2024:HHC:11351

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Arbitration Appeal No. 145 of 2024

Date of decision: 14.11.2024

National Highway Authority of India. ...Appellant.

Versus

Vishesar (Since deceased) through LRs.

...Respondents.

Coram:

Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?

For the appellant	:	Mr. K.D.Shreedhar, Sr. Advocate with Ms. Shreya Chauhan, Advocate, for the appellant, in all the matters.
For the respondents	:	Mr.Varun Rana, Advocate.

Jyotsna Rewal Dua, Judge

The National Highway Authority of India (for short 'NHAI') feeling aggrieved against the dismissal of its applications on 04.12.2021 under Section 34 of the Arbitration & Conciliation Act, 1996 (for short 'the Act') by the learned District Judge, Mandi (H.P.) has taken recourse to institution of these arbitration appeals under Section 37 of the Act.

2. Facts.

2(i). This appeal out of the acquisition of land by the appellant in Mohal Thala Tehsil Sundernagar, District Mandi (H.P.).

2(ii). Notification under Section 3A(1) of the National Highways Act, 1956 (for short 'NH Act'), was published in the official Gazettee on 21.04.2012 for acquiring the subject land for four laning of NH-21 (Ner Chowk-Mandi Section).

2(iii). Notification under Section 3D(1) of the NH Act, was issued in the official Gazette on 15.12.2012

2(iv). Notification under Section 3G(3) of the NH Act inviting claims from interested persons was published in the newspapers on different dates in January 2013.

2(v). For the land covered by the above notifications, the Competent Authority Land Acquisition ('CALA') announced award No.45/2013-14 on 31.10.2013. In terms of the award, market value of the land was assessed at Rs.60,00,000/- per bigha.

2(vi). Seeking enhancement in the market value of the acquired land, the landowners filed their claim petitions under Section 3G(5) of the NH Act before the notified Arbitrator. Learned Arbitrator passed the award on 31.10.2017 under Section 3G(5) of the NH Act. The claim petitions filed by the landowners were allowed. The market value of the acquired land was enhanced to Rs.81,39,120/- per bigha.

2(vii). The NHAI feeling aggrieved against the enhancement in the market value determined by the

Arbitrator took recourse to Section 34 of the Act and filed applications assailing the awards passed in favour of the landowners before the learned District Judge, Mandi. All these applications moved under Section 34 of the Act by NHAI were clubbed and vide common judgment passed on 04.12.2021, the same were dismissed.

It is in the aforesaid background that NHAI has now taken recourse to Section 37 of the Act and has assailed the judgment dated 04.12.2021 passed by the learned District Judge in all these matters.

3. Submissions.

3(i). Learned Senior Counsel for the appellant contended that:-

3(i)(a). The proceedings had commenced before the learned Arbitrator on 09.06.2014, whereas the award was passed on 31.10.2017. In view of Section 29A of the Act, which came into force w.e.f. 23.10.2015, the award was required to be passed within 12 months from the date of entering upon reference. The award passed by the learned Arbitrator on 31.10.2017 was *non est* as the Arbitrator had become *functus officio* on that date.

3(i)(b). It was also submitted that Sale deed relied upon by learned Arbitrator pertaining to Mohal Thala was for a very small area compared to large tracts of land acquired

under the questioned land acquisition process. It could not have been relied upon for assessing the market value of large tracts of land. That learned Arbitrator has applied 20% deduction, whereas deduction should have been less than 50%.

3(i)(c). Yet another point put forth is that the learned Court below failed to appreciate the fact that while enhancing the market value, the Arbitrator had wrongly taken into consideration the inspection report prepared by a retired Officer of the State Administrative Service. Provisions of Civil Procedure Code do not apply to the arbitration proceedings. Therefore, the aforesaid report could not be looked into.

3(i)(d). It was also contended that the Arbitrator had not followed the procedure & parameters laid down in Section 3G(7) of the NH Act. The award passed by him, therefore, suffers from patent illegality and is required to be declared as void.

3(ii). Learned counsel for the respondents defended the award passed by learned Arbitrator as also the judgment passed by learned District Judge.

4. CONSIDERATION.

4(i). Arbitrator – *functus officio*.

In ***P.K. Construction Company & Anr. vs. Shimla Municipal Corporation & Ors.***[1], it has been held that provisions of Section 29A of the Act will not be applicable to the arbitration proceedings that had started before the Arbitration & Conciliation (Amendment) Act, 2015 (3 of 2016) came into force.

