

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8273 OF 2021

Natiohal Highways Authority of India
Project Implementation Unit,
Nashik, Represented by its
Project Director 1st Floor
Kenstar Apartment B-Wing
Plot No.1 Pathardi Phata, Nashik

.. PETITIONER

VERSUS

1] Ujwal Automotives Pvt.Ltd.
Through its Authorised Representative
R/o At Post Mohadi, Tq. and Dist.Dhule

2] The Additional Divisional Commissioner
and Arbitrator, Nashik

..RESPONDENTS

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Mr. D.S.Manorkar, Advocate for the petitioner
Mr. Amol S. Sawant, Advocate for respondent No. 1
Mr.K.B.Jadhavar, A.G.P for respondent no.2.

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CORAM : MANGESH S. PATIL, J.

DATE : 24.08.2021

ORAL JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned advocate Mr.Sawant waives service for the respondent no.1 and the learned A.G.P waives service for respondent no.2. With the consent of both the sides the matter is heard finally at the stage of admission.

2] The petitioner is the National Highway authority constituted under the National Highways Act, 1956. It has challenged the arbitral award under Section 34 of the Arbitration and Conciliation Act (hereinafter referred to as the Arbitration Act) and the matter is pending before the Court at Dhule since 2013.

3] By filing application (Exh.19) the respondent no.1 relying upon the provisions of the National Highways (Manner of Depositing the Amount by the Central Government with the Competent authority for Acquisition of Land) Rules 1998 and particularly Rule 2 (b) solicited a direction from the Court directing the petitioner to deposit the amount of award. By the impugned order the learned Judge allowed the application and directed the petitioner to deposit the amount under the award in the Court within 8 days.

4] The learned advocate Mr.Manorkar for the petitioner would submit that if there is no stay to the award, mere filing of the proceeding under Section 34 of the Arbitration Act would not operate as a stay and the respondent no.1 is at liberty to get the award executed. Instead of doing that a shortcut is being devised by referring to the Rules of 1998. He would submit that those Rules have now been superseded by the Rules of 2019 and mere filing of a challenge to the award is sufficient for the petitioner not to deposit the amount of the award. Rules have come into force w.e.f. 18/1/2019. It is in view of such changed scenario the petitioner is not under any statutory obligation to deposit the amount of award.

5] The learned advocate Mr.Manorkar would also refer to a common order

passed in Writ Petition No.3644/2021 and connected matters on 9/8/2021 clarifying that the claimants are entitled to enforce the award in similar set of facts and circumstances. He would therefore submit that when the proceeding under Section 34 of the Arbitration Act has been pending for years together, when the petitioner has not solicited any order for grant of stay to the operation of the award, there was no need for the learned Judge to be active in directing the petitioner to deposit the amount.

6] The learned advocate Mr.Sawant would submit that though the proceeding under Section 34 of the Arbitration Act has been filed way back in the year 2013 at no point of time the petitioner has taken care to press for stay to the execution. Faced with the situation, the respondent no.1 had no other alternative but to seek enforcement of the Rules of 1998, which are in tune with the statutory mandate of Sub Section 6 of Section 3H of the National Highways Act,1956.

7] I have carefully considered the rival submissions. Admittedly, the petitioner has challenged the award under Section 34 of the Arbitration Act in the year 2013. Though it is stated that it has filed an application for stay to the execution and operation of the award by resorting to Section 36 of the Arbitration Act, till date, no order has been solicited on that application and it is still pending.

8] At the backdrop of such state of affairs, the respondent no.1 seems to have filed the application (Exh.19) seeking a compliance with the Rules of 1998 which have been framed pursuant to provision contained in Section 3H(6) of the National Highways Act, 1956, which requires deposit of the

amount of award within 7 days of determination by the competent authority or by arbitration, as the case may be, with the competent authority by demand draft.

9] Reliance being placed by the learned advocate on the Rules of 2019 which supersede the Rules of 1998 is misplaced. The paraphrase of the Rules of 2019 reads as under :

“G.S.R. 39(E) – In exercise of the powers conferred by clause (aa) of sub-Section (2) of Section 9 of the National Highways Act, 1956 (48 of 1956), and in supersession of the National Highways (Manner of depositing the amount by the Central Government with the competent authority for acquisition of land) Rules, 1998, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely

” (emphasis supplied).

10] As can be seen the Rules of 2019 are applicable except as regards the things done or omitted to be done before such supersession. In my considered view, when the petitioner has omitted to comply with the predecessor Rules of 1998, by not depositing the amount of award within 7 days, these new Rules of the year 2019 would not be applicable to the present dispute which would still be governed by old Rules of 1998.

11] Though the learned Judge who has been called upon to decide a proceeding under Section 34 of the Arbitration Act is apparently being overactive in conceding to the request of the respondent no.1, the aforementioned facts and circumstances, in my view, create a situation due to which such over enthusiasm cannot be said to be wholly unwarranted.

12] As has been pointed out in the impugned order, this Court in Appeal from Order No.22/2020 which in turn has relied upon the directions given by the Division Bench of this Court in several matters referred to therein, had required the petitioner to comply with the provision of Section 3H(6) of the National Highways Act, 1956 and the Rules framed thereunder, mentioned hereinabove. Therefore in my considered view, the impugned order cannot be said to be perverse, arbitrary or illegal.

13] The Writ Petition is dismissed. However, the proceeding under Section 34 of the Arbitration Act is expedited. The learned Judge shall make every endeavour to decide the main proceeding at the earliest.

14] The Rule is discharged.

[MANGESH S. PATIL, J.]

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