

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO. 755 OF 2005
IN
ARBITRATION PETITION NO. 450 OF 2003**

M/s. Jeevat Construction	)	... Appellants.
4 Manik Smruti, 16 th Road Khar,	)	(Org. Respondent)
Mumbai -400052.	)	

V/s.

1. The Union of India	)	
2. Department of Telecommunication	)	
The Bharat Sanchar Nigam Ltd.,	)	
through Executive Engineer (Civil)	)	
BSNL Civil Division No. II, Near	)	... Respondents.
Mulund Telephone Exchange,	)	(Org. Petitioners)
Mulund (W), Mumbai-400 080	)	

Shri Vishal Kanade a/w. Dipti Das & Pariket Shah i/by Uday
Sankaar Samudrala for the Appellants.
Shri Y. R. Bhate, Advocate for Respondents.

**CORAM : ANOOP V. MOHTA AND
P. R. BORA, JJ.**

**JT. RESERVED ON : 10th JANUARY, 2017.
JT.PRONOUNCED ON : 07th FEBRUARY, 2017.**

JUDGMENT : (Per : P.R. BORA, J.)

1 This Appeal is directed against the order dated 30th
March, 2005 passed by the learned single Judge in Arbitration

Petition No. 450 of 2003, whereby the learned single Judge has allowed the arbitration petition filed by the present Respondents, under section 34 of the Arbitration Act by setting aside the majority of the Award dated 30th June, 2003 given by the Arbitral Tribunal consisting of Justice S.C. Pratap.

2 The facts leading to this Appeal are as follows :

Respondent No.2 had awarded the construction work of Type III-Staff Quarters at Mulund, Mumbai to the present Appellant by its work order dated 18th April, 1981. The contract so awarded was rescinded by Respondent No.2 vide its communication dated 22nd January, 1982. According to the Appellant, the contract was wrongly rescinded. Since the dispute had arisen in that regard between the appellant and respondent No.2, the appellant invoked the arbitration clause. Vide order passed by this court on 05.10.1998 in arbitration suit no. 284 of 1982, Justice Shri S.C. Pratap (Retd.) was nominated as a Sole Arbitrator for adjudicating the claims and also for settling the dispute between appellant and respondent no.2 pertaining to the said contract. The learned Sole Arbitrator made and published the Award on 30th June, 2003, awarding to the appellant an amount of Rs.8,30,260/- towards loss of profit, Rs. 43,000/- towards overhead expenses, Rs. 20,000/- towards refund of earnest money deposit and Rs.24,400/- towards the interest.

3 The Respondents, being dissatisfied with the Award so passed, filed the arbitration petition under Section 34 of the Act before this court, challenging the said award on various grounds. The learned single Judge vide order dated 30th March, 2005, set aside the Award against claim no.1 towards loss of profit and against claim no.2 towards overhead expenses. Aggrieved by, the Appellant has filed the present appeal under Section 37 of the Act.

4 Since the Arbitral Award against claim no. 1 and claim no.4 is set aside, the pleadings and the evidence relating to the said claims would only be relevant for decision of the present appeal, which are thus :

5 On 18th April, 1981 the work order was issued to the appellant. The contract value of the work was Rs.63,86,625/- and period of completion of contract was of 19 months. The date of commencement was 02nd May, 1981 and the stipulated date of completion was 2nd December, 1982. It was the case of the Appellant before the learned Arbitrator that the Respondents committed inordinate delay in providing the architectural designs and the structural drawings to the appellant and several changes were effected by the respondents from time to time in the designs and structural drawings. The final drawings came to be handed over to the appellant on 24th August, 1981 and the copy of the agreement