In the instant case, the proceedings commenced before the learned Arbitrator on 09.06.2014, whereas Section 29A of the Act came into force from 23.10.2015, therefore, learned District Judge did not err in holding that the award passed in the present case cannot be held to be *non est*.

4(ii). Small tract of land/deduction:-

A contention has been raised for the appellant that the sale deed relied upon was in respect of 0-4-4 bighas, whereas the land acquired runs in several bighas (3 bighas approximately). Therefore, the sale deed for small parcel of land could not have been made the basis for determining market value for the acquired large chunk of land. It was also urged that deduction in the amount should have been to the extent of 50% not just 20%.

As observed by the learned District Judge, learned Arbitrator had considered the sale deed, Exhibit-PB, for determining the market value, as it was the only piece of

[1]AIR 2017 HP 103

evidence of the rate of purchase of land, available before him. The sale deed, however, pertained to the year 2008, whereas notifications in the instant case were issued in the year 2012. Learned Arbitrator justly increased the value by 7%. This increase cannot be said to be excessive. [Refer ***Land Acquisition Officer vs. Raman***[2]]

In ***Spl. Land Acquisition Officer & Anr. vs. M.K. Rafiq Saheb***[3], the Hon'ble Supreme Court held that there is no absolute rule that sale instances of smaller chunks of land cannot be considered when a large tract of land is acquired. In certain scenarios, such sale deeds pertaining to smaller pieces of land can be put to use for determining the value of acquired land which is comparatively large in area. The Court further held that it is hardly possible for a claimant to produce sale instances of large tracts of land as they are generally very far & few and normally the sale instances would relate to small pieces of land. The Apex Court noted that this limitation of sale transaction cannot operate to the disadvantage of the claimant. Relevant paragraphs from the judgment reads as under:-

> *"19. The judgment of the High Court is well reasoned and well considered. We find no perversity in its reasoning. The only issue is that Ex. P-5, which was relied upon by the High Court, relates to a small piece of land, whereas the acquisition is of a larger piece of*

[2](2005) 9 SCC 594
[3](2011) 7 SCC 714

land. It is not an absolute rule that when the acquired land is a large tract of land, sale instances relating to smaller pieces of land cannot be considered. There are certain circumstances when sale deeds of small pieces of land can be used to determine the value of acquired land which is comparatively large in area, as can be seen from the judicial pronouncements mentioned hereunder.

20. It has been held in the case of Land Acquisition Officer, Kammarapally Village, Nizamabad District, Andhra Pradesh v. Nookala Rajamallu and Ors.[4] *that:-*

> *"6. Where large area is the subject-matter of acquisition, rate at which small plots are sold cannot be said to be a safe criterion. Reference in this context may be made to few decisions of this Court in Collector of Lakhimour v. Bhuban Chandra Dutta*[5]*, Prithvi Raj Taneja v. State of M.P.*[6] *and Kausalya Devi Bogra v. Land Acquisition Officer*[7] *.*
>
> *7. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices."*

21. In the case of Bhagwathula Samanna and Ors. v. Special Tahsildar and Land Acquisition Officer[8]*, it was held:*

> *"13. The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land because of advantageous position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development,*

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[4] (2003) 12 SCC 334
[5] (1972) 4 SCC 236 : AIR 1971 SC 2015
[6] AIR 1977 SC 1560
[7] AIR 1984 SC 892
[8] (1991) 4 SCC 506

the principle of deduction of the value for purpose of comparison is not warranted."

22. In Land Acquisition Officer, Revenue Divisional Officer, Chittoor v. Smt. L. Kamalamma (dead) by Lrs. and others[9], this Court held as under:-

> *"6. ...when no sales of comparable land was available where large chunks of land had been sold, even land transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains, expenses involved in formation of a lay out, lump sum payment as also the waiting period required for selling the sites that would be formed."*

23. Further, it has also been held in the case of Smt. Basavva and Ors. v. Special Land Acquisition Officer and Ors.[10], that the court has to consider whether sales relating to smaller pieces of land are genuine and reliable and whether they are in respect of comparable lands. In case the said requirements are met, sufficient deduction should be made to arrive at a just and fair market value of large tracts of land. Further, the court stated that the time lag for real development and the waiting period for development were also relevant factors to be considered in determining compensation. The court added that each case depended upon its own facts. In the said case, based on the particular facts and circumstances, this court made a total deduction of 65% in determination of compensation.

24. It may also be noticed that in the normal course of events, it is hardly possible for a claimant to produce sale instances of large tracts of land. The sale of land containing large tracts are generally very far and few. Normally, the sale instances would relate to small pieces of land. This limitation of sale transaction cannot operate to the disadvantage of the claimants. Thus, the Court should look into sale instances of smaller pieces of land while applying reasonable element of deduction."

