

**Neutral Citation No. - 2023:AHC-LKO:85857**

**Court No. 19**

**Case :-** APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 15 of 2022

**Appellant :-** Harish Kumar Awasthi

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Transport And Others

**Counsel for Appellant :-** Rajendra Prasad Tiwari, R.S. Dixit, Shweta Singh

**Counsel for Respondent :-** C.S.C., Ratnesh Chandra

**Hon'ble Jaspreet Singh, J.**

1. Heard learned counsel for the appellant and Sri Ratnesh Chandra, learned counsel for the respondents.
2. The instant appeal has been preferred under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “Act of 1996”) against the judgment dated 26.08.2022 passed by the ADJ-VI (Special Judge, P.C. Act-V/B/UPSEB) in Arbitration Case No. 05 of 2020 whereby the petition preferred by the appellant under Section 34 of the Act of 1996 has been rejected.
3. Before adverting to the controversy involved in the instant petition, certain brief facts giving rise to the instant appeal are being noticed hereinafter:-
4. The petitioner was engaged as a contractual employee by the respondent and an agreement was also executed by the parties dated 02.11.2017. In terms of the said agreement, the appellant was employed for a period of 11 months w.e.f. 02.11.2017 to 01.10.2018. The appellant was working as a Bus Conductor and the scope of his work was also mentioned in the said agreement. This agreement dated 02.11.2017 contained an

arbitration clause and in Clause 21 it was provided that in case of any dispute relating to the said agreement, its implementation or any matter arising therefrom the same would be referred to the Managing Director of the Region who would conduct the arbitration or nominate an Arbitration Committee which would comprise of the working officers of the respondent/Corporation.

5. The dispute arose from an inspection done on 14.06.2019 when the appellant was on duty on a bus bearing No. UP 33 AT 6493 plying on the Nazeerabad to Lucknow route. The bus had stopped at Tendua and three passengers boarded the said bus. At that time, another bus which was coming from Raebareli and from the said bus the Inspector and three Traffic Inspectors from Raebareli Depot alighted and boarded the said bus bearing No. UP 33 AT 6493.

6. It is alleged that the appellant had not taken or given tickets to the three persons who had boarded the bus at Tendua, earlier and as such the appellant was charged with dereliction of duty as he had permitted plying of the bus with passengers without charging them or issuing tickets to them.

7. In this matter, a preliminary inquiry was conducted and thereafter the petitioner was disengaged from service on 17.07.2019. In this view of the matter, the appellant invoked the Arbitration Clause and in furtherance thereof an Arbitral Tribunal comprising of five members was constituted and after affording an opportunity of hearing to the appellant, the Tribunal by means of its award dated 27.11.2019 rejected the claim of the appellant.

8. Being aggrieved, the appellant had preferred a petition under Section 34 of the Act of 1996 before the ADJ-VI (Special Judge, P.C. Act-V/B/UPSEB), Lucknow registered as Case No. 5 of 2020 which also has been dismissed by means of judgment dated 26.08.2022 against which the appellant has preferred the instant appeal.

9. The submission of learned counsel for the appellant is that once the agreement which was for 11 months had expired, it was not open for the appellant to have passed any order in the arbitration proceedings as the arbitration clause also died its natural death upon the expiry of the agreement itself.

10. The learned counsel for the appellant has further submitted that even otherwise the appellant was not granted adequate opportunity of hearing nor the evidence which the appellant wanted to lead before the Tribunal was permitted which it resulted in violation of principles of natural justice and has caused irreparable prejudice to the appellant.

11. The learned counsel for the appellant has further submitted that the award dated 27.11.2019 is a non-speaking award and is contrary to the provisions contained in Section 31 (3) of the Act of 1996.