was sent on 30th September, 1981. It was the grievance of the appellant that since respondent no. 2 did not provide him the drawings and structural designs within time, he could not commence the work on the stipulated date i.e. 2nd May, 1981 and because of the further delay made by the respondents in revising the drawings and designs, he could not commence the actual work even thereafter. It was the specific contention of the appellant that if the drawings and structural designs would have been made available to him, he would have immediately commenced the foundation work and possibly could have completed the said work or at least the majority of the said work before the commencement of the monsoon. It was further contended by the appellant that since monsoon was in full swing when structural designs and drawings were received to him, it had become impossible for the appellant to commence the work and there was no other option except to wait till the monsoon ends. In the circumstances the appellant, had requested the respondents for extension of time for completion of the work without insisting for any penalty and also for revising the rates and had also claimed overhead expenses of the intervening period. It was the further contention of the appellant that though the demand made by him, seeking extension of time was fully justified, the respondents, instead of accepting the request so made by the appellant, wrongfully rescinded the contract. According to the appellant, he was, therefore, entitled to claim the loss of profit

which he could have earned if the contract work would have been completed according to the terms and conditions of the contract and also for the overhead expenses which he was compelled to incur without any fault on his part.

6 Before the Arbitral Tribunal, the appellant had set up 9 claims. Claim No. 1 was towards the loss of profit amounting to Rs. 9,57,993, calculated at the rate of 15% of the estimated value of the work amounting to Rs. 63,86,625/-. Claim No. 4 was for the overheads expenses amounting to Rs. 86,667/-. The Arbitral Tribunal has allowed claim no. 1 to the extent of Rs. 8,30,260/- on the basis of the documentary material on record and the exchange of correspondence between the parties. The Arbitral tribunal has recorded a finding that the respondents committed breach of contract.

7 The Arbitral Tribunal has also accepted the claim no. 4 towards overhead expenses to the extent of Rs. 43,000/-. Perusal of the arbitral Award reveals that though the learned Arbitral Tribunal was convinced that the claim made by the appellant towards the overheads expenses was just and reasonable, taking overall and equitable view of the matter declined to award the full overhead expenses and preferred to award only a half thereof to the extent of Rs. 43,000/-.

8 In an application filed by the Respondents under section 34 of the Act, the learned single Judge set aside the award against claim nos. 1 and 4 on the ground that the learned arbitrator excluded from his consideration certain relevant material and as such the Award was passed in breach of the principles of natural justice. Aggrieved by, the appellant has preferred the present appeal.

9 Shri Vishal Kanade, the learned counsel appearing for the appellants assailed the impugned judgment and order on various grounds. The learned counsel submitted that the Award made and published by the learned sole arbitrator was passed on appreciation of voluminous evidence placed on record by the parties and also after considering the terms and conditions of the contract. Learned counsel submitted that while considering the challenge raised by the respondents in the petition, the learned single Judge has virtually re-appreciated the evidence furnished before the learned arbitrator and had arrived at an erroneous conclusion that the learned arbitrator had excluded from his consideration the relevant material like two letters given by the appellants referred to hereinabove and further the fact that even otherwise the appellants-contractor was to work during the monsoon season, as per the terms of the contract. The learned counsel further submitted that perusal of the arbitral award shows that the learned sole arbitrator has minutely considered

each and every point raised by the parties to the arbitration and based on the material placed on record has ultimately recorded his conclusion. The learned counsel further submitted that the contents of letter dated 3rd October 1981 as well as the letter dated 17th August, 1981 have also been properly considered by the learned arbitral tribunal. The learned counsel submitted that in no case it can be said that the conclusions recorded by the arbitral tribunal are perverse or contrary to the evidence on record and in such circumstances, it was not open for the learned single Judge to set aside the award on the said grounds.

10 Shri Y. R. Bhate, the learned counsel appearing for the respondents supported the impugned order. The learned counsel submitted that, the learned single Judge has rightly recorded that, the Arbitral Tribunal had failed in appreciating the fact that while seeking extension of time for completion of the contract work, the contractor has put forth unreasonable conditions. The learned counsel further submitted that, the Arbitral Tribunal had also failed in appreciating that the contractor did not show his bonafides by commencing the contract work and from the conduct of the contractor, it was quite evident that, he was unduly making capital of the meagre delay caused in supplying the architectural designs and the structural drawings to him by the department. The learned counsel submitted further that, the learned single

Judge has rightly set aside the award against claim nos. 1 and 4 by providing cogent reasons therefor. The learned counsel further invited our attention to the report received in respect of the revenue stamps affixed on the so called payment made by the contractor. The learned counsel submitted that, from the report received it was clearly revealed that the 20 paise revenue stamps affixed on the vouchers were printed in the year 1990, whereas, the payment vide the said vouchers was shown to have been made in the year 1981. The learned counsel submitted that hence, no relief was liable to be granted to such a dishonest litigant. The learned counsel, therefore, prayed for dismissal of the appeal.

