while functioning under a State-appointed Administrator. There is no estoppel where a party is compelled to participate in proceedings that are a jurisdictional nullity.

Concluding Observations

The Supreme Court's decision in *Bharat Udyog Ltd.* is a salutary reminder that arbitration is a creature of contract, not administrative convenience. Jurisdiction cannot be created by unilateral action, governmental intervention, or procedural participation where the foundational requirement of a valid arbitration agreement is absent.

The judgment is also a caution to public authorities and their commercial counterparties. Dispute resolution clauses in public contracts must be drafted with precision, and parties seeking to invoke arbitration must ensure that a valid arbitration agreement exists before commencing proceedings.

For legal practitioners, the case reaffirms that jurisdictional challenges are not foreclosed by participation, particularly where participation is not voluntary or informed. The doctrine of estoppel does not operate to validate proceedings that are void ab initio.

Finally, the decision underscores the constitutional and statutory autonomy of municipal bodies. State Governments, notwithstanding supervisory or regulatory roles, cannot usurp the contractual rights and dispute resolution mechanisms agreed between municipal bodies and their commercial counterparties.

Citation: *M/s Bharat Udyog Ltd. v. Ambernath Municipal Council*, Special Leave Petition (C) No. 1127 of 2017, decided on 24 March 2026 by Hon'ble Justices Pamidighantam Sri Narasimha and Alok Aradhe.

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