

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2024:AHC:81638
Court No. 1

**APPEAL UNDER SECTION 37 OF ARBITRATION AND
CONCILIATION ACT 1996 No. - 41 of 2021**

NATIONAL HIGHWAYS AUTHORITY OF INDIA

v.

MUSAFIR AND OTHERS

HON'BLE SHEKHAR B. SARAF, J.

1. Heard Sri Divakar Rai Sharma, counsel appearing on behalf of the appellant and Sri Ashish Kumar Singh, counsel appearing on behalf of the respondent Nos.1, 2, 3, 15, 16, 28, 32, 34 and 38 and Sri Dharamveer Singh, counsel appearing on behalf of the respondent No.53.

2. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Arbitration Act”) arises out of an order passed by the District Judge, Mau dated November 5, 2020.

3. The facts of the case are briefly provided below:

- i. A notification under Section 3A(1) of the National Highways Act, 1956 (hereinafter referred to as “the Act”) was issued on January 23, 2015 for acquiring the land for the purposes of widening of the road NH-29 (now NH-24) between Varanasi – Gorakhpur.
- ii. The aforesaid notification was published in two daily newspapers on March 6, 2015 seeking objection from the persons interested in the land within a period of 21 days under

Section 3C(1) of the Act. Thereafter, the Competent Authority passed an award on August 17, 2016.

- iii. Being aggrieved by the award, the opposite parties filed their objections under Section 3G(5) of the Act before the Arbitrator.
- iv. The Arbitrator, after considering the objections, vide its order dated March 15, 2018 set aside the award dated August 17, 2016 and remitted the matter to the Competent Authority directing to form a Joint Committee including the officers of the National Highways Authority of India (hereinafter referred to as “the NHAI”) to get the land re-valued by conducting a spot inspection and determine the compensation as per Act No.30 of 2013.
- v. Pursuant to the order of remand dated March 15, 2018, the Competent Authority passed a fresh award on June 4, 2018.
- vi. On November 15, 2018, before the Arbitrator, the NHAI agreed to make the payment in three slabs depending upon area at the rate of Rs.3600/-, Rs.1400/- & Rs.800/- per square metre.
- vii. Later on, the Arbitrator passed another award on December 27, 2019 fixing the rate as per three slabs in terms of the order dated November 15, 2018.
- viii. The Arbitrator passed another award dated May 19, 2020 recalling the earlier award dated December 27, 2019 and directed to make the payment in terms of the amended award dated March 25, 2018.
- ix. The Arbitrator passed another award dated May 28, 2020 in the name of amended award and fixed only one slab, that is, at the rate of Rs.3600/- per square metre.

- x. Being aggrieved, the NHAI preferred objection under Section 34 of the Arbitration Act by impleading 53 persons/land holders in one case.
- xi. District Judge, Mau rejected aforesaid objection of the NHAI by holding that the objection is devoid of merit and the same deserves to be rejected.

4. It is to be noted that the award dated March 15, 2018 passed by the Arbitrator remanding the matter to the Competent Authority directing the land to get re-valued by conducting the spot inspection and determining the compensation as per Act No.30 of 2013 was never challenged by either of the parties. This order has, accordingly, attained finality.

5. Counsel appearing on behalf of the appellant and the counsel appearing on behalf of several respondents in this matter have fairly submitted that the Arbitrator may be directed to once again decide the matter *de novo* basing the same upon the spot inspection and re-valuation carried out by the Joint Committee including the officers of the NHAI as per the order dated March 15, 2018.

6. At this juncture, it is pertinent to refer to Section 33 of the Arbitration Act, which deals with Correction and interpretation of award, and making of an additional award:

“33. Correction and interpretation of award; additional award.—
(1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—

(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under subsection (1) to be justified, it shall make the correction or give the

interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.”

7. What is clear from the aforesaid provision is that the arbitral tribunal can only correct and interpret an award. An additional award can be made, only in respect of claims which have been omitted from the arbitral award. Interpretation of the award and additional award can be made only upon a request received by a party. However, correction can be done by the arbitral tribunal on its own within thirty days from the date of the arbitral award. However, none of these provisions, give arbitral tribunal the power to recall and modify its award. Arbitral tribunals are not courts of law which are bestowed with inherent powers. Arbitrators are required to act within the confines of the arbitration agreement, and the framework enshrined in the Arbitration Act. Any act which the arbitral tribunal is not empowered to do under the Arbitration Act is *void ab initio*.

8. The principle of *kompetenz- kompetenz* which empowers arbitral tribunals to rule on their own jurisdiction, is not a *carte blanche* for

unlimited authority. Rather, it underscores the tribunals' duty to determine its jurisdiction within the confines of the arbitration agreement and applicable law. The authority of arbitral tribunals to correct, interpret, or supplement their awards does not extend to revisiting the merits of the dispute or reconsidering substantive issues that have already been decided. Arbitral tribunals are bound by the principle of *functus officio*, which holds that once an award has been rendered, the tribunal's jurisdiction over the dispute is terminated, and it lacks authority to revisit or modify its decision in absence of specific statutory provisions to the contrary.

9. The Arbitrator in the instant case erred in passing the awards dated December 27, 2019, May 19, 2020 and May 28, 2020 since no statutory authority empowers the arbitral tribunal to review/modify its award. Therefore, the said orders are void ab initio and deserve to be set aside.

10. Section 34 Court despite noting that such recall and modification by the Arbitrator was beyond the statutory confines and improper, proceeded to dismiss the application:

“From the above provisions, it is amply clear that the learned Arbitrator has got no power to review his award. The learned Arbitrator/District Magistrate, Mau firstly reviewed the award date 15.03.2018 by passing the order dated 27.12.2019 without hearing the opposite parties and on the application filed by the opposite parties, the learned Arbitrator/District Magistrate, Mau has recalled the order dated 27.12.2019 by his order dated 28.05.2020, which is improper, but the net result is that award dated 15.03.2018 is revived.”

11. This raises important questions regarding the role of judiciary in overseeing arbitral proceedings and ensuring compliance with the principles of arbitration law. While courts generally afford deference to arbitral tribunals and uphold the finality of arbitral awards, they also have a duty to intervene when arbitrators exceed their authority or act improperly. In this case, the Section 34 court's decision to dismiss the application without addressing the arbitrator's improper actions may be seen as a missed opportunity to uphold the integrity of the arbitral process.

12. For the reasons discussed above, this Court, in exercise of its power under Section 37 of the Arbitration Act sets aside the order dated November 5, 2020 passed by the District Judge, Mau and the awards dated December 27, 2019, May 19, 2020 and May 28, 2020.

13. Furthermore, this Court directs the Arbitrator appointed by the Central Government under the Act to decide the matter *de novo* within a period of six months from the date of production of a certified copy of this order before him. The Arbitrator is directed to take into account the order dated March 15, 2018 and the report submitted pursuant to the same.

14. With the aforesaid direction, the appeal is allowed.

Date : 6.5.2024

Kuldeep

(Shekhar B. Saraf,J.)