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[9] AIR 1998 SC 781
[10] AIR 1996 SC 3168

On deductions, the Apex Court in ***Lal Chand vs. Union of India & Anr.***[11] held, *inter alia*, that development of road is not necessary for widening the National Highway.

In ***C.R.Nagaraja Shetty (2) vs. Spl. Land Acquisition Officer and Estate Officer & Anr.***[12] also, land was acquired for widening the highway. Deduction of Rs.25/- per sq.ft. made by the High Court was not accepted, as development of the land was not held necessary for widening the highway. Relevant paragraphs from the judgment read as under:-

> *"12. That leaves us with the other question of deduction ordered by the High Court. The High Court has directed the deduction of Rs.25/- per square feet. Unfortunately, the High Court has not discussed the reason for this deduction of Rs.25/- per square feet nor has the High Court relied on any piece of evidence for that purpose.*
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> *13. It is true that where the lands are acquired for public purpose like setting up of industries or setting up of housing colonies or other such allied purposes, the acquiring body would be entitled to deduct some amount from the payable compensation on account of development charges, however, it has to be established by positive evidence that such development charges are justified. The evidence must come for the need of development contemplated and the possible expenditure for such development. We do not find any such discussion in the order of the High Court.*
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> *14. As if this is not sufficient, when we see the judgment of the Principal Civil Judge (Sr. Division), Bangalore, Rural District, Bangalore in Reference proceedings, we find that there is no deduction ordered for the so-called development charges. We are, therefore, not in a position to understand as to from where such development charges sprang up.*

[11] (2009) 15 SCC 769
[12] (2009) 11 SCC 75

15. The Learned Counsel appearing on behalf of the respondents was also unable to point out any such evidence regarding the proposed development. We cannot ignore the fact that the land is acquired only for widening of the National Highway. There would, therefore, be no question of any such development or any costs therefor.

16. In Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa & Ors[13], this Court has discussed the question of development charges. That was a case, where, the acquisition was for laying a Railway line. This Court found that the land under acquisition was situated in an area, which was adjacent to the land already acquired for the same purpose, i.e., for laying Railway line. In paragraph 29, the Court observed that the Land Acquisition Officer, the District Judge and the High Court had failed to notice that the purpose of acquisition was for Railways and that the purpose is a relevant factor to be taken into consideration for fixing the compensation.

17. The Court in Nelson Fernandes[13] relied on Viluben Jhalejar Contractor Vs. State of Gujarat[14], where it was held that:-

> *"29. ……the purpose for which the land is acquired, must also be taken into consideration in fixing the market value and the deduction of development charges."*

Further, in paragraph 30, the Court specifically referred to the deduction for the development charges and observed:-

> *"30. We are not, however, oblivious of the fact that normally 1/3rd deduction of further amount of compensation has been directed in some cases. However, the purpose for which the land is acquired must also be taken into consideration. In the instant case, the land was acquired for the construction of new BG line for the Konkan Railways. .... In the instant case, acquisition is for laying a railway line. Therefore, the question of development thereof would not arise."*

The Court made a reference to two other cases, viz., Hasanali Khanbhai & Sons Vs. State of Gujarat[15]

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[13] (2007) 9 SCC 447
[14] 2005(4) SCC 789
[15] 1995 (5) SCC 422

> *and Land Acquisition Officer Vs. Nookala Rajamallu*[16]*, where, the deduction by way development charges, was held permissible.*
>
> *18. The situation is no different in the present case. All that the acquiring body has to achieve is to widen the National Highway. There is no further question of any development. We again, even at the cost of repetition, reiterate that no evidence was shown before us in support of the plea of the proposed development. We, therefore, hold that the High Court has erred in directing the deduction on account of the developmental charges at the rate of Rs.25/- per square feet out of the ordered compensation at the rate of Rs.75/- per square feet. We set aside the judgment to that extent."*

In ***V.Hanumantha Reddy (dead) by LRs vs. The Land Acquisition Officer & Mandal R. Officer***[17], the Apex Court held that the land might be having high potentialities or proximity to developed area, but that by itself would not be a reason for not deducting developmental charges. The Court relied upon its judgment rendered in ***Kasturi & Ors. vs. State of Haryana***[18] wherein it was held that there may be various factual factors which may have to be taken into consideration while deducting the compensation towards developmental charges. In some cases, deduction may be more than 1/3rd and in some cases less than 1/3rd. There is difference between a developed area and an area having potential value, but is yet to be developed. The fact that an area is developed or adjacent to a developed area will not *ipso facto* make every land situated in the area also developed to

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[16] 2003(12) SCC 334
[17] (2003) 12 SCC 642
[18] (2003) 1 SCC 354

be valued as a building site or plot, particularly when vast tracts are acquired for development purposes.

