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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ARBITRATION APPEAL NO. 9 OF 2018

Zilla Parishad, Aurangabad
Through its Chief Executive Officer,
Ms. Pavneet d/o Kaur

APPELLANT

Age – 35 years,
Occ – Government Service
Through Authorized Signatory Officer
Mr. Ravindra Ramrao Hampiholi Age – 51 years,
Occ – Deputy Executive Engineer (WD)
Office at Zilla Parishad Aurangabad

VERSUS

M/s Navnirman Development Consultants
Through Varsha Atul Dawale
R/o Hare Krishna Temple
Model Colony, Pune 411 016

RESPONDENT

.....

Mr. G. K. (Naik) Thigale, Advocate for appellant
Mr. Ajay S. Deshpande, Advocate for respondent

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON _____ : 7th SEPTEMBER, 2023
PRONOUNCED ON _____ : 1st DECEMBER, 2023

JUDGMENT :

1. By this appeal, filed under section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter for short "the said Act"), appellant challenges order dated 22nd March, 2018 passed by the learned Principal District Judge, Aurangabad in MARJI No. 69 of 2011, filed under section 34 of the said Act, thereby confirming

Award dated 14th November, 2010 passed by sole arbitrator.

2. Brief facts leading to this appeal can be stated as follows:

3. In February, 2001, appellant floated a tender for selection of architect for construction of new administrative building of Zilla Parishad. General Body, by resolution dated 26th June, 2001 selected respondent as architect. It is the case of appellant that by communication dated 28th November, 2001, respondent was informed that appropriate approval is necessary before appointing him and said approval is solicited from government. The government, issued GR dated 30th April, 2004 prescribing process for appointment of architect and carrying out construction of the administrative building. By letter dated 24th November, 2004, appellant instructed respondent to proceed with signing of written agreement and accordingly the agreement between appellant and respondent was executed on 6th January, 2005. On behalf of appellant, Additional Chief Executive Officer, Zilla Parishad, has signed the agreement. Respondent completed architectural work up to stage 5.4 as per agreement.

4. By letter dated 24th July, 2006, appellant informed respondent with minutes of BOT committee meeting that its

appointment as architect/consultant was cancelled and, therefore, tenders are invited for architectural services. By issuing notice, respondent called upon appellant to pay outstanding amount of the work done by respondent and informed appellant that respondent would proceed to get the dispute settled by arbitration. In its claim, respondent has sought to recover an amount of Rs.14,64,558/- as an outstanding amount for architectural work up to stage 5.4 as per agreement. The claim included damages towards loss of profit, interest thereon, refund of earnest money, future interest and cost of arbitration.

5. Arbitral Tribunal was appointed by this Court vide order dated 9th February, 2007. Respondent presented claim along with documents before Tribunal. Appellant opposed claim by filing written statement, thereby denying existence of contractual relation with respondent. It was claimed that correspondence with respondent and submissions of drawings, plans etc., by claimant were steps preparatory to the selection of architect and, therefore, there is no legally enforceable contract between appellant and respondent. Mere selection of respondent does not give any right to respondent to demand fees and damages. Entire process of selection and appointment of architect was to

be done by a committee called BOT committee. Selection of respondent was not in accordance with GR dated 30th April, 2004 and respondent has no right against appellant as there was no contractual relation, there was no arbitrable dispute, agreement was not signed by Chief Executive Officer of Zilla Parishad and, therefore, agreement is not enforceable. Appellant also filed counter claim.

6. Arbitral Tribunal after considering oral and documentary evidence, placed before it, partly allowed the claim of respondent and dismissed the counter claim of appellant.

7. The Award passed by the Arbitral Tribunal was challenged by appellant under section 34 of the said Act, in MARJI No. 69 of 2011, which is rejected by the learned Principal District Judge, Aurangabad. Hence, the present Arbitration Appeal.

8. The main ground of challenge is that the Principal District Judge has no jurisdiction to entertain application under section 34 of the said Act and as per sections 3 and 10 (3) of the Commercial Courts Act, the matter should have been dealt with by Commercial Court, as section 21 of the Commercial Courts Act has an overriding effect. Hence, the impugned order is without jurisdiction. It is submitted that there cannot be any

estoppel against law. At the relevant time District Judge-1 was having jurisdiction to try commercial suits. Since appellant had filed counter claim of Rs.20 crore, the jurisdiction lies with District Judge-1 under the Commercial Courts Act. Learned Principal District Judge had, therefore, no jurisdiction to entertain and decide application under section 34 of the said Act. Learned advocate for appellant conceded that point of jurisdiction was not raised before the District Court, however, according to him, there cannot be estoppel against law since learned Principal District Judge lacks inherent jurisdiction, appellant is entitled to raise issue of jurisdiction at any stage.

9. It is submitted that, the Tribunal, without there being any justifiable reason or material, erred in awarding exorbitant interest @ 18% p.a. and this aspect is ignored by the District Court while rejecting MARJI No. 69 of 2011. Arbitrability of the dispute is also questioned by appellant. It is submitted that respondent was only informed by letter dated 28th November, 2001 that he is selected, however, appointment was not made. There was no approval granted by the Government to the appointment of respondent. Decision to appoint architect vested with the BOT Committee and no resolution is passed by the BOT Committee. Therefore, selection of respondent lapsed and

hence, there was no concluded contract. Arbitrator has recorded perverse findings.

10. It is also submitted that appellant was denied reasonable opportunity of being heard, as its counter claim was required to be withdrawn with liberty to raise it before appropriate forum. However, that permission is also rejected. Arbitrator failed to take into consideration sections 116, 126 and 267 Maharashtra Zilla Parishadas and Panchayat Samitis Act 1061. Provisions of GR dated 30th April, 2004 were not considered and there is no material to show that there was due compliance of the contract.

In support of these submissions, reliance is placed on -

- (i) *“Chief General Manager (IPC) MP Power Trading Co Ltd and Others V. Narmada Equipments Pvt Ltd., 2021 (14) SCC 548*
- (ii) *“Gopal Krishnaji Ketkar V Mohamed Haji Latif and Others” AIR 1968 SC 1413*
- (iii) *“D. M. Corporation Private Limited V. State of Maharashtra and Others 2018 (4) Mh.L.J. 457*
- (iv) *“Union of India V Tarachand Gupta and Brothers” 1971 (1) SSC 486*

11. Per contra, learned advocate for respondent supports the Arbitral Award as well as order passed by learned Principal District Judge. He submits that application was filed before learned Principal District Judge invoking provisions of section 34 of the said Act and said proceedings went on for 8 long years

and at no point of time, appellant raised issue of competence of Principal District Judge to decide the said application. Since appellant has submitted to the jurisdiction of the Court of Principal District Judge, appellant cannot now take advantage of its own wrong. According to him, this is not a case of inherent lack of jurisdiction. Provisions of section 9 (2) of the Commercial Courts act were not invoked by appellant. Though appellant submitted counter claim of Rs.20 crore, it was withdrawn by submitting *pursis* Exhibits-42 and 43 before the Arbitral Tribunal, therefore, counter claim cannot be a decisive factor in determining the jurisdiction, especially with reference to the Commercial Courts Act. He submits that though GR dated 30th April, 2004 postulates consideration of BOT Committee, the agreement executed on 6th January, 2005 cannot be said to be not in conformity with GR dated 30th April, 2004. He submits that appellant's decision was politically motivated, which was taken by the changed managing body and the same is rightly dealt with by the Arbitrator, as well as by the learned Principal District Judge. In support of his submissions, he relied on ***"Delhi Airport Metro Express Private Limited V/s Delhi Metro Rail Corporation Limited" 2022 (1) SCC 131.***

12. I have considered rival submissions of the learned

advocates for the respective parties. Perused the record and the citations relied on by the learned advocates for the respective parties.

13. It is a matter of record that appellant communicated respondent that before giving appointment letter, appellant is required to obtain approval of the Government. It was further communicated that in order to obtain approval from the Government, appellant is required to submit various drawings. Respondent was, therefore, asked to report at the Head Office of appellant at Aurangabad. Appellant kept instructing respondent to carry out all the preparatory work for obtaining approval. It is further clear that respondent has carried out all the preparatory work, including preparing alternatives for project development, finalizing detail plans etc. By communications dated 4th March, 2002 and 7th March, 2002, appellant instructed respondent to carry out further work. Appellant, by letter dated 8th April, 2002 informed respondent that pursuant to General Body Resolution, 3% charges are recommended towards architectural fees on the cost of construction and respondent was asked to perform the contract, subject to approval of the Government. Accordingly, on 2nd May, 2002, respondent submitted Techno-Economic feasibility report of project along with floppy containing (a) site plan (b)

shopping center plan and (c) three dimensional view of administrative building. Record further reveals that respondent was called upon to remain present in the meeting of Zilla Parishad. Appellant, by order dated 24th November, 2004, instructed respondent to proceed with signing written agreement and accordingly, agreement dated 6th January, 2005 came to be executed between appellant and respondent. It is, therefore, clear that respondent has completed architectural work up to stage 5.4 as per the agreement.

14. Sub section (3) of Section 116 of the Maharashtra Zilla Parishads and Panchayat Samities Act empowers the Chief Executive Officer to delegate powers to the officers subordinate to him. In the present case, it appears that the powers were so delegated and agreement dated 6th January, 2005 was executed between appellant and respondent and on behalf of appellant, Additional Chief Executive Officer has signed the said agreement. Therefore, there is no merit in the contention of appellant that no agreement was in existence. In this view of the matter, the Tribunal as well as the District Court are right in holding that there was concluded contract by negotiations and correspondence.

15. There is no merit in the contention of appellant that in

terms of GR dated 30th April, 2004, procedure was laid down for appointment of consultant architect and conditions were also mentioned as to how the contract is made on Built Operate and Transfer (BOT) basis. Pertinently, GR dated 30th April, 2004 does not contain any recital that selection of architect already made and work if any done by said architect would stand cancelled and therefore, fresh process of selection of architect should commence. Record also indicates that steps required for selection of architect, as per GR dated 30th April, 2004 were already initiated and reference of this GR is there in clause 1 of agreement dated 6th January, 2005. As a matter of fact reference of GR in Clause 1 of agreement is subsequently added, by writing, but said addition is signed by Additional Chief Executive Officer. It is, therefore, clear that appellant and respondent were aware of existence of GR dated 30th April, 2004 at the time of executing the agreement. Appellant was not entitled to unilaterally cancel appointment of respondent, when respondent was selected as architect, by unanimous resolution dated 26th June, 2001 and he has executed work up to stage 5.4, as per the agreement. The act of appellant, cancelling appointment of respondent, therefore amounts to breach of the contract.

16. Coming to the next argument of appellant that Principal

District Judge had no jurisdiction to entertain the application filed under section 34 of the said Act is concerned, the same is also devoid of merit. It is clear from the application filed under section 34 of the said Act that the application was filed challenging award. The said application was decided on merits, by the learned Principal District Judge on 22nd March, 2018. Therefore, the matter was being prosecuted by appellant for more than 8 years' period and at no point of time, appellant has raised the issue of jurisdiction before the learned Principal District Judge. Appellant now contends that in view of formation of Commercial Courts Act, the matter ought to have been decided by District Judge -1, who was conferred jurisdiction to decide the commercial disputes. The decision in the case in hand is by the learned Principal District Judge. Thus, it cannot be said that there was inherent lack of jurisdiction as the matter is decided by the learned Principal District Judge, who is of the same cadre, therefore, in my opinion there is no merit in the objection of jurisdiction raised by appellant.

17. Merely because appellant had challenged award, which includes rejection of counter claim filed by appellant that by itself does not mean that Commercial Court had jurisdiction to decide application. In view of valuation made by appellant, for the

purpose of jurisdiction, appellant now cannot be permitted to say that dispute was of value of more than Rs.1 crore and, therefore, it was required to be decided by Commercial Court.

18. Commercial Courts Act has come into force on 1st January, 2016. Section 12 of the said Act provides for determination of “specified value” and the modalities as to how it has to be determined. Section 12 defines “specified value”. It was Rs. 1 crore in the Statute. The statute was amended and “specified value” of Rs.1 crore was brought down to rupees not less than 3 lakhs or higher value as may be notified by Central government. This amendment has come into force with effect from 3rd May, 2018 i.e. after adjudication of the application by District Court. Therefore, till the notification of specified value having been reduced to Rs.3 lakhs or more was published, to become a commercial dispute, the dispute had to be of the valuation of Rs.1 core. In this view of the matter also, argument of appellant that the dispute was a commercial dispute and ought to have been decided by Commercial Court, headed by District Judge-1, cannot be accepted.

19. In ***“Delhi Airport Metro Express Private Limited V/s Delhi Metro Rail Corporation Limited” (2022) 1 SCC 131***, the Supreme Court, while considering the scope of sections 34 and 37 of the

said Act, held that -

“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: (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: (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

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 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: (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.

36. Thus, it is clear that public policy of India is now constricted to mean

firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paras 18 and 27 of Associate Builders [Associate Builders V DDA (2015) 3 SCC: (2015) 2 SCC (Civ) 204] or secondly, that such award is against basic notions of justice or morality as understood in paras 36 to 39 of Associate Builders [Associate Builders V DDA (2015) 3 SCC: (2015) 2 SCC (Civ) 204] Explanation 2 to Section 34 (2) (b) (ii) and Explanation 2 to Section 48 (2) (b) (ii) was added by the Amendment Act only so that Western Geco [ONGC v. Western Geco International Ltd., 25 | (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] ,as understood in Associate Builders [Associate Builders V DDA (2015) 3 SCC: (2015) 2 SCC (Civ) 204] , and paras 28 and 29 in particular, is now done away with.

37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act , 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within “the fundamental policy of Indian law”, namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

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.

39. To elucidate, para 42.1 of Associate Builders [Associate Builders V DDA (2015) 3 SCC: (2015) 2 SCC (Civ) 204] , namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside 26 | an arbitral award. Para 42.2 of Associate Builders [Associate Builders V DDA (2015) 3 SCC: (2015) 2 SCC (Civ) 204] , however, would remain, for if an arbitrator gives no reasons for an

award and contravenes Section 31 (3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.

41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders [Associate Builders V DDA (2015) 3 SCC: (2015) 2 SCC (Civ) 204] , while no longer being a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.”

20. In “**Project Director, National Highways No. 45E and 220 National Highways Authority of India V/s M.Hakeem and Another**” (2021) 9 SCC 1, it is held -

“23. It is settled law that a Section 34 proceeding does not contain any challenge on the merits of the award. This has been decided in MMTC Ltd V. Vedanta Ltd , (2019) 4 SCC 163, at 167 as follows: -

14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an

appeal under Section 37 this Court must be extremely cautious and slow to disturb such concurrent findings.

24. Likewise, in Ssangyong Engg & Construction Co. LTD V NHAI, (2019) 15 SCC 131, this Court under the caption “Section 34 (2) (a) does not entail a challenge to an arbitral award on merits” referred to this Court’s judgment in Renusagar Power Co. Ltd., V General Electric Co., 1994 Supp (1) SCC 644, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 [the “New York Convention”] and various other authorities to conclude that there could be no challenge on merits under the grounds mentioned in Section 34 - (see paras 34 to 48). This Court also held, in Maharashtra State Electricity Distribution Co Ltd. V Datar Switchgear Ltd., , (2018) 3 SCC 133 (at 170), that the court hearing a Section 34 petition does not sit in appeal (see para 51).

25. As a matter of fact, the point raised in the appeals stands concluded in Mc. Dermott International Inc. V. Burn Standard Co Ltd., , (2006) 11 SCC 181, where this Court held: -

51. After the 1996 Act came into force, under Section 16 of the Act the party questioning the jurisdiction of the arbitrator has an obligation to raise the said question before the arbitrator. Such a question of jurisdiction could be raised if it is beyond the scope of his authority. It was required to be raised during arbitration proceedings or soon after initiation thereof. The jurisdictional question is required to be determined as a preliminary ground. A decision taken thereupon by the arbitrator would be the subject-matter of challenge under Section 34 of the Act. In the event the arbitrator opined that he had no jurisdiction in relation thereto an appeal thereagainst was provided for under Section 37 of the Act.

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.”

27. Also, in Dyna Technologies (P) Ltd V Crompton Greaves Ltd., (2019) 20 SCC 1, this Court held: -

36. At this juncture it must be noted that the legislative intention of providing Section 34 (4) in the Arbitration Act was to make the award enforceable, after giving an opportunity to the Tribunal to undo the curable defects. This provision cannot be brushed aside and the High Court could not have proceeded further to determine the issue on merits.

37. In case of absence of reasoning the utility has been provided under Section 34 (4) of the Arbitration Act to cure such defects. When there is complete perversity in the reasoning then only it can be challenged under the provisions of Section 34 of the Arbitration Act. The power vested under Section 34 (4) of the Arbitration Act to cure defects can be utilised in cases where the arbitral award does not provide any reasoning or if the award has some gap in the reasoning or otherwise and that can be cured so as to avoid a challenge based on the aforesaid curable defects under Section 34 of the Arbitration Act. However, in this case such remand to the Tribunal would not be beneficial as this case has taken more than 25 years for its adjudication. It is in this state of affairs that we lament that the purpose of arbitration as an effective and expeditious forum itself stands effaced.”

21. In **"Haryana Tourism Limited V/s Kandhari Beverages Limited"** (2022)3 SCC 237, the Supreme Court has summarized

principles for exercise of jurisdiction of the court under sections 37 and 34 of the said Act. It is held

“8. So far as the impugned judgment and order passed by the High Court quashing and setting aside the award and the order passed by the Additional District Judge under Section 34 of the Arbitration Act are concerned, it is required to be noted that in an appeal under Section 37 of the Arbitration Act, the High Court has entered into the merits of the claim, which is not permissible in exercise of powers under Section 37 of the Arbitration Act.

9. As per settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be 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. None of the aforesaid exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order passed by the High Court is hence not sustainable.”

22. Applying aforesaid ratio to the facts of the present case, it is clear that appellant has failed to make out a ground that there is perversity in the reasoning of the Arbitral Tribunal. It is not the case that the Award is rendered without reasons. Appellant has failed to make out case that the Award is contrary to the

fundamental policy of Indian law or the interest of India or justice or morality and/or that it is patently illegal. No such illegality which goes to the root of the matter could be demonstrated by appellant. The Award cannot be said to be so unfair and unreasonable, that it shocks conscience of the court.

23. Appellant has placed reliance on "***D. M. Corporation Private Limited V. State of Maharashtra and Others***" 2018 DGLS (Bom) 496. In that case, the Court of District Judge-1 Satara was constituted as Commercial Court under section 3 of the Commercial Courts Act for judicial district of Satara, whereas, court of Principal District Judge, where the arbitration application was filed, was not a commercial court, but the court under Part-1 of the Arbitration Act. Parties thereon had no dispute that estimated amount of tender was more than Rs.1 crore. In these facts, learned Single Judge of this Court has held that considering the petition under Article 227 of the Constitution of India, wherein order passed by Principal District Judge, below Exhibit-44 by which the opponents in the Arbitration Application contended that arbitral dispute between the parties related to commercial disputes as subject matter of the dispute being above the specified value, Trial Court allowed the application and passed order transferring arbitration application to Commercial

Court holding that dispute pertains to commercial nature and it is above the specified value. Learned Single Judge of this Court upheld said order, however, in the present case, dispute pertains to the value below Rs. 1 core and, therefore, Court of Principal District Judge, was justified in entertaining the same.

24. In ***"Dyna Technologies (P) Ltd V. Cromptron Greaves Ltd"*** (2019) 20 SCC 1, the Supreme Court was considering a case, where arbitration award was rendered without reasons. In the case in hand, such is not the position. The Arbitral Award is well supported by reasons and the same is confirmed by the District Court, in an application under section 34 of the said Act.

25. In ***"Delhi Development Authority V/s R.S. Sharma and Company New Delhi"*** (2008) 13 SCC 80, Apex Court has held:

31. in our view, the phrase "public policy of India" used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view, in addition to narrower meaning given to the term "public policy" in *Renusagar* case, it is required to be held that the award could be set aside if it is patently illegal. The

result would be 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) in addition if it is patently illegal.*

.... Award could also be set aside if it is so unfair and unreasonable that it shock the conscience of the court. Such award is opposed to public policy and is required to be adjudged void.”

26. In this judgment, the Supreme Court has laid down following principles

“21. From the above decision, the following principles emerge:

- (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 right 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 policy policy of India.

27. None of the above ground is made out by appellant in the present appeal

28. Judgment in "**Chief General Manager (IPC) MP**" (*supra*) is distinguishable on facts.

29. While awarding interest @ 18%, the Arbitral Tribunal has given valid reasons, District Court has confirmed same and, therefore, this Court, while exercising jurisdiction under section 37 of the said Act, will not enter into merit of award of interest.

30. All the contentions raised on behalf of appellant are already considered by this Court while appointing Arbitral Tribunal.

31. In the light of aforesaid reasons, there is no merit in the appeal and the same is dismissed with no order as to costs.

32. In view of disposal of Arbitration Appeal, civil applications No. 12878 of 2021 and 13591 of 2018 do not survive and hence they are disposed of.

33. At this stage, learned advocate for the appellant seeks

extension of stay granted earlier, so as to enable the appellant to approach the Apex Court. This order shall remain stayed for a period of six weeks from today.

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[NITIN B. SURYAWANSHI]
JUDGE