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HIGH COURT OF CHHATTISGARH, BILASPUR

Arbitration Appeal No.4 of 2019

(Arising out of order dated 22-11-2018 in M.J.C.No.31/2017 of the learned Judge, Commercial Court (Distt. Level), Atal Nagar, Distt. Raipur)

Chhattisgarh Rajya Sahakari Vipdan Sangh Maryadit, Through District Marketing Officer, Chhattisgarh Rajya Sahakari Vipdan Sangh, Janjgir, Tahsil Janjgir, District Janjgir-Champa (C.G.)

(Respondent before the learned Commercial Court Raipur)

---- Appellant

Versus

Shri Shyam Global Pvt. Ltd., Banari, Tahsil Janjgir, District Janjgir-Champa (C.G.), Through Director, Ramesh Kumar Agrawal, Aged about 54 years, S/o Shri Hariram Agrawal, R/o Banari, Tahsil Janjgir, District Janjgir-Champa (C.G.)

(Applicant before the learned Commercial Court Raipur)

---- Respondent

For Appellant: Mr. Ashish Surana, Advocate.
For Respondent: Mr. Ankit Singhal, Advocate.

Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Arvind Singh Chandel, JJ.

Order On Board
(16-11-2021)

Sanjay K. Agrawal, J.

1. The appellant herein while invoking the appellate provision contained in Section 37(1) of the Arbitration and Conciliation Act, 1996 (for short, 'the AC Act'), takes exception to the impugned order dated 22-11-2018 passed by the Judge, Commercial Court (District Level), Atal Nagar, District Raipur, by which the respondent's application under Section 34(2) of the AC Act has been allowed and arbitral award has been set aside.

2. The appellant herein is Co-operative Marketing Federation Limited, a society registered under the provisions of the Chhattisgarh Co-

operative Societies Act, 1960. The appellant herein and the respondent herein entered into an agreement for milling of paddy purchased by the appellant through various purchase centres for the Kharif year 2011-2012 for custom milling. As per the agreement, the miller respondent after milling of paddy as rice has either to deposit in the godown of the Chhattisgarh Civil Supplies Corporation Limited or in the godown owned by the Food Corporation of India. In pursuance of the said agreement, it is the case of the appellant that it has given 79,821.40 quintals of paddy and has returned 46,556.52 quintals of rice up to 31-3-2013 and has not returned 7,653.69 quintals of rice to the appellant. Consequently, the appellant company as per the terms of the agreement, encashed the bank guarantee of ₹ 1,50,00,000/- given by the respondent, on 15-3-2013 and on account of that, arbitral dispute arose before the appellant and the respondent. The respondent raised arbitral dispute on 27-4-2013 before the Secretary, Food, Government of Chhattisgarh in which arbitral award was passed by the learned Arbitrator on 7-9-2017 and claim of the respondent herein was rejected.

3. It is the case of the respondent herein that the Secretary (Food) / learned Arbitrator heard the matter from 24-5-2013 to 16-5-2015, but did not pass the arbitral award, thereafter, the matter was fixed for 16-6-2015, however, it was not heard again by the new Secretary (Food) / Arbitrator and yet, the award was passed on 7-9-2017. The respondent questioned the award dated 7-9-2017 by filing application under Section 34(2) of the AC Act and the said application has been allowed by the learned Commercial Court (District Level) by the impugned order dated 22-11-2018 which has been sought to be

challenged by way of this appeal so preferred.

4. Mr. Ashish Surana, learned counsel appearing for the appellant herein, would submit that the matter was heard by the then Secretary / learned Arbitrator between 24-5-2013 and 16-5-2015, and thereafter, the award was passed, as such, it is not in violation of the principles of natural justice, therefore, the finding recorded by the learned Commercial Court is liable to be set aside by granting the appeal.

5. Mr. Ankit Singhal, learned counsel appearing for the respondent herein, would submit that though date was fixed on 16-6-2015, but on that date, new Secretary (Food) has taken-over as Arbitrator, however, the matter was not heard on 16-6-2015 and all of a sudden, the arbitral award rejecting the claim of the respondent herein was passed on 7-9-2017 and therefore it is violation of the principles of natural justice and the award is liable to be set aside in view of the decision of the Supreme Court in the matter of **McDermott International Inc. v. Burn Standard Co. Ltd. and others**[1]. He would rely upon the decision of the Supreme Court in the matter of **Automotive Tyre Manufacturers Association v. Designated Authority and others**[2] to buttress his submission.

6. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

7. It is well settled law that scope of interference by a court while hearing and entertaining an application under Section 34 of the AC Act for setting aside the arbitral award is limited to specific grounds

1 (2006) 11 SCC 181
2 (2011) 2 SCC 258

enumerated in Section 34 of the AC Act. Least judicial intervention is the basic thread that runs through the scheme of the Act. Section 5 of the AC Act limits the extent of judicial intervention only to the extent provided for in the Act itself. Therefore, the courts while entertaining application under Section 34 of the AC Act have to examine and test the same vis-a-vis the impugned arbitral award on the anvil of the grounds enumerated under the said provision that is Section 34 of the AC Act.

8. At this stage, it is necessary to analyse the scope of judicial interference in an arbitral award.

9. **Russel on Arbitration (21st Edition)**, page 426, held that the tribunal's findings of fact are conclusive. The appeal to the court can only be made on a question of law arising out of an award made in proceeding and observed as under: -

> "The arbitrators are the masters of the facts. On an appeal the Court must decide any question of law arising from an award on the basis of a full and unqualified acceptance of the findings of fact of the arbitrators. It is irrelevant whether the Court considers those findings of fact to be right or wrong. It also does not matter how obvious a mistake by the arbitrators on issues of fact might be, or what the scale of the financial consequences of the mistake of fact might be.[3]
>
> The parties will not be allowed to circumvent the rule that the tribunal's findings of fact are conclusive by alleging that they are inconsistent[4], or that they constitute a serious irregularity[5], or an excess of jurisdiction[6], or on the basis that there was insufficient evidence to support the findings in question[7]."

10. D.P. Mohapatra, J, speaking for the Supreme Court in the matter of

3 Geogas S.A. v. Trammo Gas Ltd (The "Balears") [1993] 1 Lloyd's Rep. 215 at 228, C.A.
4 Moran v. Lloyd's [1983] 1 Lloyd's Rep. 472; Geogas S.A. v. Trammo Gas Ltd (The "Balears") [1993] 1 Lloyd's Rep. 215 at 232, C.A.
5 Moran v. Lloyd's [1983] 1 Lloyd's Rep. 472; K/S A/S Bill Biakh v. Hyundai Corporation [1988] 1 Lloyd's Rep. 187
6 Bank Mellat v. GAA Development and Construction Co. [1988] 2 Lloyd Rep. 44 at 52
7 Geogas S.A. v. Trammo Gas Ltd. (The "Baleares") [1993] 1 Lloyd's Rep. 215 at 232

Indu Engineering & Textiles Ltd. v. Delhi Development Authority[8] held as under: -

> "An arbitrator is a Judge appointed by the parties and as such the award passed by him is not to be lightly interfered with."

11. Way back in the year 2006, in **McDermott International Inc.** (supra), the Supreme Court has held that interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law and highlighting the supervisory role of court in arbitral process observed as under: -

> "52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. 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. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."

12. Thereafter, in the matter of **Fiza Developers and Inter-Trade Private Limited v. AMCI (India) Private Limited and another**[9], the Supreme Court has considered the scope of proceeding under Section 34 of the Arbitration and Conciliation Act, 1996 and held that in arbitral award, interference should be minimal by courts in matters relating to arbitration and observed as under: -

> "17. The scheme and provisions of the Act disclose two significant aspects relating to courts vis-a-vis arbitration. The first is that there should be minimal interference by courts in matters relating to arbitration. Second is the sense of urgency shown with reference to arbitration matters brought to court, requiring promptness in disposal.

8 (2001) 5 SCC 691
9 (2009) 17 SCC 796

18. Section 5 of the Act provides that notwithstanding anything contained in any other law for the time being in force, in matters governed by Part I of the Act, no judicial authority shall intervene except where so provided in the Act.

19. Section 34 of the Act makes it clear that an arbitral award can be set aside on the grounds enumerated in sub-section (2) of Section 34 and on no other ground. Sub-section (3) of Section 34 provides that an application for setting aside may not be made after three months and the maximum delay that can be condoned is only thirty days. In other words, the maximum period for challenging an award is three months plus thirty days, even if there is sufficient cause for condonation of a longer period delay.