11 We have carefully considered submissions advanced by the learned counsel appearing for the parties. We have also perused the impugned order, the award passed by the Arbitral Tribunal and the other material placed on record by the parties. Since the learned single Judge has set aside the arbitral award only against claim no. 1 and claim no.4, we have to consider the facts and the arguments pertaining to the said claims. It has to be mentioned that in the concluding paragraph the learned single Judge seems to have inadvertently mentioned claim no.2, whereas, having regard to the discussion made in the order, it is evident that, it should be claim no. 4 i.e. the claim in respect of overheads.

12 The Award passed by the Arbitral Tribunal, as against claim No.1 and claim no.4 has been set aside by the learned single Judge on the ground that the learned Tribunal has excluded from his consideration relevant matters like the fact that during the period of monsoon in Mumbai, normally no underground construction work can be commenced or carried out and as such the claim made by the appellants that since the respondents committed the delay in providing the structural designs and drawings, he was unable to commence and carry out the work till the end of monsoon, was untenable. Further, according to the learned single Judge, the Tribunal did not consider the contents of two letters; first dated 17th August, 1981 and another dated 3rd October, 1981 which had material bearing on the claims made by the appellants. The learned single Judge has held that the award dated 30th June, 2003 was clearly in breach of principles of natural justice as relevant material was excluded from consideration by the Arbitral Tribunal. As has been observed by the learned single Judge, in view of the contents of the letter dated 3rd October, 1981, there was no way for the petitioners i.e. present respondents to grant extension of time and keep the issue of compensation and higher rates open. It has also been observed by the learned single Judge that even if the work in question had started as per the schedule, the contractor was under an obligation to work during the monsoon and therefore, there was no justification for claiming any extra rates by him.

13 In the light of the observations made and the findings recorded by the learned single Judge, when we perused the arbitral award, it is apparently revealed that, the learned Arbitrator had duly considered both the communications, first dated 17th August, 1981 and another dated 03rd October, 1981. In para 12 of the arbitral award there is express reference of the letter dated 03rd October, 1981 and, though, the letter dated 17th August, 1981 is not particularly referred, perusal of the discussion made in para 16 of the arbitral award makes it clear that all the contentions raised in the letter dated 17th August, 1981 are duly considered by the Arbitral Tribunal. If the arbitral award is read as a whole, it is difficult to subscribe the conclusion recorded by the learned single Judge that the Arbitrator has excluded from his consideration the aforesaid two letters.

14 We find substance in the submission made by the learned counsel for the appellant that the learned single Judge has misinterpreted the contents of the aforesaid two letters. It is not in dispute that, the structural drawings for commencing the foundation work were provided to the appellant on 20th June, 1981, when such drawings were expected to be made available to the appellant at the time of issuance of work order on 18th April, 1981 or latest by 2nd May, 1981, the date on which contract work was scheduled to be

commenced. In this background certain correspondence was made by the appellant contractor. First of such letter was written by the appellant on 26th June, 1981, stating therein that the architectural drawings as issued were in conflict with the R.C.C. drawings and that the corrections were made on the drawings without any signature and the said corrections were also not authenticated by the respondents and further that the plinth beam design was not given. The fact, that monsoon was in full swing, was also mentioned therein.

15 The material on record shows that there was some more correspondence between the appellant and the respondent no.2, in regard to the drawings so received. Thereafter, the letter came to be issued by the appellant on 17th August, 1981, some of the contents of which and more particularly in paras 1 and 6 are re-produced by the learned single Judge in the impugned order. After re-production of the contents of para 1 of the said letter, it is observed by the learned single Judge that even if the drawings would have been made available to the appellant on time and even if the work had been started in first week of May 1981, the work of foundation will have to be carried out by the contractor during monsoon. It is further observed by the learned single Judge that, the contractor was taking advantage of the mistake on the part of the department of not making the drawings

available before 02nd May, 1981 and hence was putting forth unreasonable conditions. After making such observations, the learned single Judge has re-produced the contents of para 6 of the said letter dated 17th August, 1981. The learned single Judge has then opined that, even if the work had started as per schedule the contractor was obliged to work during monsoon and, therefore, there was no justification for claiming extra rate by the contractor.

16 It appears to us that, while emphasizing the contents in para 1 and 6 of the letter dated 17th August, 1981, the learned single Judge has ignored the contents of para 5 of the said letter which read thus :

“5. The work can now be started only after October' 1981 or even November' 1981, as there will be heavy sub-soil water immediately after the monsoon and it would mean work in slushy soil, work under water, heavy pumping etc. for which new rates are to be agreed upon by and between the parties. Please let us know the revised rates and extra rates which you are planning to pay for the foundation items to be executed in slushy conditions, for pumping, for work under water etc.. If we do not get the rate fixed by you, in a week's time we will take it that you are not willing to pay any extra rates for these more difficult and costly items which we will have to execute in monsoon and that you want us to start the work only after October or November, 1981

when the sub-soil goes down and the earth is fairly dry.”

17 From the contents as aforesaid, it is quite clear that, had the work been commenced as per the given schedule i.e. before commencement of the monsoon, the contractor could have proceeded with the work of foundation excavation and executed the footing work before beginning of monsoon. Since drawings were made available when monsoon had already begun, as mentioned by the contractor, if he was to carry out the foundation excavation in slushy soil by pumping out the water, he was required to pay more rates than the rates agreed upon in the contract. The contractor had also made it clear that, if rates are not revised, it will be presumed that the department is not willing to pay any extra rate for the difficult and costly items which the contractor was supposed to execute in monsoon and then it will be further presumed that the department was expecting him to start the work only after October or November 1981 when the subsoil water goes down and the earth becomes fairly dry.

18 It does not appear to us that, any unreasonable stand was taken by the contractor by writing such letter to the department. It was not the case of the contractor that he would have completed the entire foundation work before commencement of the monsoon if the drawings would have

been supplied to him in April, 1981 or before 02nd May, 1981. It can be gathered from the contents of the letter dated 17th August, 1981 that the contractor could have completed the foundation excavation and started the footing work before commencement of the monsoon, if the correct foundation drawings would have been provided before the date of commencement of the work. It does not appear to be the case of the contractor that he would have completed the entire foundation work before the commencement of monsoon. As is revealing from the contents of the aforesaid letter, foundation excavation was to be done on priority before onset of monsoon and had it been so done as mentioned further in para 1 of the said letter, the contractor could have done some further work in the monsoon also whenever clear days were there. The contractor has in clear terms mentioned in para 1 itself that, it was not possible to do the foundation excavation in the heavy monsoon. In the aforesaid premise, it was clarified by the contractor in para 5 of the aforesaid letter that, if the foundation excavation is to be carried out in monsoon when the soil was likely to be slushy and the excavation was not possible without heavy pumping of the water, some extra expenses were required to be incurred. It was for this reason that, the contractor had asked for revised rates. It was also clarified by the contractor that if the department does not show any willingness to revise the rates he will presume that the department expects the foundation

work to be commenced only after October or in November, 1981 when the subsoil water goes down and earth becomes fairly dry. The learned single Judge, however, has not considered these aspects properly and reached to a different conclusion than recorded by the Tribunal, that even otherwise the contractor was obliged to carry out the work in the season of monsoon and, as such, there was no justification for the contractor to claim extra or revised rates.

19 According to us, the learned single Judge ought not have reached to any such conclusion only on the basis of the aforesaid two letters and must have taken into account the entire correspondence between the contractor and the department and must also have considered the conduct of the parties.

20 We deem it appropriate to reproduce herein below the observations made and the findings recorded by the arbitral Tribunal in respect of the request made by the contractor, seeking higher rates and extension of time for completion of work, in paras 12 to 17 of the arbitral Award, which read thus :

"12. Under clause 5 of the contract, if the contractor desires extension of time for completion of works, he has to apply to the engineer in charge within thirty days of the hindrance on account of

which the extension is sought. The claimants accordingly submitted application for extension within thirty days i.e. on 12th September 1981, when the drawings were given to them on 24th August 1981. This application was arbitrarily rejected on the totally untenable ground that there was no delay in issuance of drawings. It is surprising that when work order is issued on 18th April 1981, application for extension is, nevertheless, rejected on the ground that there was no delay in issue of drawings. Still further, the contract was terminated even when the claimants' application before the Superintending Engineer was pending consideration. This was a case, where, in the face of the higher authority (Superintending Engineer) being seized of the matter, the authority (Executive Engineer) lower in hierarchy thinks fit to by pass the Superintending Engineer, pre-empt the decision on the claimant's pending application before the Superintending Engineer and put up before all concerned a fait accompli by unilaterally terminating the contract itself. Significantly, there was no reply to the claimants letter of 3rd October 1981 that they will commence work by 15th October 1981. Instead, and surprisingly enough the Executive Engineer on 7th October 1981 issued show cause notice under clauses 2 and 3 of the agreement. Overall impression gained is that the conduct of the Executive Engineer is not bonafide. Spirit of vendetta pervades the same."

13. It was possible for the respondents to inform the claimants that their request for higher rates and extension of time for completion of work can be considered in the course of the work under the contract and/or can be made the subject matter of an arbitration after the work is completed. Such reasonable course was not taken and obstinacy

prevailed and contract terminated far, far ahead of the completion period. And this presumably because the respondents were not at all keen and serious about the constriction work at the present site, as seen from the undisputed fact that the site has till date remained as it is with the work totally abandoned.

14. The claimants were unable to overlook and ignore the rise in the cons of materials and labour in the market during the period of the work during the monsoon period was extremely difficult, if not impossible, the claimants were required to incur extra expenses on execution of the work after monsoon due to increase in the cost of labour and materials. There was, in these circumstances, nothing unnatural in the claimants request for revision of rates to compensate increase in rates of labour and material so as to compensate the loss due to the delay caused by the respondents in the issuance of drawings and in the issuance of incorrect drawings and in the issuance of unauthenticated drawings. Indeed, the notice dtd: 13th January 1982 by the Superintending Engineer gave to the claimants time to reply thereto within fifteen days of the receipt thereof. The claimants accordingly sent their reply on 18th January 1982, well within the time permitted. The claimants did not receive any response thereto from the Superintending Engineer and most, surprisingly enough, even while the proceedings were thus pending before the Superintendent Engineer, the Executive Engineer terminated the contract on 22nd January 1982 pre-empting the expected favourable decision of the Superintending Engineer and foreclosing the matter altogether. Apart from lack of defence by the Executive Engineer to and towards his superior, the Superintending Engineer,

the conduct of the Executive Engineer in peremptorily and suddenly terminating the contract and foreclosing the matter in the matter done cannot but be deprecated.

