

FAO No. 7573 of 2015

[1]

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO No. 7573 of 2015 (O&M)

Date of decision: 15th March, 2023

Vinod Kumar

Appellant

Versus

Union of India and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. S. K. Choudhary, Advocate for the appellant.
Mr. Vipul Aggarwal, Senior Panel Counsel for UOI.

AVNEESH JHINGAN, J (Oral):

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') is filed aggrieved of dismissal of objections under Section 34 of the Act.

2. The brief facts are that the petitioner was allotted a tender for supply of heavy vehicles and the payment was to be made on kilometer basis. There was a dispute with regard to the calculations and the amount to be paid as per para No. 9 of the terms and conditions of the contract. To decide the dispute, sole arbitrator was appointed and the proceedings culminated in award dated 21.3.2011 whereby the claim of the appellant was rejected. The objections filed by the appellant were dismissed on 10.2.2015, hence the present appeal.

3. Learned counsel for the appellant submits that for the vehicle hired for outstation duties payment was to be made for 80 kilometers/eight hours and kilometers beyond 80 kilometers were to be paid extra. He

further submits that the amount was not paid in consonance with para No. 9 of the terms and conditions. The contention is that the arbitral award is non-speaking.

4. Learned counsel for the respondent defends the impugned order and the award.

5. There is no quarrel on the proposition that one of the ground for interference under Sections 34 and 37 of the Act is patent illegality. The contravention of a substantive law including the provisions of the Act brings the case within the ambit of patent illegality.

6. It would be gainful to cite following decisions.

6.1 In ***Tamilnadu Electricity Board v. M/s Bridge Tunnel Constructions, 1997(4) SCC 121***, the Supreme Court observed:

“The Parliament has expressed the legislative judgement that the award shall state reasons upon which it is based unless parties have agreed otherwise or the award is covered on agreed terms under [Section 30](#) of the new Act.

Thus, the law on the award, as governed by the new Act, is other way about of the pre-existing law; it mandates that the award should state the reasons upon which it is based. In other words, unless (a) the parties have agreed that no reasons are to be given or (b) the award is an arbitral award on agreed terms under [Section 30](#) of the new Act, the award should state the reasons in support of determination of the liability/non-liability. Thereby, legislature has not accepted the ratio of the Constitution Bench in the Chokhamal Contractor's case that the award, being in the private law field, need not be a speaking award even where the award relates to the contact of private parties or between person and the Government or public sector undertakings. The principle is the same, namely the award is governed by [Section 31\(3\)](#).”

6.2. The Supreme Court in ***Oil & Natural Gas Corporation Ltd. v.***

SAW Pipes Ltd., 2003(5) SCC 705 held:

“Similarly, if the award is non-speaking one and is in violation of Section 31(3), can such award be set aside? In our view, reading Section 34 conjointly with other provisions of the Act, it appears that the legislative intent could not be that if the award is in contravention of the provisions of the Act, still however, it could not be set aside by the court. If it is held that such award could not be interfered, it would be contrary to basic concept of justice. If the arbitral tribunal has not followed the mandatory procedure prescribed under the Act, it would mean that it has acted beyond its jurisdiction and thereby the award would be patently illegal which could be set aside under Section 34.”

6.3 In ***M/s Som Datt Builders Ltd. v. State of Kerala, 2009(10) SCC 259***, the Supreme Court held:

“25. The requirement of reasons in support of the award under Section 31(3) is not an empty formality. It guarantees fair and legitimate consideration of the controversy by the arbitral tribunal. It is true that arbitral tribunal is not expected to write judgment like a court nor it is expected to give elaborate and detailed reasons in support of its finding/s but mere noticing the submissions of the parties or reference to documents is no substitute for reasons which the arbitral tribunal is obliged to give. Howsoever brief these may be, reasons must be indicated in the award as that would reflect thought process leading to a particular conclusion. To satisfy the requirement of Section 31(3), the reasons must be stated by the arbitral tribunal upon which the award is based; want of reasons would make such award legally flawed. In what we have discussed above, it cannot be said that High Court was wrong in observing that no reasons have been assigned by the arbitral tribunal as to whether the period of completion extended by the employer for 18 months was due to reasons

not attributable to the claimant. However, in our view, the High Court ought to have given the arbitral tribunal an opportunity to give reasons.”