12. It has also been urged that even in view of Section 12 (5) of the Act of 1996, the respondent-Corporation was not permitted to constitute an Arbitral Tribunal comprising of five serving officers which is prohibited in terms of Section 12(5) of the Act of 1996 read with Schedule V and VII of the Act of 1996, thus, the entire proceedings were a complete sham and even the issue raised before the Court under Section 34 of the Act of 1996

specifically stating that the award was patently illegal and was against the public policy and was liable to be set aside has been ignored and the matter has not been appropriately considered by the Court while dismissing the petition under Section 34 of the Act of 1996 by means of order dated 26.08.2022 and as such the appeal deserves to be allowed after setting aside the order passed by the Court below as well as the impugned award.

13. Per contra, Sri Ratnesh Chandra, learned counsel while opposing the aforesaid submissions has urged that the appellant was granted full opportunity of hearing and he participated in the arbitral proceedings without any demur and protest and as such once the award has been passed against him, he has raised this issue which he ought to have raised before proceeding further with the arbitral proceedings before the Tribunal and before filing its claim on merits. Once, the appellant missed the boat, he is not permitted to raise this issue before this Court in appeal.

14. Sri Chandra further submits that it is incorrect to suggest that once the agreement came to an end, the arbitration clause also died its natural death. It is urged that even after the period mentioned in the agreement had expired yet the appellant continued to work on the same terms and conditions as a bus conductor, accordingly, the arbitration clause would survive especially when it was the appellant himself who had invoked the arbitration clause in the first place and to the aforesaid extent the submission of the learned counsel for the appellant is contradictory.

15. It is further urged that the Corporation had passed an order of termination and it was found that the appellant was guilty of breaching the conditions of his service and he had permitted the passengers to board the

bus without issuing tickets or charging them, hence, in the aforesaid circumstances, it cannot be said that there is any error in the award and moreover since the findings recorded by the Arbitral Tribunal are pure findings of fact, hence, they are not assailable in terms of Section 34 of the Act of 1996, consequently, the scope of appeal even being narrow, hence, is not liable to be disturbed and the appeal deserves to be dismissed.

16. Sri Chandra further urges that the appellant himself had stated that he did not wish to lead any further evidence before the Tribunal and only thereafter the matter was heard and decided and now at a later stage it is incorrectly urged by learned counsel for the appellant that the appellant was not granted adequate opportunity of leading evidence before the Arbitral Tribunal. These issues are apparently an afterthought and for the said reason, the appeal is devoid of merit and is liable to be dismissed.

17. The Court has heard learned counsel for the parties on few dates and thereafter by means of order dated 05.12.2023 the Court had called the original records of the Corporation relating to the arbitral proceedings which were held, wherein, the award dated 27.11.2019 was passed. The Court had also called for the records of the case before the Court dealing with the petition under Section 34 of the Act of 1996 and thereafter when the records were available, the matter was heard at length.

18. Having had the benefit of perusing the original record of the arbitral proceedings and also the record of the court dealing with the petition under Section 34 of the Act of 1996, this Court finds that after the date of the alleged incident on 14.06.2019, an order terminating the service of the

appellant was passed on 17.07.2019. Being aggrieved, the appellant had made a request to the respondents to invoke the arbitration clause in the agreement dated 02.11.2017.

19. It will be relevant to state that before proceeding with the Arbitration, it was the duty of the respondents to have informed the appellant regarding the mandate of Section 12 (5) and only if it had received the waiver in writing from the appellant, the Corporation could have proceeded to move ahead with the Arbitral Proceedings comprising of five serving officers of the Corporation as the Arbitration and Conciliation Act, 1996 which was amended in the year 2015, in terms whereof the departmental arbitration is not permissible and is hit by Schedule V and VII of the Act of 1996.

20. From the perusal of the original records of the arbitral proceedings, this Court does not find that at any point of time, the appellant was informed of the legal mandate regarding the waiver and that it was expressly waived by the appellant.

21. The record further indicates that there is no order sheet indicating on which date the proceedings took place. All that can be seen from the record is the fact that certain evidences/statements were recorded and thereafter the award dated 27.11.2019 was passed.

