



O.S.A.Nos.237 and 242 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2022

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

O.S.A. Nos.237 and 242 of 2013
and M.P. No.1 of 2013

Union of India,
Represented by the Executive Engineer,
Postal Civil Division,
Chennai-600 008.

... Appellant in both O.S.A's.

Vs.

1.George Vincent Ayammpati
REC Post, Trichy-620 015.

2.M.Jayakumar
Sole Arbitrator, Chief Engineer (Civil),
Telecom Civil Kerala Zone,
III Floor, Transport Bhavan,
East Fort, Trivandrum-695 023.

... Respondents in both O.S.A's.

COMMON PRAYER: Original Side Appeals filed under Order XXXVI
Rule 9 of O.S. Rules read with Clause 15 of Letters Patent against the fair
and decretal order of this Court made in O.P.Nos.742 and 743 of 2007
dated 12.03.2012.



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For Appellant : Mr.K.S.Jeyaganeshan
in both Appeals
For Respondents : Mr.P.J.Rishikesh [R1]
in both Appeals
Arbitrator [R2]

COMMON JUDGMENT

(Judgment of the Court was delivered by SUNDER MOHAN, J.)

The above appeals have been filed under Section 37 of the Arbitration and Conciliation Act, 1996 challenging the common order of the learned Single Judge dismissing O.P.Nos.742 and 743 of 2007 dated 12.03.2012 filed by the appellant under Section 34 of the said Act.

2. A dispute arose between the appellant and the first respondent with regard to the terms of two contracts entered into between them for the construction of Head Post Office and Post Masters' Quarters at Postal Staff quarters, Thirukovilur. The dispute was referred to a sole arbitrator appointed by the appellant in respect of the contract which formed the subject matter of the award No.MJ/ARB/200/2 which was challenged in O.P.No.742 of 2007. The first respondent made claims under ten heads. The appellant made counter claim under three heads. The Arbitrator after



hearing the parties allowed claim numbers 3, 4 and 10 made by the first respondent and counter claim numbers 1 and 2 in favour of the appellant.

The Arbitrator rejected all other claims by the parties. In respect of the contract which formed the subject matter of the award no.MJ/ARB/200/1 which was challenged in O.P.No.743 of 2007, the first respondent made claims under eleven heads. The Arbitrator after hearing the parties allowed four claims and one counter claim in favour of the appellant. The Arbitrator rejected all the other claims made by the parties. The first respondent accepted both the awards of the Arbitrator and did not challenge them. The appellant challenged the awards in O.P.Nos.742 and 743 of 2007.

3. Before the learned Single Judge, the appellant contended that the awards passed by the Arbitrator was against public policy and therefore had to be set aside. The first respondent herein contended that the appellant had not made out any ground to show as to how the awards were against public policy and that there was no need to interfere with the awards passed by the Arbitrator. The learned Single Judge considered the rival contentions and found on facts that the awards passed by the Arbitrator was reasonable and



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that the appellant had not made out any ground to interfere with the awards.

In any event, the appellant had not established that the awards were against public policy and dismissed the petitions.

4. Against the said common order passed in O.P.Nos.742 and 743 of 2007, the appellant has come out with the present appeals in O.S.A.Nos.237 and 242 of 2013.

5. The learned counsel for the appellant submitted that claims ought not to have been allowed by the Arbitrator as the first respondent had not established as to how he was entitled to make those claims. The claimant/ first respondent had not produced any documentary proof to substantiate the alleged loss suffered by him on account of the delay in completion of the project. Further, the contract also did not provide for grant of compensation for the losses on account of the delay in completion of the project. The arbitrator had erroneously awarded interest as claimed by the first respondent which was also contrary to the contract entered into between the appellant and the first respondent. The interest awarded in any event was



excessive and prayed for allowing the appeals.