6.4 The Supreme Court in ***State of Chhattisgarh v. Sale Udyog Private Ltd., (2022) 2 SCC 275***, held:

“14. The law on interference in matters of Awards under the 1996 Act has been circumscribed with the object of minimising interference by courts in arbitration matters. One of the grounds on which an Award may be set aside is “patent illegality”. What would constitute “patent illegality” has been elaborated in [Associate Builders v. Delhi Development Authority](#), where “patent illegality” that broadly falls under the head of “Public Policy”, has been divided into three sub-heads in the following words:-

“...42. In the 1996 Act, this principle is substituted by the “patent illegality” principle which, in turn, contains three subheads:

42.1. (a) A contravention of the substantive law of India would result in the death knell of an Arbitral Award. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. This again is really a contravention of [Section 28\(1\)\(a\)](#) of the Act, which reads as under:

“28. Rules applicable to substance of dispute. – (1) Where the place of arbitration is situated in India-

(a) In an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;”

42.2. (b) A contravention of the [Arbitration Act](#) itself would be regarded as a patent illegality – for example if an arbitrator gives no reasons for an award in contravention

of [Section 31\(3\)](#) of the Act, such award will be liable to be set aside.

42.3. (c) Equally, the third subhead of patent illegality is really a contravention of [Section 28\(3\)](#) of the Arbitration Act, which reads as under:

“28. Rules applicable to substance of dispute. – (1) – (2)

(3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.” [2015] 3 SCC 49

This last contravention must be understood with a caveat. An Arbitral Tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do.”

6.5 The Supreme Court in ***National Highways Authority of India v. Sri P. Nagaraju @ Chelluvaish and another, 2022(3) RCR (Civil) 604***, held:

24. Leaving aside the facts in the instant case for a while, if in a matter as against the determination of the market value by the SLAO, the land loser had referred to the exemplar sale deeds and seeks higher compensation than prescribed in the guidance value, and in that circumstance, if no reasons are assigned by the learned Arbitrator for such determination and either approves the SLAO award or awards a lesser amount than the actual entitlement, in such circumstance the arbitration process which is thrust on the land loser should

not be an impediment and limited interference should not be a reason to deny the just and fair compensation. In such cases while examining the award in the limited scope under Section 34 of Act, 1996, the Court is required to take note as to whether the evidence available on record has been adverted to and has been taken note by the Arbitrator in determining the just compensation failing which it will fall foul of Section 31(3) and amount to patent illegality. Therefore, while examining the award within the parameters permissible under Section 34 of Act, 1996 and while examining the determination of compensation as provided under Sections 26 and 28 of the RFCTLARR Act, 2013, the concept of just compensation for the acquired land should be kept in view while taking note of the award considering the sufficiency of the reasons given in the award for the ultimate conclusion. In such event an error if found, though it would not be possible for the Court entertaining the petition under Section 34 or for the appellate court under Section 37 of Act 1996 to modify the award and alter the compensation as it was open to the court in the reference proceedings under Section 18 of the old Land Acquisition Act or an appeal under Section 54 of that act, it should certainly be open to the court exercising power under Section 34 of Act, 1996 to set aside the award by indicating reasons and remitting the matter to the Arbitrator to reconsider the same in accordance with law. The said exercise can be undertaken to the limited extent without entering into merits where it is seen that the Arbitrator has on the face of the award not appropriately considered the material on record or has not recorded reasons for placing reliance on materials available on record in the background of requirement under RFCTLARR Act, 2013.”

[Emphasis supplied]

7. The award as stipulated in Section 31(3) of the Act should contain reasons to support the conclusion arrived at, unless otherwise agreed between the parties. There is nothing on record to show that parties agreed that no reasons are to be given in award.
8. From the perusal of the award, it is evident that after noting para No. 9 of the contract, the arbitrator simply concluded that the calculations done by the respondent were correct. No reasons were recorded to support the conclusion arrived at.
9. The appeal is allowed and the impugned order and the award are set aside.
10. Needless to say that the parties would be at liberty to avail remedies including initiation of fresh arbitration.

[AVNEESH JHINGAN]
JUDGE

15th March, 2023
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |