



2023:DHC:9092



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Pronounced on: 18 December 2023*+ **O.M.P. (COMM) 96/2021 & I.A. 3524/2021, I.A.3525/2021,
I.A. 3526/2021**

GOVERNMENT OF NCT OF DELHI. Petitioner
Through: Mr. Sanjoy Ghose, Sr. Adv.
with Mr. Gautam Narayan & Mr. Anuj
Aggarwal, ACS-GNCTD with Ms. Urvi
Mohan & Ms. Ayushi Bansal, Advs.

versus

**M/S SHONKH TECHNOLOGIES INTERNATIONAL LTD.
& ANR.** Respondents
Through: Mr. Saurabh Kirpal, Sr. Adv.
with Ms. Debmalaya C. Banerjee, Mr. Rohan
Sharma & Mr. Nicholas Choudhary, Advs.
for R-1 & R- 2

**CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR**

J U D G M E N T
18.12.2023

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1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter “the 1996 Act”) challenges award dated 19 May 2020, passed by a three-Member arbitral tribunal, by a majority of two learned members to one.

Facts



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2. In 2001, the Ministry of Road Transport and Highways (hereinafter “MoRTH”) took a decision to substitute paper-based vehicle registration certificates and driving licenses, across India, by smart cards. The MoRTH entrusted the National Informatics Centre (hereinafter “NIC”) to standardise hardware and software application parameters to be used for vehicle registration and consolidate data with respect to vehicle registrations of all states in the National Register. NIC developed application software named “VAHAN” for computerisation of the operation of Regional Transport Offices (RTOs) in the matter of vehicle registration. All states, including the petitioner, GNCTD had mandatorily to use the VAHAN software. NIC also developed a Key Management System (KMS) which, when injected into a smart card, locked the smart card and gave it a Unique Alphanumeric Code, resulting in the registration certificate being reflected on the Central database as a valid registration certificate. All RTOs/Motor Licensing Offices (MLOs) had mandatorily to inject the KMS into every smart card.

3. VAHAN was released in two versions. VAHAN ver.1, released first, could only register non-transport vehicles or private vehicles. VAHAN 2.0, which was the upgraded version of VAHAN ver.1, released in 2012, was capable of registering commercial vehicles as well.



4. The concept of smart card-based Vehicle Registration Certificates (VRCs) (“Smart Cards” hereinafter), to replace the paper based VRCs which were issued under Form 23 of the Central Motor Vehicles Rules (CMVRs) was introduced into the Motor Vehicle Act, 1988 (MVA), by Notification G.S.R. 400(E) dated 31 May 2002 of the MoRTH. Smart cards were to be issued under Form 23-A of the CMVR.

5. The Delhi Motor Vehicles Rules, were amended *vide* Notification dated 26 February 2004, allowing issue of VRCs in the form of smart cards in Form 23-A. The price of the smart optical card was fixed at ₹ 370 by way of a further notification dated 10 March 2004 of the GNCTD.

6. A smart card comprises a Visual Inspection Zone located at the reverse of the card and a Machine Readable Zone/microprocessor chip, which contain all information relating to the vehicle registered under the smart card.

7. Computerisation of vehicle registration in the State of Delhi was implemented as an independent Project (hereinafter “the Project”), *vide* Notification G.S.R. 400(E) dated 31 May 2002 of the GNCTD. For this purpose, Letter of Intent (LOI) was issued by the GNCTD to Respondent 1, Shonkh Technologies International Ltd.



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(“Shonkh”). This was followed by a Consortium Agreement (“CA” hereinafter) between Shonkh and Respondent 2, Virgo Softech Ltd. (“Virgo”), for implementation of the project.