While deciding ***Mala etc. vs. State of Punjab & Ors.***[19], the Apex Court reiterated that while determining the deduction for development charges, the Court should keep in mind the nature of land, area under acquisition, whether the land is developed or not, if developed, to what extent, the purpose of acquisition etc. The percentage of deduction or the extent of area required to be set apart has to be assessed by the Courts having regard to the size, shape, situation, user etc. of the land acquired. It is essentially a kind of guess-work, the Courts are expected to undertake.

In view of above, neither the reliance placed upon sale deed, Exhibit-PB, nor increase in value by 7% nor the deduction by 20%, while determining the market value of the acquired land can be faulted.

4(iii). Report of Local Commissioner.

The contention that learned Arbitrator could neither appoint the Local Commissioner nor his report could be relied upon, is not tenable. Section 26 of the Act reads as under :-

> *"Section 26. Expert appointed by arbitral tribunal.Previous Next*
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> *(1) Unless otherwise agreed by the parties, the arbitral tribunal may—*

[19] Civil Appeal No.3992-4000 of 2011, decided on 17.08.2023

> *(a) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal, and*
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> *(b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.*
>
> *(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in an oral hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.*
>
> *(3) Unless otherwise agreed by the parties, the expert shall, on the request of a party, make available to that party for examination all documents, goods or other property in the possession of the expert with which he was provided in order to prepare his report."*

Section 26 of the Act provides that unless otherwise agreed by the parties, the Arbitral Tribunal may appoint one or more experts to report to it on a specific issue to be determined by the Tribunal. The Arbitral Tribunal has jurisdiction to appoint an expert. The only prohibition being, the parties should not have stipulated that no expert should be appointed before the learned Arbitral Tribunal. Admittedly, no such agreement was placed on record by the parties. In view of above facts, learned District Judge has correctly held that the plea that the Arbitrator could not appoint the expert or could not consider the report of the expert was not tenable.

Further it may be observed that the landowners had moved before the learned Arbitrator under Section 3G(5) of the Act, which reads as under:-

> *"3G(5). If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government."*

In terms of the aforesaid provision, in case the amount determined by the Competent Authority is not acceptable to either of the parties then the amount shall be determined by the Arbitrator to be appointed by the Central Government. The aggrieved party has the right to produce relevant material before the Arbitrator to prove that the compensation determined by Competent Authority Land Acquisition was not correct and required to be enhanced. The grievance projected by the appellant that the Arbitrator had erred in relying upon the evidence inclusive of the report of Local Commissioner, which was not produced before the CALA, is not justified.

No further submissions were urged on this issue.

4(iv). The procedure not followed by the Arbitrator as per parameters laid down in Section 3G(7) of the NH Act:-

Section 3G(7) of the NH Act reads as under:-

> *"3G.(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—*
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> *(a) the market value of the land on the date of publication of the notification under section 3A;*

> *(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;*
>
> *(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;*
>
> *(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change."*

As per Section 3G(7), the Arbitrator is to determine market value of the land as on date of publication of notification under Section 3A of the Act. Damage to

land/person/property & reasonable expenses for change of residence etc. are also to be considered.

Both sides were in unison in their stand before the learned Arbitrator that circle rate was not relevant for determining the market value. The Arbitrator had considered the sale deed of land pertaining to Mohal Thala. It has already been held that reliance placed upon this sale deed was in order, this being the only piece of evidence available on record regarding rate of purchase of land. Learned Arbitrator had allowed 10% increase in the value for covering the gap of 2 years. The Arbitrator had considered the potentiality of the land & increased the value keeping in view the proximity from the road and other developed areas. This

was justifiable. The increase in value by 7% cannot be said to be excessive. Learned Arbitrator had also allowed deduction of 20% on account of developmental charges. The stipulated parameters were duly considered by the Arbitrator.

4(v). Patent illegality in the Award/re-appreciation of evidence/jurisdiction.