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6. The learned counsel for the first respondent submitted that the appellant had not made out any grounds that are available for challenging awards under Section 34 of the Arbitration and Conciliation Act, 1996 and the learned Single Judge had rightly dismissed the petitions under Section 34 of the said Act. The appellant has not established that the awards were against public policy. The submissions made by the appellant are on merits and an application under Section 34 of the said Act cannot be equated with an appeal. The proviso to Section 34(2A) of the Arbitration and Conciliation Act, 1996, states that an award cannot be set aside even if there is an error in the appreciation of facts and law. But, in this case, the learned Single Judge had found that even on facts, the award of the Arbitrator was reasonable. In any event, the scope under Section 37 of the Arbitration and Conciliation Act, 1996 is circumscribed and narrower than the jurisdiction conferred on the Court under Section 34 of the Arbitration and Conciliation Act, 1996. The learned counsel for the first respondent relied upon the following two judgments:



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- i) *UHL Power Company Limited vs. State of Himachal Pradesh* reported in (2022) 4 SCC 116 and
- ii) *Delhi Airport Metro Express Private Limited vs. Delhi Metro Rail Corporation Limited* reported in (2022) 1 SCC 131.

7. Heard Mr.K.S.Jeyaganeshan learned counsel for the appellant and Mr.P.J.Rishikesh, learned counsel for the first respondent.

8. We have given our anxious consideration to the rival submissions made by the learned counsel on either side.

9. Admittedly, the appellant had not raised the ground that the awards were opposed to public policy, in the grounds raised in the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 before the learned Single Judge. However, we find from the order of the learned Single Judge that a faint attempt was made by the appellant to submit that the awards were opposed to public policy. The learned Single Judge has considered the facts of the case and on consideration found that the awards were justified and reasonable. The learned Single Judge has found that no



grounds were made out to show that it was opposed to public policy. The grounds raised by the appellant before us are factual in nature and cannot be entertained in an appeal under Section 37 of the Arbitration and Conciliation Act, 1996. That apart, the learned Single Judge has elaborately considered the facts and found the awards to be just and reasonable.

10. It is well-settled that the scope of interference in an award is limited. The grounds raised by the appellant is primarily on the basis that the awards are contrary to the contract entered into between the parties and the Arbitrator had not appreciated the evidence in the proper perspective. We find that the proviso to Section 34(2A) of the Arbitration and Conciliation Act, 1996 makes it clear that an award shall not be set aside on the ground of erroneous application of law by re-appreciation of evidence. The proviso to Section 34(2A) of the Arbitration and Conciliation Act, 1996 reads as follows:

"Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence."



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From the above proviso, it is clear that even if we were to accept the submissions made by the appellant that the Arbitrator had erroneously appreciated the law and evidence, we cannot set aside the awards on that ground alone. No other ground has been raised by the appellant. As stated earlier, we find that the Arbitrator has given reasons for his awards and it is based on the evidence placed before him. We find that there is no error in the awards passed by the Arbitrator.

11. The jurisdiction of this Court under Section 37 of the Arbitration and Conciliation Act, 1996 is narrower than the jurisdiction of this Court conferred under Section 34 of the said Act. As such, the jurisdiction of the Court under Section 34 of the Arbitration and Conciliation Act, 1996, is fairly narrow and unless the grounds available for challenging an award under Section 34 of the said Act are made out, the award cannot be said aside. The Hon'ble Apex Court in the case of ***UHL Power Company Limited vs. The State of Himachal Pradesh*** reported in ***(2022) 4 SCC 116*** has held as follows:

"16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to



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the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words : (SCC pp. 166-67, para 11)

“11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the “fundamental policy of Indian law” would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, “patent illegality” itself has been



held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.”

Further, in the case of ***Delhi Airport Metro Express Private Limited vs. Delhi Metro Rail Corporation Limited***, the Hon'ble Apex Court has held that if the view of the Arbitrator is a possible view, the same cannot be interfered with under Section 34 of the Arbitration and Conciliation Act, 1996, unless there is a patent illegality. The relevant portions of the aforesaid order of the Hon'ble Supreme Court is extracted hereunder:

"29. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression "patent illegality". Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression "patent illegality". What is prohibited is for Courts to reappreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no



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fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression “patent illegality”.

12. In the instant case, the appellant has not established any of the grounds that are available for challenge of an award under Section 34 of the Arbitration and Conciliation Act, 1996. Therefore, an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 where the jurisdiction of this Court is narrower cannot be entertained. Hence, the appeals deserve to be dismissed.

13. With the above observations, both the Original Side Appeals stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[V.M.V., J.] [S.M., J.]
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Index : Yes/ No

Speaking Order : Yes/ No
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V.M.VELUMANI, J.
AND
SUNDER MOHAN, J.

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To:

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Sole Arbitrator, Chief Engineer (Civil),
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