8. On 20 June 2003, a CA was executed between the GNCTD and Shonkh, whereunder Shonkh was to provide services relating to issuing of the smart optical cards. The project was on Built Own Operate (BOO) basis, under which ownership of the hardware installed remained with Shonkh. The following clauses of the CA are relevant:

“1.1.7 Ratio means 5 years from the date the date of the commencement of the services in all the ten MLO Offices and at the headquarters office in under Hill Road Delhi where the vehicle Registrations are presently undertaken or 5 years and six months from the date of the signing of this Agreement whichever is earlier.

4(d) GNCTD has on June 17, 2003 issued a Draft Notification No. 95 proposing amendments to the applicable laws, rules and regulations governing the registration and issue of vehicle registration certificates to provide for the following:

- (i) With respect to new vehicles the registration with Smart Optical Cards to be made compulsory for all categories of vehicles;
- (ii) With respect to old vehicles the registration of all categories of vehicles with the Smart Optical Cards to become compulsory within two years from the effective date of the final notification;
- (iii) The cost of the Smart Optical Cards to be recovered from the addition to all other fees and charges leviable



under applicable laws, rules and regulations for registration of vehicles and for other matters concerning the vehicles;

“5(iv) Shonkh shall arrange to acquire and install Hardware, which conforms to the market standards, to be exclusively used for the process of issuance of Vehicle Registration Smart Optical Cards and performance of obligations under this Agreement. Shonkh shall use all reasonable endeavours to ensure that the Hardware is maintained according to industry standards, sufficient to perform the services as mentioned in this Agreement and in case the services are being delayed because of requirement of upgradation to the existing systems, Shonkh shall upgrade the systems to bring them up to the optimum level of services. Hardware shall vest with Shonkh to enable it to provide the Service and meet with its obligations detailed herein. Upon the expiry of the Tenure, the Hardware will be removed by Shonkh.

5(viii) Shonkh shall be responsible to correctly transcribe the data and information as provided by the GNCTD and for any defect or mistake in such transcription by Shonkh on the Smart Optical Cards "Shonkh shall be liable and responsible to the GNCTD. Shonkh shall indemnify and hold harmless GNCTD from all claims, losses, damages etc to which GNCTD may be subjected to or suffer on account of any mistake on the part of Shonkh in transcribing the data and information provided by the GNCTD to Shonkh. Shonkh shall not have any obligation of responsibility in regard to any mistake in the data or information provided by GNCTD.

5(xiii) Shonkh shall maintain sufficient stocks of Smart Optical Cards for due performance of its obligation under this agreement of providing such new or replacement cards within 4 working days.

7(a) GNCTD shall authorize Shonkh to collect and appropriate directly from the vehicle owners a sum of Rs.370/- per



Smart Optical Card to bid issued by Shonkh at the Motor Licensing Offices net of all taxes payable or may become payable. In the event the vehicle registration is done at place other than at the MLO, Shonkh shall collect charges from the customer.

(b) It is clarified that Shonkh shall charge an amount of Rs.370/- for issue of each Smart Optical Card or for replacement thereof in the event of such Smart Optical Card is lost or destroyed or the vehicle ownership is changed or the particulars incorporated in the Smart Optical Card changes to the extent that there will be a requirement to replace the card under the applicable laws rules and regulations. The fee to be collected for updating any data by Shonkh on the Smart Optical Card from time to time @ Rs.10 per entry and the consideration amount of Rs.370/- per card to be paid to Shonkh does not include such services of updating data on the Smart Optical Card.

10. Shonkh hereby agreed and undertakes to issue Smart Optical Cards with incorporation of the relevant data and information within 4 working days from the time the requisite data and information in the standardized form is delivered to Shonkh in regard to the issue of new or replacement cards in regard to any update or charges to be incorporated in the existing card Shonkh shall maintain during the office hours of Motor Licensing Offices 90% uptime (to be determined on monthly basis) of its facilities and undertake the update or charges to be made immediately on receipt of the data or information from GNCTD.