4(vii)(a). It is by now well-settled that the scope of Appellate Court exercising jurisdiction under Section 37 of the Act to review the findings in an award, is narrow/limited, if the award has been upheld or substantially upheld under Section 34. [Ref. ***Larsen Air Conditioning and Refrigeration Company vs. Union of India***[20]]

In ***Konkan Railway Corporation Ltd. Vs. Chenab Bridge Project Undertaking***[21], it was held that jurisdiction of the Court under Section 37 of the Act is akin to that under Section 34 of the Act. The Courts ought not to interfere with arbitral award in a casual and cavalier manner. Mere possibility of an alternative view on facts or interpretation of contract does not entitle Courts to reverse findings of the Arbitral Tribunal. Relevant paragraphs from the decision are as follows:-

[20] Civil Appeal No.3798 of 2023, decided on 11.08.2023
[21] 2023(9) SCC 85

"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.*
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> *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*

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[22] UHL Power Company Ltd. v. State of Himachal Pradesh (2022) 2 SCC (Civ) 401, para 15. See also: Dyna Technologies Pvt Ltd v. Crompton Greaves Limited (2019) 20 SCC 1, para 24, 25.
[23] ibid; Ssangyong Engineering. & Construction Company Ltd. v. National Highways Authority of India (NHAI) (2019) 15 SCC 131; Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., (2019) 7 SCC 236, para 11.1.
[24] (2019) 20 SCC 1

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."

In ***Bombay Slum Redevelopment Corporation Pvt. Ltd. Vs. Samir Barain Bhojwani***[25], the Hon'ble Apex Court emphasized that supervisory role of

[25] (2024) 7 SCC 218

Courts is very restricted in dealing with appeals under Section 37 of the Act. Scope of interference in a petition under Section 34 of the Act is very narrow. Jurisdiction under Section 37 of the Act is narrower. By their own volition, the parties choose to go before the Arbitral Tribunal instead of availing remedy before the traditional Civil Courts. Therefore, Courts must be very conservative while dealing with arbitral awards and confine themselves to the grounds strictly available under Section 34 of the Act.

4(vi)(b). In ***Reliance Infrastructure Ltd. vs. State of Goa***[26], the Hon'le Apex Court held that 'patent illegality' in the award calls for interference but a mere illegality is not patent illegality. 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 pleadings and evidence. Relevant paragraphs of the decision relevant to the context are 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.*
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> *58. Of course, when the terms and conditions of the agreement governing the parties are completely ignored,*

[26] (2024) 1 SCC 479

> *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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> *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."*

In the ***Larsen Air Conditioning and Refrigeration Company's*** case,[14] the Hon'ble Apex Court 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 paragraphs from the decision reads 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*

[27] (2015) 3 SCC 49
[28] (2022) 1 SCC 131

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[30]:

> *"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."*

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[29] "15. Power of court to modify award.—The court may by order modify or correct an award—
(a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or
(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or
(c) where the award contains a clerical mistake or an error arising from an accidental slip or omission."

[30] (2021) 5 SCR 368

[31] (2006) 11 SCC 181

[32] (2018) 11 SCC 328 : (2018) 5 SCC (Civ) 106

[33] (2021) 7 SCC 657

In ***S.V. Samudram vs. State of Karnataka***[34], the Hon'ble Apex Court 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 from the decision reads as under:-

> *"46. It has been observed by this Court in MMTC Ltd. v. Vedanta Ltd.*[35]
>
> > *"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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[34] (2024) 3 SCC 623
[35] (2019) 4 SCC 163
[36] (2022) 4 SCC 116

xx xx xx

> *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.*[37]
>
> *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."*

In the backdrop of above legal position, the award passed by the learned Arbitrator cannot be said to be suffering from any patent illegality, necessitating interference by the Court. The learned District Judge has examined the award in accordance with law vis-à-vis the contentions urged by the appellant and did not find any ground in exercise of jurisdiction under Section 34 of the Arbitration Act for interfering with it. Having considered the impugned judgment, the award and the contentions now urged, I do not find it a case to interfere in essence of limited jurisdiction under Section 37 of the Act.

5. In view of above discussion, no case is made out to interfere with the impugned judgment dated 04.12.2021, whereby applications moved by the appellant under Section

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[37] Larsen Air Conditioning and Refrigeration Company v. Union of India and Others 2023 SCC OnLine 982 (2-Judge Bench)

[38] S.V. Samudram v. State of Karnataka, 2017 SCC OnLine Kar 6559

34 of the Act were dismissed and the award passed by the learned Arbitrator was affirmed. Accordingly, the present appeal under Section 37 of the Act is dismissed. Pending miscellaneous application(s), if any, shall also stand disposed of.

Jyotsna Rewal Dua
Judge

November 14, 2024
(R.Atal)