22. The scope of enquiry in a proceeding under Section 34 is restricted to consideration whether any one of the grounds mentioned in sub-section (2) of Section 34 exists for setting aside the award. We may approvingly extract the analysis relating to "grounds of challenge" from *The Law & Practice of Arbitration and Conciliation* by Shri O.P. Malhotra [1st Edn., p. 768, Para (I) 34-14]:

> "Section 5 regulates court intervention in arbitral process. It provides that notwithstanding anything contained in any other law for the time being in force in India, in matters governed by Part I of this Act, the court will not intervene except where so provided in this Part. Pursuant to this policy, Section 34 imposes certain restrictions on the right of the court to set aside an arbitral award. It provides, in all, seven grounds for setting aside an award. In other words, an arbitral award can be set aside only if one or more of these seven grounds exists.
>
> The first five grounds have been set forth in Section 34(2)(a). In order to successfully invoke any of these grounds, a party has to plead and prove the existence of one or more of such grounds. That is to say, the party challenging the award has to discharge the burden of poof by adducing sufficient credible evidence to show the existence of any one of such grounds. The rest two grounds are contained in Section 34(2)(b) which provides that an award may be set aside by the court on its own initiative if the subject-matter of the dispute is not arbitrable or the impugned award is in conflict with the public policy of India."

The grounds for setting aside the award are specific. Therefore, necessarily a petitioner who files an application will have to plead the facts necessary to make out the ingredients of any of the grounds mentioned in

> sub-section (2) and prove the same. Therefore, the only question that arises in an application under Section 34 of the Act is whether the award requires to be set aside on any of the specified grounds in sub-section (2) thereof. Sub-section (2) also clearly places the burden of proof on the person who makes the application. Therefore, the question arising for adjudication as also the person on whom the burden of proof is placed is statutorily specified. Therefore, the need for issues is obviated."

13. Thereafter, similarly in the matter of **<u>Kwality Manufacturing Corporation v. Central Warehousing Corporation</u>**[10], the Supreme Court has held that the court considering the application for setting aside the arbitral award under the Arbitration Act, 1940, does not sit in appeal over the findings and decision of the arbitrator, nor can it reassess or reappreciate evidence or examine the sufficiency or otherwise of the evidence and succinctly observed as under: -

> "10. At the outset, it should be noted that the scope of interference by courts in regard to arbitral awards is limited. A court considering an application under Section 30 or 33 of the Act, does not sit in appeal over the findings and decision of the arbitrator. Nor can it reassess or reappreciate evidence or examine the sufficiency or otherwise of the evidence. The award of the arbitrator is final and the only grounds on which it can be challenged are those mentioned in Sections 30 and 33 of the Act. Therefore, on the contentions urged, the only question that arose for consideration before the High Court was, whether there was any error apparent on the face of the award and whether the arbitrator misconducted himself or the proceedings."

14. In the matter of **<u>Steel Authority of India Limited v. Gupta Brother Steel Tubes Limited</u>**[11], the Supreme Court in respect of interpretation of contract by arbitrator held that if the view taken by arbitrator as to meaning of a contractual clause if possible one and not absurd, then irrespective of its correctness or otherwise, it is not open to correction and held as under: -

10 (2009) 5 SCC 142
11 (2009) 10 SCC 63

> "27. Again, the view of the arbitrator that breach due to refusal on the part of SAIL to supply materials in July-September, 1988 quarter does not fall within the ambit of relevant terms contained in the compensation clause (Clause 7.2); by no stretch of imagination can be said to be an absurd view. The arbitrator's view about non-applicability of Clause 7.2 for refusal to supply materials in July-September 1988 quarter and delayed supply of materials for October-December 1988 quarter is founded on diverse grounds elaborately discussed in the award. Whether this is or is not a totally correct view is really immaterial but such view is a possible view that flows from reasonable construction of Clause 7.2.
>
> 28. The view of the arbitrator being possible view on construction of Clause 7.2, and having not been found absurd or perverse or unreasonable by any of the three courts, namely, Sub-Judge, District Judge and the High Court, we are afraid, no case for interference is made out in exercise of our jurisdiction under Article 136 of the Constitution. Once the arbitrator has construed Clause 7.2 in a particular manner, and such construction is not absurd and appears to be plausible, it is not open to the courts to interfere with the award of the arbitrator."