16. TERMINATION

16.1 This agreement may also be terminate: on the following conditions:

- a. By GNCTD if an order is made or a resolution is passed for winding up of Shonkh or if a Receiver is appointed of the assets or the undertaking of Shonkh or if Shonkh suffers any similar or analogous action in consequences of debt or becomes bankrupt.



b. By either party if the other party commits any material breach of its obligations under this Agreement and where such breach is capable of being remedied shall fail to remedy such breach within 90 days of notice from the termination party requiring such breach to be remedied (hereinafter referred to as the “Cure Period”).

16.2 The termination of this agreement shall, however, be without prejudice to any accrued rights or liabilities of the parties as on the date of such termination and continuation in force of the obligation of Shonkh contained in this agreement in regard to confidentiality, delivery of data and information and other similar matters as specifically provided in this agreement.

18. Representations and warranties of GNCTD: The GNCTD represents and warrants to Shonkh as follows:

(c) Correctness of Data: GNCTD shall have the sole and total responsibility to verify all documents submitted for registration in the prescribed form as per applicable law and provide such data to Shonkh for transcribing the same on the Smart Optical Cards. Shonkh shall not be in any way responsible for the above.

21. Intellectual Property rights.

21.1 All data, information collected by the GNCTD from time to time and delivered to Shonkh for incorporation in the Smart Optical Card shall belong to GNCTD and Shonkh shall have no right to use such data or information for any purpose other than the implementation of the project by Shonkh as per the terms of this Agreement.

21.2 On expiry of the agreement Shonkh shall duly transfer all data and information maintained by Shonkh to GNCTD in the media and format, in which they have been maintaining such data and information. Shonkh shall also assist on best endeavour basis GNCTD or its agent to enable conversion of such data and information to such media as GNCTD may desire.



21.3 Shonkh shall have the proprietary right in the technology in the Project of Vehicle Registration Certificate of Smart Optical Card developed by Shonkh. Notwithstanding the above GNCTD shall at all times have the right to use the technology as well as the software involved in the issue of vehicle Registration Certificate of Smart Optical Cards both during the term of this agreement and at all times after the termination of this agreement for any reasons whatsoever other than for reasons of breach or failure on the part of GNCTD.”

9. On 20 June 2003 itself, the Transport Commissioner issued a Work Order in favour of Shonkh and also acknowledged Virgo as the consortium partner of Shonkh in the execution of the project.

10. The CA was amended on 30 December 2004. The amendment deleted, from the definition of “Duration” in clause 1.1.7, the concluding words “5 years and 6 months from the date of the signing of this agreement, whichever is earlier”. Clause 1.1.7, as amended, therefore, read thus:

“Duration means 5 years from the date of initial commencement of the service in all the MLO offices and at the headquarter office at Under Hill Road, Delhi where the vehicle registration is presently.”

11. The present controversy is concerned with the amended Clause 1.1.7.

12. Show cause notices were issued by the GNCTD to Shonkh on 7 June 2006, 6 July 2007, 2 May 2008, 21 September 2012, and 7



March 2013, alleging default on Shonkh's part in ensuring regular supply of smart cards to vehicle owners. It was alleged that clause 5(xiii) of the CA required smart cards to be issued by Shonkh within four working days of the requirement directly to the vehicle owner against payment of ₹ 370 per smart card. However, there was considerable delay in the issuance of smart cards in various cases. It was also alleged that Shonkh had failed to upgrade their systems as per industry standards sufficient to perform services as envisaged in the CA. Shonkh was, therefore, by a final Show Cause Notice dated 10 May 2013, directed to show cause as to why action for breach of financial trust be not initiated against Shonkh and Virgo, and as to why the CA be not cancelled and the matter referred to an appropriate agency for investigation. The Show Cause Notice also purported to be a 90 day notice as required by clause 16.1(b) of the CA, for its termination. Shonkh was also, therefore, directed to show cause as to why the performance guarantee of ₹ 50 lakhs with the Bank of Baroda submitted by it be not forfeited.

13. This was followed by order dated 13 May 2013 of the GNCTD, which alleged that an amount of approximately ₹ 2 crores had been collected by Shonkh in violation of the terms of the CA. It was, therefore, decided that, till Shonkh was in a position to deliver the pending smart cards to vehicle owners and also maintain a sufficient stock of blank smart cards with all zonal offices so as to enable issuance of registration certificates within four days as envisaged by



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the CA, it was not appropriate to allow Shonkh to continue to collect money from the public. As such, the order suspended the applicability of Clause 7 of the CA till Shonkh cleared pendency in all zonal offices of registration of smart cards and also created a stock of blank smart cards to cater to at least fifteen days' requirement. MLOs were directed, in the interregnum, to collect fees for smart cards and retain the amount in safe custody, to be transferred to Shonkh after the smart cards were delivered to the vehicle owners.

14. Shonkh filed replies dated 16 May 2013, 21 May 2013, 29 May 2013 and 3 June 2013, refuting the allegations in the Show Cause Notice dated 10 May 2013 and the subsequent order dated 13 May 2013.

15. On 6 June 2013, the Transport Department issued a further order, revoking the order dated 13 May 2013, which suspended the right of Shonkh to collect fees from vehicle owners. The order stated that Shonkh had made some efforts to reduce the pendency of applications for smart cards.

16. In view thereof, the payment due to Shonkh, retained in safe custody, was released and Shonkh was again allowed to collect fees from vehicle owners as it was doing prior to 13 May 2013. It was stated, however, that if Shonkh failed to comply with clause 5(xiii) of



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the CA within fifteen days, the earlier order dated 13 May 2013 would be restored.

17. On 7 August 2013, a notice was issued by the MLO, Raja Garden to Virgo alleging that there was a huge pendency of smart card registrations and that proper stock of blank smart cards was not being maintained as required by the CA. This was followed by a second notice dated 31 August 2013, granting further time of seven days to Virgo to submit a response in the above regard.

18. On 9 September 2013, Shonkh responded to the communication dated 21 August 2013, alleging the pendency of smart card vehicle registration certificates at various MLOs. The data regarding pendency of registration certificates at MLOs was provided, and it was submitted that the figures were within the limits allowed for smart card issuance. It was submitted that the respondents had maintained a steady supply of smart cards to the MLO offices, so that timely issuance of smart cards to vehicle owners was assured. For the months of July, August and September 2013, it was pointed out, against registration of 75510, 66085 and 18527 vehicles, 61014, 72960 and 16490 smart cards had been issued. As such, no pendency of issuance of smart cards, in violation of the CA could be alleged. The reply further assured that there would be no future shortage or delay in procuring blank smart cards or in issuance of smart cards to



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vehicle owners.

19. On 1 October 2013, the MLO, Sarai Kale Khan Central Zone Transport Department released, to the respondents, the entire pending payment of ₹ 8,41,152 for the period 17 September 2013 to 30 September 2013, as pendency of registration of smart cards stood cleared.

20. On 29 October 2013, the Transport Commissioner, GNCTD issued an order terminating the CA with effect from 31 December 2013. The order noted the alleged earlier defaults by Shonkh and Virgo in providing smart cards to vehicle owners within the time envisaged in clause 5(xiii) of the CA and in maintaining an adequate stock of blank smart cards in the MLO offices. Though the earlier Show Cause Notice dated 10 May 2013 was withdrawn consequent on the assurance by Shonkh and Virgo that there would be no breach in future, it was alleged that failure to comply with clause 5(xiii) of the CA continued, resulting in further communications having to be addressed to Shonkh and Virgo. The notice also purported to provide the data of default with the requirement of clause 5(xiii) at the Mall Road, Sheikh Sarai, MLO Headquarters in Burari, Vasant Vihar, Rohini, and Janakpuri Zones, in the following tabular statement:

S.No.	Name of the Zone	Cases of Default as per Clause 5(xiii)
1.	Mall Road	57



2.	Sheikh Sarai	2309
3.	MLO, Headquarter & Burari	667
4.	Vasant Vihar	185
5.	Rohini	110
6.	Janak Puri	78

Opining that the defaults had resulted in considerable inconvenience to the public, regarding which public outcry had also been raised, the notice communicated the decision of the Transport Department, GNCTD to terminate the CA with effect from 31 December 2013.

