

Participation In Arbitral Proceedings Cannot Cure Absence Of Arbitration Agreement: Supreme Court

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Introduction

In *Bharat Udyog Ltd. v. Ambernath Municipal Council through Commissioner [2026 INSC 288]*, the Supreme Court examined whether an arbitral award could survive where there was no arbitration agreement between the parties and the arbitrator had been appointed unilaterally by the State Government.

The Supreme Court held that neither the contract between the parties nor Section 143-A(3) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 authorised the State Government to appoint an arbitrator. The Supreme Court further held that participation in the proceedings could not confer jurisdiction on the arbitrator where there was no arbitration agreement in the first place.

The judgment reiterates that arbitration is founded on consent. In the absence of mutuality and consensus ad idem, arbitral proceedings are coram non iudice and the resulting award is non-est.

In this article, we navigate through the facts of the case and the findings rendered by the Supreme Court.

Brief Facts

Ambernath Municipal Council issued a tender for collection of octroi for a one-year period. Bharat Udyog Ltd., formerly known as Jai Hind Contractors Pvt. Ltd., participated in the tender process and was awarded the contract.

After execution of the agreement and commencement of work, Bharat Udyog sought reduction of the minimum reserve price fixed under the tender. The Municipal Council rejected the request, stating that the reserve price had been fixed in accordance with the applicable Government guidelines.

Bharat Udyog initially approached the High Court, but later withdrew the writ petition with liberty to adopt appropriate proceedings. Thereafter, Bharat Udyog approached the State Government requesting appointment of an arbitrator to decide the dispute relating to reduction of the reserve price.

The State Government issued a Government Resolution appointing an arbitrator under Section 143-A(3) of the 1965 Act. The Municipal Council participated in the proceedings through the Administrator. An award was thereafter passed reducing the reserve price.

Bharat Udyog initiated proceedings before the Civil Court under Sections 14 and 17 of the Arbitration Act, 1940 for making the award a rule of the court. The Municipal Council objected on the ground that there was no arbitration agreement and that the State Government had no jurisdiction to appoint an arbitrator. The Civil Court rejected the objections and made the award a rule of the court.

The Municipal Council challenged the Civil Court's order before the High Court. The High Court allowed the appeal and set aside the award, holding that there was no arbitration agreement between the parties and that the State Government could not impose arbitration on a concluded contract.

Bharat Udyog challenged the decision of the High Court before the Supreme Court.

Arguments from Both Sides

Bharat Udyog contended that the Municipal Council had participated in the arbitral proceedings and could not later challenge the jurisdiction of the arbitrator. It was submitted that the Municipal Council had waived its objections and acquiesced in the arbitral process.

Bharat Udyog further submitted that the objections raised by the Municipal Council were barred by limitation. It was also argued that even if the agreement did not expressly use the word "arbitration", the intention to refer disputes to arbitration could be gathered from the contractual framework.

The Municipal Council opposed these submissions and contended that there was no arbitration agreement between the parties. It was submitted that Clause 22 of the contract merely provided for a departmental dispute resolution mechanism and did not amount to an arbitration clause.

The Municipal Council further submitted that Section 143-A(3) of the 1965 Act did not empower the State Government to appoint an arbitrator for disputes between the Municipal Council and its agent. Participation in proceedings pursuant to a unilateral Government Resolution could not cure the absence of consent.

Findings of the Supreme Court

The Supreme Court dismissed the special leave petition and upheld the judgment of the High Court.

The Supreme Court first examined Section 143-A of the 1965 Act. The Supreme Court held that the provision deals with farming of octroi or appointment of an agent for collection of octroi. Section 143-A(3) permits the State Government to issue general or special directions regarding the manner and procedure for collection of octroi.

However, the Supreme Court held that this provision could not be extended to authorise the State Government to appoint an arbitrator unilaterally in respect of a contractual dispute between the Municipal Council and its agent. The power to issue directions for regulating octroi collection could not be treated as a power to impose arbitration.

The Supreme Court then examined Clause 22 of the contract. Clause 22 provided that disputes would be referred to the Collector, whose decision would be final and binding. It also provided for an appeal first to the Divisional Commissioner and finally to the Government in the Urban Development Department.

The Supreme Court held that Clause 22 did not constitute an arbitration agreement. It merely created a departmental or hierarchical mechanism for dispute resolution. It did not show any agreement between the parties to submit disputes to an arbitral tribunal.

The Supreme Court also noted that Bharat Udyog had not invoked Clause 22 in the manner contemplated by the contract. Instead, after withdrawing the writ petition, Bharat Udyog directly approached the State Government seeking appointment of an arbitrator. The State Government then appointed an arbitrator without any contractual or statutory basis.

The Supreme Court held that neither Clause 22 nor any other clause in the agreement constituted an arbitration agreement. The Supreme Court further held that the State Government had no jurisdiction under Section 143-A(3) of the 1965 Act to appoint an arbitrator.

The Supreme Court rejected the argument based on waiver, acquiescence and estoppel. The Supreme Court held that participation in arbitral proceedings cannot confer jurisdiction where there is no arbitration agreement. Since the Municipal Council was drawn into the proceedings without consent, its participation could not validate the arbitral process.

The Supreme Court also noted that the Municipal Council had raised jurisdictional objections before the Civil Court as well as the High Court. Therefore, there was no basis to hold that the Municipal Council was estopped from challenging the award.

The Supreme Court summarised the position by holding that there was no valid arbitration agreement as required under Section 2(a) of the Arbitration Act, 1940. The State Government had no authority to appoint an arbitrator. There was no mutuality or consensus ad idem for reference of disputes to arbitration. Since the arbitrator lacked inherent jurisdiction, the proceedings were a nullity and the award was *non-est*.

Accordingly, the Supreme Court found no error in the judgment of the High Court and dismissed the special leave petition.

Comment

The judgment in ***Bharat Udyog (supra)*** is an important reaffirmation of the consensual foundation of arbitration.

The Supreme Court has clarified that arbitration cannot be imposed merely because a contract contains a dispute resolution clause. The clause must disclose a clear agreement to refer disputes to arbitration. A departmental mechanism, even if it provides for a final and binding decision by an administrative authority, does not automatically become an arbitration agreement.

The decision is equally important on statutory powers. Section 143-A(3) of the 1965 Act enabled the State Government to issue directions regarding the manner and procedure for octroi collection. It did not authorise the State Government to appoint an arbitrator for disputes arising from a contract between the Municipal Council and its agent.

The judgment also reinforces that participation cannot cure a foundational jurisdictional defect. Where there is no arbitration agreement, an arbitrator cannot acquire jurisdiction merely because a party participated in the proceedings, particularly where such participation followed a unilateral appointment without consent.

The decision therefore reiterates that arbitral jurisdiction is not a procedural formality. It flows from agreement. In the absence of consent, the proceedings are without jurisdiction and the award is a nullity.

The judgment strengthens the principle that arbitration remains a creature of contract. Neither administrative action nor participation in proceedings can substitute the basic requirement of a valid arbitration agreement.

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