

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

FAO-6145-2023 (O&M)
Date of Decision:-13.12.2023

Union of India

... Petitioner

Versus

M/s Sar Agencies (Engineer and Contractors) & anotherRespondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Pankaj Gupta, Senior Panel Counsel for the appellant.

GURVINDER SINGH GILL, J.

1. The appellant – Union of India assails order dated 24.7.2023 passed by learned Additional District Judge, Bathinda vide which a petition under Section 34 of the Arbitration and Conciliation Act, 1996 filed by the appellant assailing award dated 28.12.2015 passed by the Arbitrator has been dismissed.
2. The matter arises out of an agreement entered into between the parties as per which the respondent – M/s SAR Agencies was to execute some construction work for the appellant. The agreement provided for resolution of disputes by way of arbitration. A dispute having arisen, the respondent invoked

arbitration. The instant dispute is confined to the entitlement of the respondent for an amount on account of escalation in the price of steel.

3. The Arbitrator awarded an amount of Rs. 35,04,597/- to the respondent – Contractor towards the escalated price of Steel alongwith interest @ 12% per annum from the date of final bill i.e. w.e.f. 16.3.2006 till the date of award. The Arbitrator also awarded future interest @ 18%.
4. The learned counsel for the appellant has vehemently argued that the amount as awarded towards escalation by the Arbitrator has not been worked out correctly and is on the higher side. It has also been argued that the future interest awarded @ 18% is certainly exorbitant and that as such, the impugned order dated 24.7.2023 as well as award dated 28.12.2015 deserve to be set aside.
5. This Court has considered the aforesaid submissions and has also perused the impugned award dated 28.12.2015 as well as the impugned judgment dated 24.7.2023 passed by learned Additional District Judge, Bathinda.
6. It is not in dispute that there indeed was a provision for compensating the Contractor on account of escalation of price of steel. The learned counsel has, however, submitted that the amount awarded towards escalation has not been worked out correctly. The relevant extract from award dated 28.12.2015 is reproduced herein-under :-

“.....The respondent Chief Engineer submitted their details of claim No.1 against the detail of contractor vide their letter No.80802/Arb/156/E8 dated 10.2.2012 and they submitted the amount of the claim for Rs.35,04,597.00 whereas the claimants submitted their whole calculations as mentioned by me earlier which includes Rs.35,22,055/- in addition to the other three items which were placed at the higher cost.

From the calculations of both the parties, figure of Rs.35,04,597.00 is the correct figure of abnormal increase in prices of steel whereas claimants' calculations is Rs.35,22,055/-."

7. Nothing has been shown to this Court from which it could be inferred that it was the respondent-Contractor who had contributed to the delay leading to escalation in price of steel. Even otherwise, the scope of interference in a petition under Section 34 of the Act is very limited. Hon'ble Apex Court in Indian Oil Corporation Limited Vs. Shree Ganesh Petroleum Rajgurunagar, (2022) 4 SCC 463 held as under :-

- "41. As held by this Court in *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49, cited by Mr. Prasenjit Keswani, learned counsel appearing on behalf of the Respondent, Section 34 in conjunction with Section 5 of the 1996 Act makes it clear that an arbitral award that is governed by Part I of the 1996 Act, can only be set aside on grounds mentioned under Sections 34(2) and (3) of the said Act and not otherwise. The Court considering an application for setting aside an award, under Section 34 of the 1996 Act cannot look into the merits of the award except when the award is in conflict with the public policy of India as provided in Section 34(2)(b)(ii) of the 1996 Act.
42. In *Associate Builders* (supra), this Court held that an award could be said to against the public policy of India in, inter alia, the following circumstances:-
- 42.1 When an award is, on its face, in patent violation of a statutory provision.
- 42.2 When the Arbitrator/Arbitral Tribunal has failed to adopt a judicial approach in deciding the dispute.
- 42.3 When an award is in violation of the principles of natural justice.
- 42.4 When an award is unreasonable or perverse.
- 42.5 When an award is patently illegal, which would include an award in patent contravention of any substantive law of India or in patent breach of the 1996 Act.

42.6 When an award is contrary to the interest of India, or against justice or morality, in the sense that it shocks the conscience of the Court.

43. An Arbitral Tribunal being a creature of contract, is bound to act in terms of the contract under which it is constituted. An award can be said to be patently illegal where the Arbitral Tribunal has failed to act in terms of the contract or has ignored the specific terms of a contract.

44. However, a distinction has to be drawn between failure to act in terms of a contract and an erroneous interpretation of the terms of a contract. An Arbitral Tribunal is entitled to interpret the terms and conditions of a contract, while adjudicating a dispute. An error in interpretation of a contract in a case where there is valid and lawful submission of arbitral disputes to an Arbitral Tribunal is an error within jurisdiction.

45. The Court does not sit in appeal over the award made by an Arbitral Tribunal. The Court does not ordinarily interfere with interpretation made by the Arbitral Tribunal of a contractual provision, unless such interpretation is patently unreasonable or perverse. Where a contractual provision is ambiguous or is capable of being interpreted in more ways than one, the Court cannot interfere with the arbitral award, only because the Court is of the opinion that another possible interpretation would have been a better one.”

8. Hon’ble Supreme Court in (2022) 4 SCC 116 UHL Power Co. Ltd. v. State of H.P., while reiterating the narrow scope under Section 34 of the Act held as under:

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

17. A similar view, as stated above, has been taken by this Court in *K. Sugumar v. Hindustan Petroleum Corpn. Ltd.* [*K. Sugumar v. Hindustan Petroleum Corpn. Ltd.*, (2020) 12 SCC 539], wherein it has been observed as follows : (SCC p. 540, para 2)

"2. The contours of the power of the Court under Section 34 of the Act are too well established to require any reiteration. Even a bare reading of Section 34 of the Act indicates the highly constricted power of the civil court to interfere with an arbitral award. The reason for this is obvious. When parties have chosen to avail an alternate mechanism for dispute resolution, they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the court should be restricted to the bare minimum. Interference will be justified only in cases of commission of misconduct by the

arbitrator which can find manifestation in different forms including exercise of legal perversity by the arbitrator."

8. Further in Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131, the Hon'ble Supreme Court went on to say that reappreciation of evidence cannot be permitted under the ground of patent illegality in a Section 34 petition under Act, 1996. The relevant portion has been reiterated below:-

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 on the face of award."

9. A reference to the above stated pronouncements make it clear that this Court while exercising its jurisdiction under Section 34 of the Act shall not sit in appeal and/or re-examine the facts and evidence of the case.
10. A perusal of the aforesaid extracts indicate that scope of interference under Section 34 of the Act has been defined. There is certainly no dispute as regards the proposition of law spelt forth in the said judgment. However, this Court does not find the present case to be such where it can either be said that the Award is unreasonable or is against the public policy of India or is perverse or that there is an error in interpretation of a contract, which can be said to be patently unreasonable.
11. There is nothing perverse in the findings or any blatant irregularity, which would justify interference by this Court.
12. Finding no merit in this appeal, the same is hereby dismissed.

13.12.2023

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(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No