15. This contract was relating to building construction. The agreement between the parties contained the period within which the contract work had to be completed with clauses for extension of time. The claimants' application for extension of time set out full justification in support thereof. This was pre-eminently a fit case for extension. The respondents cannot escape the blame arising out of their not submitting the drawings till the onset of the monsoon and which onset resulted in further delay. Substantial foundation and other work could have been completed before the onset of the monsoon if only the drawings had been submitted either alongwith the work order of 18th April, 1981 or soon thereafter. It is conceded (vide minutes dtd. 14th Feb. 2003) that delay till at least 18th June, 1981 was because of the respondents' delayed action in supplying the drawings. How much such extension should be and on what terms would, of course, be a matter of fair and reasonable discretion of the concerned authority. But, in a building contract, extension, with or without condition, is normally the rule with abrupt termination of the contract, as in the present case, and that too several month before the period of the contract was over, being a very rare exception. Completion within a reasonable period of time would be implied and consequently reasonable time for completion would be allowed, if necessary, by an extension which may or may not be subject to conditions. When the claimants were required to do the work within a certain time but when the respondents concede

delay on their own part till at least 18th June, 1981 (from 18th April, 1981 when work order was issued) vide minutes dtd: 14th Feb' 2002 and when, in the meanwhile, monsoon steps in, the claimants cannot be blamed for the crucial delay of the respondents. The respondents cannot take advantage of their own wrong and their own delay which delay spilled over into the monsoon. In the circumstances. There was no justification for terminating the contract when the respondents had not performed in due time their own part.

16. It could be that some of the conditions set out by the claimants may not be acceptable. If so extension could have, nevertheless, been granted de hors the condition with, at the same time, the authority while granted extension, imposing its own conditions including making, if so necessary, the extended time of the essence of the contract. Merely because a party sets out of its own conditions while seeking extension, the authority is not bound to accept the said conditions, it being open to it to impose its own conditions for extension. Further still, while granting extension, the conditions set up by the claimants could well have been relegated to a subsequent arbitration to resolve the disputes and differences between the parties in that behalf. There was no justification for the extreme action of abruptly terminating the contract. To reiterate, this was not a case for not responding to the claimants' application for extension of time (when extension was permissible under the contract) and, instead, abruptly terminating the contract. Such a step is bound to take quasi-judicial authority by shock and surprise. State action is expected to be just, fair and reasonable. That should be its *raison d'être*. The action and conduct of the respondents has

rendered the termination or rescission of the contract arbitrary and unreasonable, wrongful and illegal. It is totally unjustified action.

17. When there is a breach of contract and wrongful termination, the party not in default is entitled to recover damages or compensation for the loss suffered. In a building contract, this normally takes the form of claim for loss of profits. In computing the damages and awarding the same, the party not in default, should as far as possible, be placed in the same position financially if the contract had not been terminated and had been performed. In building contracts, it is now virtually standard practice to grant damages ranging from 10 to 15% of the value of the contract. The claimants have made a claim of 15% of the value of the contract, 10% being the contractors' profit and contingency to 5%. In the present case, Mr. Masurkar for the respondents conceded to 10% as the contractors profit but only 3% contingency. I am inclined to accept Mr.Masurkar's percentage. On the basis of 15% (10% contractors profit and 5% contingency) of the value of the contract, the amount qua loss of profit comes to Rs. 9,57,933.00, and on the basis of 13% (10% contractors' profit and contingency 3%), the amount qua loss of profit comes to Rs.8,30,260.00. It is this latter amount Rs.8,30,260.00 that the claimants would be entitled to as loss of profit in this case."

21 The findings and conclusions, as aforesaid, are recorded by the arbitral Tribunal on the basis of the extensive documentary material on record and exchange of correspondence between the parties.

22 In case of **P.R.Shah, Shares and Stock Brokers Pvt. Ltd. Vs. B.H.H. Securities Pvt. Ltd. & Ors. 2012 (3) Mh.L.J. 737** it is held by the Hon'ble Supreme Court that :

“the Court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or re-appreciating the evidence and the award can be challenged only under the grounds mentioned in Section 34(2) of the Arbitration and Conciliation Act, 1996 and in the absence of any grounds under the said provision, it is not possible to re-examine the facts to find out whether a different decision can be arrived at.”

In case of **Rashtriya Ispat Nigam Limited vs. Dewan Chand Ram Saran (2012) 5 SCC 306**, it is held by the Hon'ble Apex Court that :

“if the view taken by the arbitrator is clearly possible, if not plausible, and it is not possible to say that the arbitrator had travelled outside his jurisdiction, the Court cannot substitute its views in place of the interpretation accepted by the arbitrator.”