15. Similar is the proposition laid down by the Supreme Court in the matter of **Sumitomo Heavy Industries Limited v. Oil and Natural Gas Corporation Limited**[12] relying upon **Gupta Brother Steel Tubes Ltd.'s** case (supra) in which it has been held that if the conclusion of the arbitrator is based on a possible view of the matter, the court is not expected to interfere with the award. Their Lordships of the Supreme Court observed in paragraphs 41 and 42 of **Sumitomo Heavy Industries Limited** (supra) as under: -

> "41. The view canvassed on behalf of the respondent was that Clause 17.3 ought to be read narrowly like an indemnity clause or given a literal interpretation as in the case of an insurance policy. The umpire on the other hand has observed that this clause is couched in wide terms and it was commercially understandable and sensible, since it was designed to cover a wide and potentially unforeseeable spectrum viz. the likely impact of a possible change in Indian law in future. In the circumstances the approach adopted by the umpire being a plausible interpretation, is not open to interference. The

12 (2010) 11 SCC 296

> Division Bench was clearly in error when it observed that the view of the umpire on Clause 17.3 is by no stretch of imagination a plausible or a possible view. Perhaps, it can be said to be a situation where two views are possible, out of which the umpire has legitimately taken one. As recently reiterated by this Court in *SAIL v. Gupta Brother Steel Tubes Ltd.*, (2009) 10 SCC 63, if the conclusion of the arbitrator is based on a possible view of the matter, the court is not expected to interfere with the award. The High Court has erred in so interfering.
>
> 42. Can the findings and the award in the present case be described as perverse? This Court has already laid down as to which finding would be called perverse. It is a finding which is not only against the weight of evidence but altogether against the evidence. This Court has held in *Triveni Rubber & Plastics v. CCE*[13] that a perverse finding is one which is based on no evidence or one that no reasonable person would have arrived at. Unless it is found that some relevant evidence has not been considered or that certain inadmissible material has been taken into consideration the finding cannot be said to be perverse. The legal position in this behalf has been recently reiterated in *Arulvelu v. State*[14]."

16. In the matter of **P.R. Shah, Shares and Stock Brokers Private Limited v. B.H.H. Securities Private Limited and others**[15], the Supreme Court has held that while considering application under Section 34 of the Arbitration and Conciliation Act, 1996, court cannot sit in appeal over award by reassessing or reappreciating evidence and observed as under: -

> "21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the

13 1994 Supp (3) SCC 665 : AIR 1994 SC 1341
14 (2009) 10 SCC 206 : (2010) 1 SCC (Cri) 288
15 (2012) 1 SCC 594

> transaction in the name of second respondent and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at."

17. In the matter of **Rashtriya Ispat Nigam Limited v. Dewan Chand Ram Saran**[16] relying upon **Gupta Brother Steel Tubes Ltd.'s** case (supra) and **Sumitomo Heavy Industries Limited** (supra), Their Lordships of the Supreme Court have held that if view taken by arbitrator is possible one, it cannot be subjected to judicial review even if contract is capable of two interpretations and observed as under: -

> "43. In any case, assuming that Clause 9.3 was capable of two interpretations, the view taken by the arbitrator was clearly a possible if not a plausible one. It is not possible to say that the arbitrator had travelled outside his jurisdiction, or that the view taken by him was against the terms of contract. That being the position, the High Court had no reason to interfere with the award and substitute its view in place of the interpretation accepted by the arbitrator.
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> 44. The legal position in this behalf has been summarised in para 18 of the judgment of this Court in *SAIL v. Gupta Brother Steel Tubes Ltd.*, (2009) 10 SCC 63, and which has been referred to above. Similar view has been taken later in *Sumitomo Heavy Industries Ltd. v. ONGC Ltd.*, (2010) 11 SC 296, to which one of us (Gokhale J.) was a party. The observations in paragraph 43 thereof are instructive in this behalf."

18. In the matter of **MSK Projects India (JV) Limited v. State of Rajasthan and another**[17], the Supreme Court has held that an error in the construction of the contract cannot be held to be without jurisdiction and condensely observed as under: -

> "17. If the arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction. But if he wanders outside the contract and deals with matters not allotted to him, he commits a jurisdictional error. Extrinsic evidence is admissible in such cases because the dispute is not something which arises under or in

