

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

ARBITRATION APPEAL NO. 7 OF 2022

Shyam Goods Garage__ Vs. __ The Collector, Akola and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. Pooja Rannaware, Advocate h/f Mr. H.S.Chitaley, Advocate for appellant
Mr. N.R.Patil, AGP for Respondents

CORAM : AVINASH G. GHAROTE, J.

DATE : 14/02/2023

1] On 13.1.2023, after hearing the respective learned counsels, the following position was recorded.

“1. Learned counsel for the appellant makes a submission that the award dated 22/01/2016 (pg.40) passed by the learned Arbitrator, rejecting the claim of the applicant as well as the judgment dated 27/11/2021 in the proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, “the A and C Act”, hereinafter) dismissing the same (pg.21), is in conflict with the fundamental policy appearing in law and also with the basic notions of morality and justice, as contemplated by Clause (ii) and (iii) of Explanation-1 to Section 34 (1) of the A and C Act, which would require this Court to interfere. She places reliance upon *Haryana Tourism Limited Vs. Kandhari Beverages Limited (2022) 3 SCC 237*, wherein the principles regarding the jurisdiction of the Court under Section 37 of the A and C Act have been summarized.

2. It is contended that though there was no clause levying penalty for delayed transportation in the agreement dated 11/07/2012 (pg.31), a penalty was levied as the material was lifted on 09/02/2015 at 2:40 p.m. from Washim and had reached Telhara the destination on 11/02/2015 at 9:00 a.m., which was only a distance of 143 kms. She submits that in absence of such a clause permitting levying of penalty for delayed transport of goods neither the award of the Arbitrator nor the judgment under Section 34 of the A and C Act can be sustained, as it is a necessity under the A and C Act, that the Arbitrator should be conferred with the jurisdiction to enter into arbitration

by the terms of the contract itself and since the penalty imposed, was not in terms of the agreement and Clause-25 of the agreement required reference to dispute, the same ought to have been considered.

3. Mrs. Barabde, learned Assistant Government Pleader for the respondents concedes that there is no dispute regarding the quantity of goods supplied nor there is a dispute regarding the quality of the goods supplied. The only dispute is relating to delayed transport. She seeks time to point out the relevant clauses in the agreement dated 11/07/2012, which relate to authority of the respondents to levy penalty in terms of the agreement on account of delayed transportation of the goods.

4. Stand over to 20/01/2023.”

2] Today, Mr. Patil, learned AGP makes a statement that the agreement dated 11.7.2012 (pg.31) is not disputed by the respondents. In view of this undisputed position, learned AGP was requested to point out the relevant clause in the agreement which permitted the levy of penalty upon the appellant on account of delay in transportation of the food grains.

3] Learned AGP upon a perusal of the agreement dated 11. 7.2012, fairly admits that there is no clause in the agreement which permits the respondents to levy any penalty upon the appellant in case there is delay in transportation of the food grains.

4] Though the jurisdiction of this Court in an appeal under Section 37 of the A&C Act is extremely limited, however, the power to interfere where the Arbitrator has travelled beyond the scope of the agreement, the terms of which confer jurisdiction upon him, cannot be disputed. Ms. Pooja Rannaware, learned

counsel for the appellant, has rightly relied upon **Haryana Tourism Ltd vrs. Kandhari Beverages Limited, (2022) 3 SCC 237**, to submit that interference even in Section 37 of the A&C Act can be made.

5] In **Haryana Tourism Ltd** (supra) the principles for interference under Section 37 of A&C Act have been summarised as under;

“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.

6] Awarding a penalty, which is not even contemplated by the terms of the agreement dated 11.7.2012, under the terms of which the dispute was referred to the learned Arbitrator would clearly fall within the scope of patent illegality, as arbitration being the creature of an agreement cannot travel beyond the terms of the agreement, by which reference has been made. Since it is an admitted position that the agreement dated 11.7.2012 did not contain any clause or term to levy penalty on account of delay in transportation of food

grains, awarding of such a penalty was clearly beyond the terms of the agreement and therefore is a patent illegality.

7] Neither the award dated 22.1.2016 (pg.40) nor the judgment dated 27.11.2021 under Section 34 of the A&C Act (pg.21) analyze the terms of the agreement dated 11.7.2012 to ascertain whether its terms indeed permitted levy of penalty. Though the learned AGP submits that clause 24 of the agreement dated 11.7.2012 could be considered, the argument is clearly fallacious as it merely makes a reference to the provisions of the Bombay Prohibition Act and the Essential Commodities Act, 1955 and any conviction which may have been suffered by the appellant, which could be made a ground for cancellation of the contract.

8] In view of the above position, the communication dated 5.3.15 (pg.39) of the respondent no.1 as well as the award dated 22.1.16 (pg.40) and the judgment dated 27.11.2021 in MJC No. 14/2018 under Section 34 of the A&C Act cannot be sustained and all are hereby quashed and set aside.

9] The appeal is allowed in above terms. No costs.

JUDGE

Rvjalit

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