As was pointed out by the learned Counsel for the appellant, the learned Single Judge who has passed the impugned order, himself had ruled in the case of **Larsan & Toubro Limited Vs. Sunfield Resources Pvt. Ltd. 2006 (1) Bom. C.R 850** and in the case of **Madhu Kacharam Archa Vs. Gul Kachharam, 2005 (3) Mh.L.J. 713** that if a

possible view has been taken by the tribunal, the High Court would not disturb the award, exercising its limited jurisdiction under section 34 of the Act. The Hon'ble Supreme Court in the case of **Associate Builders vs. Delhi Development Authority, (2015) 3 SCC 49** has held that :

“the interference with an arbitral award is permissible only when the findings of the arbitrator are arbitrary, capricious or perverse or when conscience of the Court is shocked or when illegality is not trivial but goes to the root of the matter. It is held that once it is found that the arbitrator's approach is neither arbitrary nor capricious, no interference is called for on facts. The arbitrator is ultimately a master of the quantity and quality of evidence while drawing the arbitral award. Patent illegality must go to the root of the matter and cannot be of trivial nature.”

In **Delhi Development Authority vs. R.S. Sharma & Company, New Delhi (2008) 13 Supreme Court Cases 80**, the Hon'ble Apex Court has laid down principles for interference with the arbitral award under section 34 (2) of the Arbitration and Conciliation Act, 1996 which are as follows :

- (a) An award, which is
 - (i) contrary to substantive provisions of law; or
 - (ii) the provisions of the Arbitration and Conciliation Act, 1996; or

- (iii) against the terms of the respective contract; or
- (iv) patently illegal; or
- (v) prejudicial to the rights of the parties;

is open to interference by the court under Section 34(2) of the Act.

- (b) The award could 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.

- (c) The award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court.

- (d) It is open to the court to consider whether the award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India.

23 After having considered the entire material on record, it does not appear to us that the findings recorded by the arbitrator are in any way arbitrary, capricious or perverse. We have already noted that the tribunal has not excluded any material from consideration and more particularly, the contents of the letters dated 17th of August, 1981 and 3rd of October, 1981 so as to hold that the award is in breach of the principles of natural justice. On the basis of the material which was before the arbitral tribunal, it had taken a view that there was nothing unnatural on the part of the contractor to request for revision of rates to compensate the increasing rates of

labour and material so as to compensate the loss due to the delay caused by the respondents in issuance of correct drawings. There was no reason for interference by the learned single Judge in the finding of fact recorded by the tribunal, when the finding so recorded was based on the extensive documentary evidence and the correspondence exchanged between the contractor and the department. The view taken by the arbitrator was definitely a possible view on the basis of the evidence placed on record before him. In the circumstances, it was not permissible for the learned single Judge to substitute his view and cause interference in the arbitral award.

24 It further appears to us that, the learned Single Judge has completely ignored the fact recorded by the learned Tribunal that the department had, albeit for their own reasons, altogether abandoned the project at the subject site and no other Contractor was engaged for the work in question. The Tribunal has clearly observed that the respondent totally gave up the construction of the buildings at the site of the contract in question. The Tribunal has further observed that, the said was an important circumstance showing that the respondents were not keen on putting up the buildings at the site of the subject contract. The Tribunal has further observed that however having given the contract to the claimants since it was not easy to wriggle out of the same without difficulty, the modus operandi was adopted of putting up lame and technical

excuses for unilaterally terminating the contract, that too more than ten months before the contract period expires. The Tribunal has further observed that, there cannot be a better instance for awarding damages for breach of contract than the present one where, after illegal termination, the entire project at the site was itself totally abandoned.

25 In the aforesaid circumstances and for the reasons recorded by us, we set aside the order passed by the learned single Judge impugned in the present Appeal. The Appeal thus stands allowed.

(P. R. BORA,J.)

(ANOOP V. MOHTA J.)

.....