21. The respondents represented against the termination order dated 29 October 2013 *vide* representation dated 15 November 2013.

22. The respondents also instituted OMP 1139/2013 before this Court under Section 9 of the 1996 Act seeking suspension of the operation of the termination order dated 29 October 2013 pending resolution of the dispute between the GNCTD and the respondents by arbitration. A learned Single Judge of this court dismissed OMP 1139/2013 *vide* order dated 21 April 2014, in which a *prima facie* view that the CA had come to an end by efflux of time was expressed. The respondents, however, appealed against the said order *vide* FAO (OS) 194/2014 which was disposed of, by the Division Bench of this court, by the following order dated 25 April 2014:

“Instead of going ahead and hearing the appeal from the impugned order, we feel that it would be appropriate that the parties approach the Arbitral tribunal for interim directions under Section 17 of the Arbitration and Conciliation Act, 1996. Dr. Singhvi, the learned senior counsel appearing on behalf of the appellant states that such



an application would be moved before the Arbitral Tribunal within three days. Along with that application they shall enclose the entire record which was there before the learned Single Judge.

The Arbitral tribunal would decide the said application and would be at liberty to pass any interim order. While doing so, it would not be influenced or in any way be bound by the Order passed by the Learned Single Judge which is impugned before us.”

23. It was thus, that the learned Three Member arbitral tribunal, which came to pass the impugned order, was constituted.

Proceedings before the learned arbitral tribunal

24. Before the learned arbitral tribunal, the respondents, as the claimants, submitted that the CA was valid and subsisting till 2017, and could not be said to have expired by efflux of time. During the period of validity of the CA, any termination would have to be preceded by a Cure Notice of 90 days, in terms of Clause 16(1)(b) of the CA. No such Cure Notice preceded the issuance of the termination order dated 29 October 2013. The earlier Show Cause Notice dated 10 May 2013 already stood withdrawn on 6 June 2013. Any termination could not, therefore, seek to rely on the Show Cause Notice dated 10 May 2013. The Transport Commissioner, GNCTD had mandatorily to issue a fresh Show Cause Notice, giving a cure period of 90 days to the respondents to cure alleged defects before terminating the CA.



25. Without prejudice, it was also contended that the respondents were not in breach of clause 5(xiii) of the agreement. It was also submitted that clause 5(xiii) did not impose, on the respondents, any obligation to furnish smart cards within four working days of application. That obligation was in Clause 10 of the CA.

26. The respondents, therefore, claimed before the learned arbitral tribunal,

- (i) loss of profits quantified at ₹ 15.2 crores,
- (ii) further loss of profits of ₹ 20 crores on account of failure by GNCTD to notify and implement draft notification no. 95 dated 17 June 2003 for conversion of old paper-based Vehicle Registration Certificates “VRC” into smart cards as stated in clause 4(d) of the CA,
- (iii) ₹ 2,76,98,000, representing the cost of the equipment being used by third parties in the MLOs and headquarters which should have been returned to the respondents after 24 April 2014, and
- (iv) ₹ 66,44,904 representing salaries of 272 employees employed by the respondents and Rs. 1,41,13,890 as compensation for the stock of the smart cards lying with the respondents, apart from costs.

27. As against this, GNCTD contended, before the learned arbitral



tribunal that the CA had expired by efflux of time in 2008, after which there was no subsisting agreement between the parties. In the alternative, the termination order dated 29 October 2013 was sought to be defended on the ground that the respondents had committed material breach of the terms of CA.

