2024:HHC:11447

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Arbitration Appeal No.89 of 2024**
**Reserved on : 07.11.2024**
**Decided on : 14.11.2024**

National Highways Authority of India ...Appellant

Versus

Devi Ram & Others ...Respondents

*Coram*

**The Hon'ble Mr. Justice Virender Singh, Judge.**

*Whether approved for reporting?*[1]

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| For the petitioner | : | Mr. K.D. Shreedhar, Senior Advocate with Ms. Sneh Bhimta, Advocate. |
| For the respondents | : | Mr. Suneet Verma, Advocate vice Mr.Varun Rana, Advocate. |

**Virender Singh, Judge**

National Highways Authority of India, through its Project Director, has filed the Arbitration Appeal, under Section 37 of the Arbitration and Conciliation Act 1996, (hereinafter referred to as 'the Act'), against the order dated 4.12.2021, passed by the Court of learned District Judge, Mandi, District Mandi, H.P., in Arbitration Petition No.50 of 2018, titled as NHAI versus Devi Ram and Others.

[1] *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

2. By way of order dated 4.12.2021, the learned District Judge, has dismissed the objections filed in 43 Arbitration cases, under Section 34 of the Act.

3. Brief facts, leading to the filing of the present appeal, may be summed up, as under:-

3.1. The Government of India, by issuing requisite notification, under Section 3(A) of the National Highway Act, 1956, which has published in the official gazette on 21.4.2012, has acquired the land comprising in Revenue Estate Chamukha, Tehsil Sundernagar, District Mandi, H.P., for four laning of National Highway No.21, from KM 126.500 to KM 188.917 (Bilaspur-Ner Chowk Section). As per the mandate of the Act wide publicity was given to the same.

3.2. Subject matter of the *lis* is situated in Village Chamukha and on 31.10.2013(sic.), the Competent Authority, has passed Award No.45 of 2013-14, by assessing the market value of the acquired land, as Rs.50,00,000/- per Bigha.

3.3. Thereafter, the Arbitrator was appointed and the Arbitrator, has passed the award dated 28.11.2017, by

enhancing the market value, at the rate of Rs.68,16,570/- per bigha. Thereafter, petitions, under Section 34 of the Act, were filed, which were dismissed by the learned District Judge.

4. Assailing the said order, the present appeal has been preferred, on the ground that the order impugned herein is against the provisions of law and public policy.

4.1. The award has also been stated to be non est, as the Arbitrator had become functus officio. According to the appellant, the Award was passed, after one year of entering into the reference in violation of Section 29(A) of the Act.

4.2. According to the appellant, the learned District Judge has failed to take note of the fact that the learned Arbitrator has wrongly relied upon the sale deed No.781/2008, pertaining to the land, measuring 0-4-4 Bighas, situated in village Thala, which, admittedly, is a very small area, in comparison to the large chunk of the land acquired by the appellant.

4.3. It is the further case of the appellant that the learned District Judge, has failed to appreciate the fact

that the enhancement of compensation was on the basis of a spot inspection report, prepared by a retired officer of the State Administrative Services. The appointment of a Local Commissioner is bad and according to the appellant, the learned District Judge, has wrongly placed reliance upon the same.

5. On the basis of the above facts, a prayer has been made to allow the appeal, by setting aside the order, passed by the learned District Judge.

6. Per contra, Shri Suneet Verma, Advocate appearing vice Mr. Varun Rana, Advocate, for the respondents, has supported the order passed by the learned District Judge, by virtue of which, the petition under Section 34 of the Act, was dismissed.

7. The scope of Sections 34 and 37 of the Act has duly been discussed by the Hon'ble Supreme Court in ***Konkan Railway Corporation Ltd. Vs. Chenab Bridge Project undertaking, (2023) 9 Supreme Court Cases, 85.*** Relevant paragraphs of the judgment, are reproduced, as under:-

> *"19. Therefore, the scope of jurisdiction under Section 34 and Section 37 of the Act is not akin to*

*normal appellate jurisdiction. 22 It is well-settled that courts ought not to interfere with the arbitral award in a casual and cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle courts to reverse the findings of the Arbitral Tribunal. 23 In Dyna Technologies Private Limited v. Crompton Greaves Limited 24 , this Court held:*

*"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.*

*25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."*

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*25. The principle of interpretation of contracts adopted by the Division Bench of the High Court that when two constructions are possible, then courts must prefer the one which gives effect and voice to all clauses, does not have absolute application. The said interpretation is subject to the*

