

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(Through Virtual Mode from Jammu)

...

AA no.07/2020
c/w AA no.08/2020

Reserved on: 28.05.2024

Pronounced on: 04.07.2024

Union Territory of J&K

.....Appellant(s)

Through: Mr D.C.Raina, Advocate General
with Mr Jahingeer Dar, GA and
Mr Syed Musaib, Dy. AG in AA no.07/2020

Versus

M/s Hindustan Constructions Co. Limited and others

.....Respondent(s)

Through: Mr Sunil Sethi, Sr. Advocate with
Mr Parimoksh Seth, Advocate

AA no.08/2020:

M/s Hindustan Constructions Co. Limited and others

Through: Mr Sunil Sethi, Sr. Advocate with
Mr Parimoksh Seth, Advocate in AA
no.08/2020

.....Appellant(s)

Versus

Government of J&K

.....Respondent(s)

Through: Mr D.C.Raina, Advocate General
with Mr Jahingeer Dar, GA and
Mr Syed Musaib, Dy. AG

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. These two arbitration appeals are directed against judgement/order dated 18th December 2019 passed by Additional District Judge, Srinagar (“*court below*” for short) and for setting-aside the same on the grounds made mention of therein.
2. I have heard learned counsel for parties and considered the matter.
3. As record would tend to show that an Award dated 28th December 2014 was passed by Arbitral Tribunal comprising of three arbitrators, namely, Shri R.P. Indoria; Shri J.S. Katoch; and Shri N.N.Singhal. By virtue of the said Award, appellant-Government of J&K was directed to pay Rs.78,92,73,307/- to claimants/respondents along with interest @ 12% per annum from 9th May 2012 upto the date of Award.
4. Against aforesaid Award, an application under Section 34 of J&K Arbitration and Conciliation Act, 1997 (for short “*the Act*”) was filed by Government of J&K through Chief Engineer, Mughal Road Project, J&K (appellant in AA no.07/2020) before the court below, which in terms of impugned judgement/order has modified the Arbitral Tribunal’s award.
5. While taking into consideration submissions of learned senior counsel for parties, an issue has come up as to whether the court below in an application under Section 34 of J&K Arbitration Act can modify an Award. Answer thereto is in negative.
6. The law about modifying an Award has been settled by the Supreme Court in a catena of cases; some of which are: *National Highways Authority of India v. M. Hakeem and another, (2021) 9 SCC 1*; *Dakshin Haryana Bijli Vitran Nigam Limited v. Navigant Technologies Private Limited, (2021) 7 SCC 667*; *National Highways Authority of India v. Sri P. Nagaraju @ Cheluvaiah & another, 2022 LiveLaw (SC) 584*; *M/s Larsen Air*

Conditioning and Refrigeration Company v. Union of India and others, 2023 LiveLaw (SC) 631; Civil Appeal No.8067 of 2019 titled as S. V. Samudram v. State of Karnataka dated 4th January 2024. It has been expounded that even if an error is found in the award, it would not be possible for the Court entertaining the petition under Section 34 or for the appellate court under Section 37 of the Act, to modify the award. Holding further that any court under Section 34 would have no jurisdiction to modify the arbitral award, which at best, given the same to be in conflict with the grounds specified under Section 34 would be wholly unsustainable in law and any attempt to “modify an award” under Section 34 would amount to “*crossing the Lakshman Rekha*”. It has also been held that where the court sets-aside an award passed by arbitral tribunal, the underlying disputes would require to be decided afresh in an appropriate proceeding. Under Section 34, the court may either dismiss objections filed, and uphold the award, or set-aside the award if the grounds contained in Subsections (2) and (2-A) of Section 34 are made out. There is no power to modify an arbitral award. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired.

7. The Supreme Court in *ONGC Ltd v. Saw Pipes Ltd, (2003) 5 SCC 705* while construing the expression “the public policy of India” contained in Section 34(2)(b)(ii) of the Arbitration Act, 1996, held that “public policy of India” is required to be given wider meaning and that the concept of public policy connotes some matter which concerned public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from

time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgement/decision is likely to adversely affect the administration of justice. Hence, the award could be set-aside if it is patently illegally and the result would be that award could be set-aside if it is contrary to fundamental policy of Indian law, or the interest of India, or justice or morality, or in addition, if it is patently illegal, and that illegality must go to the root of the matter and if the illegality is of trivial nature, it cannot be held that the award is against the public policy. Award could be set-aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void.

8. In *MMTC Ltd v. Vedanta Ltd.*, (2019) 4 SCC 163, the Supreme Court has observed that 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. The Court cannot undertake an independent assessment of the merits of the Award, and must only ascertain that in exercise of powers by the Court under Section 34 it has not exceeded the scope of the provisions. The Supreme Court in *UHL Power Company Limited v. State of Himachal Pradesh* (2022) 4 SCC 116, has said that that the jurisdiction conferred on the Courts under Section 34 of the Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Act, the jurisdiction of the Appellate Court in examining an order, setting-aside or refusing to set-aside an award, is all more circumscribed.

9. In the backdrop of aforementioned well settled legal position, the impugned judgement/order calls for interference.

10. For the reasons discussed above, judgement/order dated 18th December 2019 passed by Additional District Judge, Srinagar, is set-aside. The matter is remanded back to the court below with a direction to decide the matter expeditiously, preferably within two months.

11. Disposed of.

(Vinod Chatterji Koul)
Judge

Srinagar

04.07.2024

Ajaz Ahmad, Secy.

Whether approved for reporting? Yes/No.