28. The GNCTD also preferred counter-claims.

29. Counter Claim No. 1 did not quantify any amount. Counter Claim No. 2 claimed ₹ 6,64,01,504 as the amount allegedly refundable to vehicle owners, representing fees collected by Shonkh for pending cases. Counter Claim No. 3 sought permission to encash the bank guarantee of ₹ 50 lakhs provided by the respondents at the time of entering into the CA. Counter Claim No. 4 claimed pre-reference, *pendente lite* and future interest at the rate of 18% per annum. Counter Claim No. 5 claimed costs of ₹ 25 lakhs.

Issues framed by the learned arbitral tribunal

30. The learned arbitral tribunal framed the following issues as arising for consideration:

- “(1) Whether termination by the Respondent of the Order dt. 29.10.2013 was illegal?
- (2) Whether the Claimants is entitled to the Claim No(s). 1 to 7 as set out in the Statement of Claim?
- (3) Whether the Respondents are entitled to the Counter Claim No(s). 1 to 5 as set out in the pleading of the Counter Claim?



(4) Whether any party is entitled to interest? If so, for what period and at what rate?

(5) Relief and Costs?”

Findings of the learned arbitral tribunal

31. Re. alleged expiry of the CA by efflux of time

31.1 The learned arbitral tribunal first addressed the submission of GNCTD that the CA had expired by efflux of time. The respondents contested this submission of the GNCTD.

31.2 The respondents contended that the period of five years under Clause 1.1.7 was required to be reckoned from the date of initial commencement of the service of providing smart cards in all MLO offices and at the Headquarter office at Under Hill Road HQ. Thus, the period of five years would reckon from the time when the service commenced at the last of these MLOs. Two MLOs were being run from the Under Hill HQ – the Under Hill Road MLO and the Rajpur Road MLO. While the Rajpur Road MLO was issuing smart cards at the time of the commencement of the CA, the MLO situated at the Under Hill Road HQ was still issuing paper VRCs. *Vide* letter dated 22 October 2005, the Rajpur Road MLO was shifted to Mall Road with effect from 28 October 2005. It was only on 15 April 2012, consequent on release of VAHAN 2.0, that the GNCTD, *vide* e-mail



dated 4 April 2012, informed the respondents that all activities pertaining to commercial vehicles including issuance of smart cards would commence at the Under Hill Road HQ MLO with effect from 15 April 2012. The work of issuance of smart cards at the Under Hill Road HQ MLO thereafter commenced on 20 April 2012. This being the last MLO office from which the service of smart card vehicle registration was commenced, the period of five years was to be reckoned from the date of such commencement. Reckoned thus, from 20 April 2012, the CA would continue to remain in force till 20 April 2017. This fact was communicated by Shonkh to the Transport Commissioner on 17 July 2013. The Transport Commissioner, in its reply dated 20 November 2013, disputed the contention, asserting that VRCs were being issued from the HQ Office from the beginning.

31.3 The GNCTD was seeking to adopt a stand that there was no separate HQ at the Under Hill Road which was issuing VRCs and that the Rajpur Road MLO was the same as the Under Hill Road HQ. This submission could not be accepted in view of the specific reference, in Clause 1.1.7 of the CA, to initial commencement of the service “in all the MLO Offices *and at the Headquarter Office at Under Hill Road, Delhi*, where the vehicle registration is presently undertaken”.

31.4 Vehicle registration was being undertaken at Under Hill Road HQ MLO, Delhi both through smart cards as well as through paper based VRCs. Smart card VRCs were being issued by the Rajpur Road



MLO, who was also sitting at the Under Hill Road HQ. Thus, at the Under Hill Road HQ, there were two MLOs working namely the Under Hill Road HQ MLO and the Rajpur Road MLO. However, while the Rajpur Road MLO was issuing smart cards for all categories of vehicles, the Under Hill Road HQ was issuing only paper-based VRCs for commercial vehicles. The service of providing paper-based smart card VRCs for commercial vehicles had not, therefore, commenced at the Under Hill Road HQ at the time when the CA was executed. From the time it commenced, the CA would remain alive for five years.