> *jurisdiction which a court is called upon to exercise. While exercising jurisdiction under Section 37 of the Act, the Court is concerned about the jurisdiction that the Section 34 Court exercised while considering the challenge to the Arbitral Award. The jurisdiction under Section 34 of the Act is exercised only to see if the Arbitral Tribunal's view is perverse or manifestly arbitrary. Accordingly, the question of reinterpreting the contract on an alternative view does not arise. If this is the principle applicable to exercise of jurisdiction under Section 34 of the Act, a Division Bench exercising jurisdiction under Section 37 of the Act cannot reverse an Award, much less the decision of a Single Judge, on the ground that they have not given effect and voice to all clauses of the contract. This is where the Division Bench of the High Court committed an error, in re-interpreting a contractual clause while exercising jurisdiction under Section 37 of the Act. In any event, the decision in Radha Sundar Dutta (supra), relied on by the High Court was decided in 1959, and it pertains to proceedings arising under the Village Chaukidari Act, 1870 and Bengal Patni Taluks Regulation of 1819. Reliance on this judgment particularly for interfering with the concurrent interpretations of the contractual clause by the Arbitral Tribunal and Single Judge under Section 34 of the Act is not justified."*

8. In ***Bombay Slum Redevelopment Corporation Pvt. Ltd.*** *Versus* ***Samir Narain Bhojwani, (2024) 7 Supreme Court Cases 218***, the Hon'ble Supreme Court emphasized that the supervisory role of Courts is very restricted in dealing with appeals, under Section 37 of the Act. It has also been held by the Hon'ble Supreme Court that the scope of interference in a petition under Section 34 of the Act is very narrow and jurisdiction, under Section

37 of the Act, is narrower. Therefore, the Courts must be very conservative while dealing with arbitral awards and confine themselves to the grounds strictly available under Section 34 of the Act. Relevant paragraph 32 of the judgment, is reproduced, as under:-

> *"32. The object of the Arbitration Act is to provide an arbitral procedure that is fair, efficient, and capable of meeting the needs of specific arbitration. The object is to ensure that the arbitral proceedings and proceedings filed for challenging the award are concluded expeditiously. The proceedings have to be cost effective. The supervisory role of the Courts is very restricted. Moreover, we cannot ignore that arbitration is one of the modes of Alternative Disputes Redressal Mechanism provided in Section 89 of the CPC. If the Courts dealing with appeals under Section 37 of the Arbitration Act start routinely passing the orders of remand, the arbitral procedure will cease to be efficient. It will cease to be cost-effective. Such orders will delay the conclusion of the proceedings, thereby defeating the very object of the Arbitration Act. Therefore, an order of remand by Section 37 Court can be made only in exceptional cases where remand is unavoidable. As observed earlier, the scope of interference in a petition under Section 34 is very narrow. The jurisdiction under Section 37 of the Arbitration Act is narrower. Looking to the objects of the Arbitration Act and the limited scope available to the Courts to interfere with the award of the Arbitral Tribunal, this Court, while dealing with the decisions under Sections 34 and 37 of the Arbitration Act, in its jurisdiction under Article 136 of the Constitution of India, has to be circumspect. By their own volition, the parties choose to go before the Arbitral Tribunal instead of availing remedy before the traditional civil courts. Therefore,the Courts must be very conservative when dealing with arbitral awards and confine*

*themselves to the grounds strictly available under Section 34 of the Arbitration Act."*

9. In ***Reliance Infrastructure Ltd.*** *versus* ***State of Goa, (2024) 1 Supreme Court Cases 479***, the Hon'ble Supreme Court has held that 'patent illegality' in the award calls for interference, but, a mere illegality is not patent illegality and it ought to be apparent on the face of the award, not the one, which is culled out by way of a long drawn analysis of pleadings and evidence. Relevant paragraphs of the said judgment, are reproduced, as under:-

*"57. As noticed, arbitral award is not an ordinary adjudicatory order so as to be lightly interfered with by the Courts under Sections 34 or 37 of the Act of 1996 as if dealing with an appeal or revision against a decision of any subordinate Court. The expression "patent illegality" has been exposited by this Court in the cases referred hereinbefore. The significant aspect to be reiterated is that it is not a mere illegality which would call for interference, but it has to be "a patent illegality", which obviously signifies that it ought to be apparent on the face of the award and not the one which is culled out by way of a long-drawn analysis of the pleadings and evidence.*