22. From the bare perusal of the award, it would indicate that the Tribunal comprising of five serving officers had framed four issues and the manner in which the aforesaid issues have been decided clearly indicates non-application of judicial mind. Needless to say that all the issues have been decided without giving any reason and for better appreciation, the

same is being reproduced hereinafter:-

**"वाद बिन्दु संख्या-1**

वादी एवं प्रतिवादी के मध्य उत्पन्न विवाद के निपटारे हेतु क्षेत्रीय आर्बीट्रेशन समिति से प्रकरण का निस्तारण कराये जाने पर अपनी सहमति व्यक्त की गई।

**वाद बिन्दु संख्या-2**

वादी एवं प्रतिवादी के मध्य अनुबन्ध-पत्र निष्पादित किया गया था। आर्बीट्रेशन कार्यवाही के दौरान अनुबन्ध-पत्र के निष्पादन एवं हस्ताक्षर को लेकर किसी भी पक्ष की ओर से कोई आपत्ति व्यक्त नहीं की गई, जिससे यह तथ्य साबित है कि दोनों पक्षों के मध्य अनुबन्ध-पत्र निष्पादित किये जाने सम्बन्धी कोई विवाद नहीं है।

-----\*\*\*\*\*-----\*\*\*\*\*-----\*\*\*\*\*-----\*\*\*\*\*-----\*\*\*\*\*

**.....वाद बिन्दु संख्या-4**

वादी द्वारा रायबरेली डिपो में संविदा परिचालक के पद पर कार्यरत रहते हुए अनुबन्ध की धारा 19 की उपधारा 9 का उल्लंघन किया गया है। इस प्रकार प्रतिवादी द्वारा वादी की संविदा समाप्त किये जाने से सम्बन्धित पारित आदेश संख्या: 4557, दिनांक 17-07-2019 अनुबन्ध की शर्तों के अनुसार उचित है।"

23. Having noticed the aforesaid, it would be clear that the aforesaid award is purely against the legislative mandate as enshrined in Section 31 (3) of the Act of 1996 which states that an award must be reasoned and it shall state reasons upon which it is based.

24. In this regard, it will also be relevant to notice the observations of the Apex Court in the case of **Cyril Lasrado (Dead) by LRs and another vs. Juliana Maria Lasrado and another, (2004) 7 SCC 431** and the relevant portion reads as under:-

*"11. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable.*

*12. Even in respect of administrative orders Lord Denning, M.R. in Breen v. Amalgamated Engg. Union [(1971) 1 All ER 1148 : (1971) 2 QB 175 : (1971) 2 WLR 742 (CA)] observed: (All ER p. 1154h) "The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree [1974 ICR 120] it was observed: "Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the*

*matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."*

25. Another striking feature which is noticed is the fact that an application written by the appellant is available on record dated 09.07.2019 wherein the appellant had prayed that he wished to lead further evidence and he may be granted some time to examine a witness, though, there is an endorsement available in the original records maintained by the respondents regarding having received the said application but as already indicated above, there is no order-sheet prepared regarding the arbitral proceedings to indicate what was the order passed on the said application. This gains significance for the reason that the appellant had taken a plea that the alleged three persons who are said to have boarded the bus on 14.06.2019 and were allegedly travelling without tickets, they had also given their affidavits indicating that no such incident of the travelling in the bus occurred and the appellant had permitted them to travel without charge or fare. The explanation given by the appellant as well as the three said passengers were not taken into account and moreover when the appellant wanted to examine one of them as a witness as they had already submitted their affidavits, yet time was not granted which resulted in sheer miscarriage of justice.

26. This Court further finds that the entire proceedings which is said to have been drawn by the Arbitral Tribunal comprising of five serving officers of the respondent-Corporation did not adhere to the mandate as contained in the Act of 1996 and the proceedings were just a sham.