31.5 The learned arbitral tribunal found merit in the aforesaid submissions of the respondents. Apart from this, the learned arbitral tribunal relied on four circumstances, to hold that the CA could not be said to have expired on efflux of time in 2008, as contended by the GNCTD.

31.6 Firstly, there was no reference, in the entire pleadings of the GNCTD, regarding the date of commencement of the period of five years or the date when the said period would come to an end.

31.7 Secondly, as the CA was executed on 20 June 2003, the period of five years would expire sometime in the year 2008. However, there was extensive correspondence between the Transport Commissioner



and the respondents even after 2008, relating to performance of the CA and seeking enforcement of obligations by each other. This would not have occurred if the CA had come to an end in 2008.

31.8 Thirdly, Clause 21 of the CA provided for consequences which would follow on the expiry of the CA. This included transfer of intellectual property rights from the respondents to GNCTD. Neither did this take place nor did the GNCTD insist for said data, post 2008.

31.9 Fourthly, and most importantly, if the CA had expired by efflux of time in 2008, there was no question of the GNCTD issuing a termination notice on 29 October 2013. The notice dated 29 October 2023 neither referred to any earlier expiry of the CA by efflux of time nor purported to have been issued by way of abundant caution. In fact, the termination order dated 29 October 2013 was preceded by a Show Cause Notice 10 May 2013, the suspension order dated 13 May 2013 and the subsequent order dated 6 June 2013, withdrawing the suspension. These, too, indicated that CA had not come to an end by efflux of time in 2008.

31.10 For all these reasons, the learned arbitral tribunal rejected the GNCTD's contention that the CA had expired by efflux of time in 2008.



31.11 Reliance was also placed, by the GNCTD, on the order dated 21 April 2014 passed by the learned Single Judge in OMP 1139/2013 and the *prima facie* view, expressed in the said order, that the CA had indeed come to an end by efflux of time. The arbitral tribunal has devoted considerable space to this submission, also citing authoritative pronouncements in that regard. In my opinion, it was not open for the GNCTD to advance the said submission at all, in view of the specific direction in the order dated 25 May 2014 of the Division Bench of this Court in FAO(OS) 194/2014 that the arbitral tribunal would not be influenced or in any way bound by the order of the learned Single Judge. It is, indeed, surprising that, in the teeth of this observation of the Division Bench, the GNCTD chose, nonetheless, to rely on the observation of the learned Single Judge in his order dated 21 April 2014 before the learned arbitral tribunal.

31.12 Paragraph 7.1.13 of the impugned order summarizes the reasons why the learned arbitral tribunal did not find the contention of GNCTD that the CA had expired by efflux of time on the completion of five years from 2008 to be acceptable. It reads thus:

“7.1.13. Before parting with this topic, we would like to sum up even at the risk of repetition the substance of our reasons for taking the view that the CA would come to an end only on expiry of 5 years from the year 2012 (April 4th 2012 to be more specific):

- (i) While the Claimant has a very specific case as to the commencement and expiry by efflux of time of the CA, the Respondent doesn't go beyond mere denial. The



Respondent has not specifically set out the dates of commencement and expiry of the CA.