*58. Of course, when the terms and conditions of the agreement governing the parties are completely ignored, the matter would be different and an award carrying such a shortcoming shall be directly hit by Section 28(3) of the Act, which enjoins upon an Arbitral Tribunal to decide in accordance with the terms of contract while taking into account the usage of trade applicable to the transaction. As said by this Court in Associate Builders vs. DDA 27 , if*

> *an Arbitrator construes the term of contract in a reasonable manner, the award cannot be set aside with reference to the deduction drawn from construction. The possibility of interference would arise only if the construction of the Arbitrator is such which could not be made by any fairminded and reasonable person.*
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> *xxx xxx xxx*
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> *95. The narrow scope of "patent illegality" cannot be breached by mere use of different expressions which nevertheless refer only to "error" and not to "patent illegality". We are impelled to reiterate what has been stated and underscored by this Court in Delhi Airport Metro Express (P) Ltd. Vs. DMRC 28 that restraint is required to be shown while examining the validity of arbitral award by the Courts, else interference with the award after reassessing the factual aspects would be defeating the object of the Act of 1996. This is apart from the fact that such an approach would render several judicial pronouncements of this Court redundant if the arbitral awards are set aside by categorizing them as "perverse" or "patently illegal" without appreciating the contours of these expressions."*

10. In the ***Larsen Air Conditioning and Refrigeration Company's case versus Union of India & Others, 2023 LiveLaw (SC) 631,*** the Hon'ble Supreme Court has held that Section 34 of the Act, permits the Court to interfere with an award, sans the grounds of patent illegality, i.e., that illegality must go to the root of the matter and cannot be of a trivial nature. Relevant paragraph of the said judgment, is reproduced, as under:-

> *15. The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans*

*the grounds of patent illegality, i.e., that "illegality must go to the root of the matter and cannot be of a trivial nature"; and that the tribunal "must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground" [ref: Associate Builders (supra)]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34. It is important to notice that the old Act contained a provision 29 which enabled the court to modify an award. However, that power has been consciously omitted by Parliament, while enacting the Act of 1996. This means that the Parliamentary intent was to exclude power to modify an award, in any manner, to the court. This position has been iterated decisively by this Court in Project Director, National Highways No. 45E and 220 National Highways Authority of India v M. Hakeem:*

> *"42. It can therefore be said that this question has now been settled finally by at least 3 decisions [McDermott International Inc. v. Burn Standard Co. Ltd. 31 ], [Kinnari Mullick v. Ghanshyam Das Damani 32 ], [Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies (P) Ltd. 33 ] of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the Uncitral Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in Redfern and Hunter on International Arbitration, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the "limited remedy" under Section 34 is coterminous with the "limited right", namely, either to set aside an award or remand the*

*matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996."*

11. In ***S.V. Samudram versus State of Karnataka & Another, (2024) 3 Supreme Court Cases 623***, the Hon'ble Supreme Court has held that jurisdiction of Court under Section 34 is fairly narrow and moreover, when it comes to jurisdiction under Section 37, it is all the more circumscribed. The relevant paragraphs of the judgment, are reproduced, as under:-

*"46. It has been observed by this Court in MMTC Ltd. v. Vedanta Ltd.*

*"14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."*

*(Emphasis Supplied)*

*47. This view has been referred to with approval by a bench of three learned Judges in UHL Power Company Ltd v. State of Himachal Pradesh 36 . In respect of Section 37, this court observed:-*

*"16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the*

> *scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed."*
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> *xx xx xx*
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> *49. We may also notice that the circumscribed nature of the exercise of power under Sections 34 and 37 i.e., interference with an arbitral award, is clearly demonstrated by legislative intent. The Arbitration Act of 1940 had a provision (Section 15) which allowed for a court to interfere in awards, however, under the current legislation, that provision has been omitted.*
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> *50. The learned Single Judge, similar to the learned Civil Judge under Section 34, appears to have not concerned themselves with the contours of Section 37 of the A&C Act. The impugned judgment 38 reads like a judgment rendered by an appellate court, for whom re-examination of merits is open to be taken as the course of action."*

12. Judging the facts and circumstances of the present case, in the light of the above decisions of the Hon'ble Supreme Court, this Court is of the view that the learned counsel for the appellant, could not satisfy the judicial conscience of this Court, as to how the order passed by the learned District Judge, suffers from perversity and is not sustainable in the eyes of law.

13. In view of the above discussion, no case is made out to interfere with the impugned order dated 4.12.2021. Accordingly, the appeal is dismissed. Pending

application(s), if any, shall also stand disposed of accordingly.

**( Virender Singh )**
**Judge**

**November 14, 2024***(ps)*