27. It will not be out of place to mention here that this Court had the occasion to consider a similar issue in a bunch of appeals wherein similarly situated bus-conductors were also charged with similar allegations which also resulted in arbitral proceedings and awards were passed against the provisions of the Act of 1996. This issue was considered by the Court in the leading petition i.e. ***Satendra Kumar Dubey Vs. UPSRTC appeal under Section 37 of the Act of 1996 bearing No. 7 of 2019; Neutral Citation No. - 2023:AHC-LKO:69771*** which came to be decided by this Court on 11.10.2023 and the relevant portion thereof read as under:-

*“42. A close scrutiny of Section 12 (5) of the Act of 1996 would indicate that though preserving the party autonomy, it is open for the parties to still continue with the old regime of Departmental arbitration or an arbitration by a Tribunal which is within the degree as enumerated in the Vth and the VIIth Schedule but only once the party gives his consent expressly waiving his rights to raise objections thereto.*

*43. It is clear that such consent is not to be readily inferred rather must be express and in the instant case there is no such material available on record to indicate that any point of time the Corporation had informed the appellants regarding the constitution of the Tribunal headed by Sri Sinha and seeking express waiver and consent of the appellants to participate before such a Tribunal.*

*44. At this juncture, it will be relevant to notice that this Court by means of order dated 07.08.2023 had called upon the learned counsel for the respondents to produce the record which was before the Arbitral Tribunal. The same was produced by the learned counsel for the respondents and it was thoroughly perused by the Court and it reveals that there is not a single document, intimation, communication issued at the behest of the Corporation or the Tribunal seeking the consent of the appellants to waive their rights in terms of Section 12 (5) of the Act of 1996.*

*45. In light of the aforesaid, apparently, the submission of learned counsel for the respondents that by mere participation before the Tribunal headed by Sri Sinha, the appellants had waived their rights and is not open for them to challenge the composition of the Tribunal as being hit by Section 12 (5) of the Act of 1996 is not tenable in the eyes of law.”*

28. Having noticed the aforesaid including the dictum of the Apex Court in the case of ***Ellora Paper Mills Limited v. The State of Madhya Pradesh 2022 (3) SCC 1*** as well as in the case of ***Associate Builders vs Delhi***

*Development Authority (2015) 3 SCC 49* and *MMTC Ltd. v. Vedanta Ltd., and Ssangyong Engg. & Construction Co. Ltd. v. National Highways Authority of India*, it would be clear that any award which is per se illegal and suffers from errors apparent on the face of record and contrary to the provisions of the Act of 1996 is covered under the ground as provided under Section 34 of the Act of 1996 as suffering from patent illegality and against the public policy.

29. This aspect has been considered by the Apex Court in a recent decision of **Batliboi Environmental Engineers Limited Vs. HPCL and another** [2023 SCC online SC 1208 and the relevant paragraphs 31, 32, 34 to 38, 41, 42 and 44 read as under:-

*“31. ... The foundation of arbitration is party autonomy. Parties have the freedom to enter into an agreement to settle their disputes/claims by an arbitral tribunal, whose decision is binding on the parties. 23 It is argued that the purpose of arbitration is fast and quick one-stop adjudication as an alternative to court adjudication, and therefore, post award interference by the courts is unwarranted, and an anathema that undermines the fundamental edifice of arbitration, which is consensual and voluntary departure from the right of a party to have its claim or dispute adjudicated by the judiciary. The process is informal, and need not be legalistic. Per contra, it is argued that party autonomy should not be treated as an absolute defence, as a party despite agreeing to refer the disputes/claims to a private tribunal consensually, does not barter away the constitutional and basic human right to have a fair and just resolution of the disputes. The court must exercise its powers when the award is unfair, arbitrary, perverse, or otherwise infirm in law. While arbitration is a private form of dispute resolution, the conduct of arbitral proceedings must meet the juristic requirements of due process and procedural fairness and reasonableness, to achieve a ‘judicially’ sound and objective outcome. If these requirements, which are equally fundamental to all forms of adjudication including arbitration, are not sufficiently accommodated in the arbitral proceedings and the outcome is marred, then the award should invite intervention by the court.*

*32. To disentangle and balance the competing principles, the degree and scope of intervention of courts when an award is challenged by one or both parties needs to be stated. Reconciliation as a statement of law and in particular application in a particular case has not been an easy exercise. We begin by first referring to the views expressed by this Court in interpreting the width and scope of the post award interference by the courts under Section 34 of the A&C Act.*

34. Sub-section (1) to Section 34 of the A&C Act requires that the recourse to a court against an arbitral award is to be made by a party filing an application for setting aside of an award in accordance with sub-sections (2) and (3) of Section 34. Sub-section (2) to Section 34 of the A&C Act stipulates seven grounds on which a court may set aside an arbitral award. Sub-section (2) consists of two clauses, (a) and (b). Clause (b) consists of two sub-clauses, namely, sub-clause (i) which states that when the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, and sub-clause (ii), which states that the court can set aside an arbitral award when the award is 'in conflict with public policy of India'. We shall subsequently examine the decisions of this Court interpreting 'in conflict with public policy of India' and the explanation.

35. Under sub-clause (a) to sub-section (2) to Section 34 of the A&C Act, a court can set aside an award on the grounds in sub-clauses (i) to (v) namely, when a party being under some incapacity; arbitration agreement is not valid under the law for the time being in force; when the party making an application under Section 34 is not given a proper notice of appointment of the arbitrator or the arbitration proceedings, or was unable to present its case; and when the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement between the parties, unless such agreement was in conflict with the mandatory and binding non-derogable provision, or was not in accordance with Part I of the A&C Act. Sub-clause (iv) states that the arbitral award can be set aside when it deals with a dispute not contemplated by, or not falling within the terms of submission of arbitration, or it contains a decision on matters beyond the scope of submission to arbitration. However, the proviso states that the decision in the matters submitted to arbitration can be separated from those not submitted, then that part of the arbitral award which contains the decision on the matter not submitted to arbitration can be set aside. In the present case, we are not required to examine sub-clauses to clause (a) to sub-section (2) to Section 34 of the A&C Act in detail. Hence, this decision should not be read as making any observation, even as obiter dicta on the said clauses.

36. Explanation to sub-clause (ii) to clause (b) to Section 34(2) of the A&C Act, as quoted above and before its substitution by Act No.3 of 2016, had postulated and declared for avoidance of doubt that an award is 'in conflict with the public policy of India', if the making of the award is induced or affected by fraud or corruption, or was in violation of Sections 75 or 81 of the A&C Act. Both Sections 75 and 81 of the A&C Act fall under Part III of the A&C Act, which deal with conciliation proceedings. Section 75 of the A&C Act relates to confidentiality of the settlement proceedings and Section 81 deals with admissibility of evidence in conciliation proceedings. Suffice it is to note at this stage that while 'fraud' and 'corruption' are two specific grounds under 'public policy', these are not the sole and only grounds on which an award can be set aside on the ground of 'public policy'.

37. Act No. 3 of 2016 with retrospective effect from 23.10.2015 has substituted the explanation referred to above, by two new explanations that are differently worded.<sup>25</sup> Sub-section (2-A) to

Section 34 of the A&C Act, which was instituted by Act No. 3 of 2016 with retrospective effect from 23.10.2015, states that the arbitral award arising out of arbitrations other than international commercial arbitrations can be set aside by the court, if it is vitiated by patent illegality appearing on the face of the award. The proviso to sub-section (2-A) to Section 34 of the A&C Act also states that the award shall not be set aside merely on the ground of erroneous application of law or by reappreciation of evidence. The aforesaid sub-section need not be examined in the facts of the present case, as we are not required to interpret and apply the substituted explanations to (ii) to sub-clause (b) to 34(2) of the A & C Act in the present case.

38. The expression 'public policy' under Section 34 of the A&C Act is capable of both wide and narrow interpretation. Taking a broader interpretation, this Court in *ONGC Limited. v. Saw Pipes Limited.*, held that the legislative intent was not to uphold an award if it is in contravention of provisions of an enactment, since it would be contrary to the basic concept of justice. The concept of 'public policy' connotes a matter which concerns public good and public interest. An award which is patently in violation of statutory provisions cannot be held to be in public interest. Thus, expanding on the scope and expanse of the jurisdiction of the court under Section 34 of the A&C Act, it was held that an award can be set aside if it is contrary to:

- (a) fundamental policy of Indian law; or
- b) the interest of India; or
- (c) justice or morality, or
- (d) in addition, if it is patently illegal.