16 (2012) 5 SCC 306
17 (2011) 10 SCC 573

> relation to the contract or dependent on the construction of the contract or to be determined within the award. The ambiguity of the award can, in such cases, be resolved by admitting extrinsic evidence. The rationale of this rule is that the nature of the dispute is something which has to be determined outside and independent of what appears in the award. Such a jurisdictional error needs to be proved by evidence extrinsic to the award. (See Gobardhan Das v. Lachhmi Ram[18], *Thawardas Pherumal v. Union of India*[19], *Union of India v. Kishorilal Gupta & Bros.*[20], *Alopi Parshad & Sons.* Ltd. v. Union of India[21], *Jivarajbhai Ujamshi Sheth v. Chintamanrao Balaji*[22] and *Renusagar Power Co. Ltd. v. General Electric Co.*[23])"

19. In the matter of **Associate Builders v. Delhi Development Authority**[24], the Supreme Court has taken note of **MSK Projects India (JV) Limited** (supra) and other earlier decisions and held that merits of arbitral award can be assailed only when it is in conflict with public policy of India and the award can be set aside only on the grounds mentioned in Section 34(2) of the AC Act and not otherwise.

20. In the matter of **Swan Gold Mining Limited v. Hindustan Copper Limited**[25], the Supreme Court has held that the court dealing with Section 34(2) of the AC Act cannot interfere with the finding of facts recorded by the arbitrator and cannot re-appreciate the evidence and observed as under: -

> "11. Section 34 of the Arbitration and Conciliation Act, 1996 corresponds to Section 30 of the Arbitration Act, 1940 making a provision for setting aside the arbitral award. In terms of sub-section (2) of Section 34 of the Act, an arbitral award may be set aside only if one of the conditions specified therein is satisfied. The arbitrator's decision is generally considered binding between the parties and therefore, the power of the court to set aside the award would be exercised only in cases where the court finds that the arbitral award is on the fact of it

18 AIR 1954 SC 689
19 AIR 1955 SC 468
20 AIR 1959 SC 1362
21 AIR 1960 SC 588
22 AIR 1965 SC 214
23 (1984) 4 SCC 679 : AIR 1985 SC 1156
24 (2015) 3 SCC 49
25 (2015) 5 SCC 739

> erroneous or patently illegal or in contravention of the provisions of the Act. It is a well-settled proposition that the court shall not ordinarily substitute its interpretation for that of the arbitrator. Similarly, when the parties have arrived at a concluded contract and acted on the basis of those terms and conditions of the contract then substituting new terms in the contract by the arbitrator or by the court would be erroneous or illegal.
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> 12. It is equally well settled that the arbitrator appointed by the parties is the final judge of the facts. The finding of facts recorded by him cannot be interfered with on the ground that the terms of the contract were not correctly interpreted by him."

21. Last of all, in the matter of **Centrotrade Minerals and Metal Inc. v. Hindustan Copper Limited**[26], a three-judges Bench of the Supreme Court has taken note of the earlier decisions and also followed the decision in **Associate Builders** (supra) with approval by holding as under: -

> "45. In our country, the case law on the subject has recently been exhaustively discussed and stated in Associate Builders v. DDA, (2015) 3 SCC 49, and it is not necessary to revisit this. Briefly, it has been held that an 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, or
>
> (d) if it is patently illegal."

22. Thereafter, the Supreme Court in the matter of **Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India (NHAI)**[27] following its earlier decision in **Associate Builders** (supra), at the end of paragraph 34, held as under: -

> "34. … However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in para 30 of *Associate*

26 (2017) 2 SCC 228
27 (2019) 15 SCC 131

Builders."

23. Similar principle has been laid down by their Lordships of the Supreme Court in the matter of **PSA SICAL Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin and others**[28] by observing as under: -

> "42. In **Ssangyong Engineering and Construction Company Limited** (supra), this Court after considering various judgments including the judgment in *Associate Builders* (supra) observed thus:
>
> > "34. What is clear, therefore, is that the expression "public policy of India", whether contained in Section 34 or in Section 48, would now mean the "fundamental policy of Indian law" as explained in paras 18 and 27 of *Associate Builders* [*Associate Builders v. DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] i.e. the fundamental policy of Indian law would be relegated to "Renusagar" understanding of this expression. This would necessarily mean that *Western Geco* [*ONGC v. Western Geco International Ltd.*, (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] expansion has been done away with. In short, *Western Geco* [*ONGC v. Western Geco International Ltd.*, (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12], as explained in paras 28 and 29 of *Associate Builders* [*Associate Builders v. DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in para 30 of *Associate Builders* [*Associate Builders v. DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204].
> >
> > 35. It is important to notice that the ground for interference insofar as it concerns "interest of India" has since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or morality is now to

28 2021 SCC OnLine SC 508

be understood as a conflict with the "most basic notions of morality or justice". This again would be in line with paras 36 to 39 of *Associate Builders* [*Associate Builders v. DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.

38. Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award."

43. It will thus appear to be a more than settled legal position, that in an application under Section 34, the court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of "public policy of India", which has been held to mean "the fundamental policy of Indian law". A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Section 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". It is only such arbitral awards that shock the conscience of the court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award."

24. Similarly, their Lordships of the Supreme Court in the matter of **State of Chhattisgarh and another v. Sal Udyog Private Limited**[29] have reiterated the principles of law laid down in their earlier decision in

29 2021 SCC OnLine SC 1027

<u>Ssangyong Engineering and Construction Company Limited</u> (supra).

25. The conspectus of the above-noted judgments rendered by their Lordships of the Supreme Court would show that if the arbitrator commits an error in the construction of contract by taking a possible or plausible view, that is an error within the jurisdiction and such error in construction cannot be said to be without jurisdiction. Only where the arbitrator wanders outside the contract, he commits jurisdictional error. Likewise, the court will not sit as court of appeal over the findings of arbitral tribunal, nor it can reassess or re-appreciate the evidence to substitute his view to that of the arbitral tribunal.

26. Reverting to the facts of the present case in the light of the above-stated settled legal position that the principles of natural justice as contained in Section 18 read with Section 34(2)(a)(iii) of the AC Act would continue to be the grounds of challenge of an award and following the principles of law laid down by the Supreme Court in the aforecited judgments (supra), it is quite vivid that in this case, the Secretary (Food) was the ex officio Arbitrator who conducted arbitral proceeding from 24-5-2013 to 16-5-2015 and thereafter, it appears that the ex officio Arbitrator-cum-Secretary (Food) was changed though the date was fixed for hearing on 16-6-2015, but thereafter, it appears that no hearing took place and all of a sudden, on 7-9-2017, the arbitral award came to be passed by the newly appointed Arbitrator. It is nowhere clear that the matter was heard on 16-6-2015 or thereafter, however, perusal of the order dated 25-7-2017 makes it clear that for the first time, the matter was placed before the newly appointed arbitrator. As such, it is quite apparent that the arbitrator earlier appointed heard the matter from 24-5-2013 to 16-5-2015 and

thereafter, the matter was fixed on 16-6-2015, but due to change of Arbitrator, the matter was placed before the new Arbitrator only on 25-7-2017, but all of a sudden, thereafter, the award was passed on 7-9-2017 holding that final hearing (oral hearing) had already taken place on 16-6-2015, whereas no such hearing took place on that date.

27. It is well settled judicial procedure that if one presiding officer has heard the matter finally and he demits the office before delivering judgment, then, fresh oral argument is required to be heard by the newly appointed presiding officer. At this stage, it would be appropriate to notice the pertinent judgment of the Supreme Court in this regard.

28. The Supreme Court (Constitution Bench) in the matter of **Gullapalli Nageswara Rao and others v. Andhra Pradesh State Road Transport Corporation and another**[30], while highlighting the object of personal hearing, held as under:-

> "(31) … Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure."

29. The principle of law enunciated in **Gullapalli Nageswara Rao** (supra) was followed with approval by the Supreme Court in **Automotive Tyre Manufacturers Association** (supra) (see paragraphs 83 and 84).

30. Accordingly, even if it is held that the earlier arbitrator has heard the matter finally, but since he has already been transferred / demitted the

30 AIR 1959 SC 308

office, the matter was required to be heard afresh by the newly appointed arbitrator before whom the matter was firstly placed for hearing on 25-7-2017 and the newly appinted arbitrator had no occasion to hear the respondent herein. As such, the award was passed in violation of the basic principle of natural justice which is the ground for setting aside the award covered by Section 34(2)(a)(iii) of the AC Act, as held by their Lordships of the Supreme Court in **McDermott International Inc.** (supra) followed in **Ssangyong Engineering and Construction Company Limited** (supra). The finding recorded by the learned Commercial Court setting aside the award holding the award passed was in violation of the principles of natural justice, is strictly in accordance with law and we do not find any illegality or perversity in the said finding recorded by the learned Commercial Court.

31. As a fallout and consequence of aforesaid discussion, the appeal deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Arvind Singh Chandel)
Judge

Soma