Nevertheless, the decision holds that mere error of fact or law in reaching the conclusion on the disputed question will not give jurisdiction to the court to interfere. However, this will depend on three aspects: (a) whether the reference was made in general terms for deciding the contractual dispute, in which case the award can be set aside if the award is based upon erroneous legal position; (b) this proposition will also hold good in case of a reasoned award, which on the face of it is erroneous on the legal proposition of law and/or its application; and (c) where a specific question of law is submitted to an arbitrator, erroneous decision on the point of law does not make the award bad, unless the court is satisfied that arbitrator had proceeded illegally. In the said case, the court set aside the award on the ground that the award had not taken into consideration the terms of the contract before arriving at the conclusion as to whether the party claiming the damages is entitled to the same. Reference was made to the provisions of Sections 73 and 74 of the Contract Act, which relate to liquidated damages, general damages and penalty stipulations. This view had held the field for a long time and was applied in subsequent judgments of this Court in **Hindustan Zinc Ltd. v. Friends Coal Carbonisation**<sup>27</sup>, **Centrotrade Minerals and Metals Inc. v. Hindustan Copper Limited**<sup>28</sup>, **Delhi Development Authority v. R.S. Sharma and Co**<sup>29</sup>, **J.G. Engineers (P) Ltd. v. Union of India and Another**<sup>30</sup>, and **Union of India v. L.S.N. Murthy**.

41. Subsequently, in **ONGC Ltd. v. Western Geco International Ltd.**, a three Judge Bench of this Court observed that the Court, in **Saw Pipes Ltd.**, did not examine what would constitute 'fundamental policy of Indian law'. The expression 'fundamental policy of Indian law' in the opinion of this Court includes all fundamental principles

providing as basis for administration of justice and enforcement of law in this country. There were three distinct and fundamental juristic principles which form a part and parcel of 'fundamental policy of Indian law'. The first and the foremost principle is that in every determination by a court or an authority that affects rights of a citizen or leads to civil consequences, the court or authority must adopt a judicial approach. Fidelity to judicial approach entails that the court or authority should not act in an arbitrary, capricious or whimsical manner. The court or authority should act in a bona fide manner and deal with the subject in a fair, reasonable and objective manner. Decision should not be actuated by extraneous considerations. Secondly, the principles of natural justice should be followed. This would include the requirement that the arbitral tribunal must apply its mind to the attending facts and circumstances while taking the view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best done by recording reasons in support of the decision. As noticed above, Section 31(3)(a) of the A&C states that the arbitral award shall state the reasons on which it is based, unless the parties have agreed that no reasons are to be given. Sub-clauses (i) and (iii) to Section 34(2) also refer to different facets of natural justice. In a given case sub-clause to Section 34(2) and sub-clause (ii) to clause (b) to Section 34(2) may equally apply. Lastly, is the need to ensure that the decision is not perverse or irrational that no reasonable person would have arrived at the same or be sustained in a court of law. Perversity or irrationality of a decision is tested on the touchstone of *Wednesbury* principle of reasonableness. At the same time, it was cautioned that this Court was not attempting an exhaustive enumeration of what would constitute 'fundamental policy of Indian law', as a straightjacket definition is not possible. If on facts proved before them, the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which on the face of it, is untenable resulting in injustice, the adjudication made by an arbitral tribunal that enjoys considerable latitude and play at the joints in making awards, may be challenged and set aside.

42. The decision of this Court in *Associate Builders* elaborately examined the question of public policy in the context of Section 34 of the A&C Act, specifically under the head 'fundamental policy of Indian law'. It was firstly held that the principle of judicial approach demands a decision to be fair, reasonable and objective. On the obverse side, anything arbitrary and whimsical would not satisfy the said requirement.

44. As observed previously, we need not examine the amendment made to the A&C Act vide Act No. 3 of 2016 with retrospective effect from 23.10.2015 and the judgments that deal with the amended Section 34 of the A&C Act. Pertinently, the amendment to Section 34 of the A&C Act was effected, pursuant to the observations of the Supplementary Report to Report No. 246 on Amendments to Arbitration and Conciliation Act, 1996 by the Law Commission of India, titled 'Public Policy – Developments post-Report No. 246' published in February 2015. This Supplementary Report observed that the power to review an arbitral award on merits under Section 34 of the A&C Act, as elucidated in the case of *Western Geco*, subsequently followed in *Associate Builders*, is contrary to the object of the A&C Act and international practice on minimization of judicial

*intervention. A reference can also be conveniently made to **MMTC Ltd. v. Vedanta Ltd., and Ssangyong Engg. & Construction Co. Ltd. v. National Highways Authority of India** which examine the scope of intervention of courts under Section 34 of the A&C Act as amended by Act No. 3 of 2016. **MMTC Ltd. and Ssangyong Engg.**, and other judgments which deal with the amended Section 34 of the A&C Act that are not applicable in the present case.”*

30. This Court had further put a query to the learned counsel for the respondents as to whether apart from the record placed before the Court, there were any other proceedings relating to the arbitration to which the learned counsel for the respondents submitted that the entire record has been placed before the Court.

31. The learned counsel for the respondents could not dispute that in so far as the arbitral proceedings are concerned nothing was placed on record to state whether the appellant who was appearing in person was ever made aware of the legislative mandate in Section 12 (5) or his waiver was sought in writing.

32. The learned counsel for the respondents also could not dispute the fact that no order-sheet or minutes of meeting were prepared of the record of proceedings by the alleged Tribunal comprising of five serving officers of the Corporation. It also could not be disputed that the application dated 09.07.2019 given by the appellant for seeking permission to lead evidence was not disposed of either way, though, was kept on record and the record also does not indicate as to when the hearing concluded and when the award was passed.

33. Having considered and noticed the settled legal principles as extracted from the decisions referred herein above and the facts of the given case, this Court is satisfied that the impugned award is apparently against the settled legal principles and suffers from patent illegality and is

against the public policy. This ought to have been taken note of by the Court dealing with the petition under Section 34 of the Act of 1996, however, it failed to notice and merely dismissed the petition under Section 34 of the Act of 1996 by formulating two grounds as to whether the award suffered from any vice of violation of principles of natural justice and the Court found that since the appellant had participated, therefore, he can not allege that any principles of natural justice were violated and secondly the ground as alleged by the appellant does not violate or fall within the provisions of Section 34 of the Act of 1996.

34. This Court in light of what has been discussed above is constrained to note that the manner in which the jurisdiction has been exercised by the Court under Section 34 of the Act of 1996 is not desirable, inasmuch as, such patent illegalities and an award which is merely a sham has been not appropriately scrutinized nor the principles laid by the Apex Court in the decision mentioned hereinabove have been noticed, accordingly, this Court has no hesitation to hold that the award dated 27.11.2019 as well as the order passed by the Court rejecting the petition under Section 34 of the Act of 1996 vide judgment dated 26.08.2022 passed by the ADJ-VI (Special Judge, P.C. Act/V/B/UPSEB) in Arbitration Case No. of 2020 are not sustainable and do not pass the test of judicial scrutiny, accordingly, are set aside. The appeal is *allowed*. The matter shall be remitted and the parties will be at liberty of invoking the arbitration clause appropriately and it shall proceed in accordance with law in light of the observations made by this Court as well as in light of the ratio laid down by the Apex Court in the decisions mentioned hereinabove. Costs are made easy. Records of the

Court below be returned forthwith. Sri Ratnesh Chandra has been handed over the original records of the Arbitral proceedings.

**Order Date :- 07<sup>th</sup> December, 2023**  
Asheesh