(ii) The duration clause of the CA specifically uses the expression, “5 years from the date of initial commencement of the service in all the MLO offices and at the headquarter office at Under Hill Road, Delhi”. The Headquarter office is clearly mentioned. The service expected to be provided by the CA from the Claimants was not only in all the MLO Offices but also at the Headquarter office. So far as the expression ‘where the vehicle registration is presently undertaken’ is concerned it is not the case of the Respondent that there was no vehicle registration undertaken at the Headquarter office on the date of the Agreement. It is an almost admitted position that the Respondent was issuing paper-based Vehicle Registration Certificate prior to the execution of CA at the 10 MLOs and HQ office at Under Hill Road. In terms of amendment to CA the duration of 5 years would start as and when the Claimant is directed by the Respondent to commence its services relating to issuance of Smart Optical Card based Vehicle Registration Certificate in lieu of paper-based vehicle registration certificate at the 10 MLOs and HQ office at Under Hill Road.

(iii) Until 2012 the HQ office at Under Hill Road was the last MLO issuing paper-based vehicle registration certificates but with the new version of VAHAN 2.0 allowed to replace the same with smart optical card based vehicle registration certificate, the Claimant takes the duration of 5 years from 2012.

(iv) Vide Letter dt. 17.07.2013 (Vol.-I, p.168) the Claimants informed the Respondent that the CA will expire on 20.04.2017 i.e. 5 years from the date of commencement of service at HQ-MLO on 20.04.2012. This letter has remained uncontroverted.

(v) The Termination Letter dt. 29.10.2013 does not even mention that the CA had already expired by efflux of time.

(vi) Vide Letter dt. 25.10.2023 (Vol-I, p. 195) the Claimants mentioned to the Respondent that they were procuring new IT equipment, VRC Optical cards and



increased manpower to ensure smooth issuance of VRC optical cards till 20th April, 2017. This letter was not replied much less controverted.

(vii) The Claimants bank vide Letter dt. 10.09.2023 notified the Respondent of the extension of the bank guarantee till 31.07.2014 (Vol-IV, p.146). The letter was not replied to. There would have been no question of extension of bank guarantee if the CA had already expired by efflux of time.

(viii) The Claimants went on rendering the service under the CA and the Respondent went on accepting the service. The Respondent cannot turn around and contend that the services were not under the CA.”

32. Validity of the termination order dated 29 October 2013

32.1 Having thus found that the CA had not expired by efflux of time five years from its execution, the learned arbitral tribunal proceeded to examine the validity of the termination order dated 29 October 2013. It was noticed that Clause 16.1 of the CA set out, in sub-clauses (a) and (b), conditions in which the CA could be terminated. Clause (a) applies where Shonkh was wound up or a receiver was appointed and obviously, therefore, was of no relevance. Clause (b) allows either party to terminate the CA if the other party committed a Material Breach of its obligations under the agreement, and, where the breach was capable of being remedied, failed to remedy the breach within a cure period of 90 days provided by the other party.

32.2 After referring to the judgment of the Supreme Court of



Wisconsin in *Volvo Trucks North America v. State of Wisconsin*¹ and the decision in *Anacapa Technology Inc. v. ADC Telecommunications Inc.*² on the concept of a “cure notice”, the arbitral tribunal went on to examine the scope of the expression “Material Breach”, as finds specific place in Clause 16.1 (b) of the CA. The arbitral tribunal notes that mere breach would not justify the termination of the agreement under Clause 16.1 (b); the breach had necessarily to be “material”. The learned arbitral tribunal placed reliance on the following definition of “material breach”, to be found in P. Ramanatha Aiyar’s Advanced Law Lexicon:

“In determining whether a failure to render or to offer performance is material, the following circumstances are significant: (a) the extent to which the injured party will be deprived of the benefit which he reasonable expected; (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurance; (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.”

32.3 The arbitral tribunal notes that the GNCTD had neither pleaded that the alleged breach of the CA, on the respondents’ part, constituted a “material breach” nor that it was incurable.

32.4 In any event, no cure notice as required by Clause 16.1(b) of

¹ Judgment dated 11 March 2010 in **Case No.2008AP1385**

² **241 F. Supp. 2d 2016**



the CA had been given to the respondents before issuing the termination order dated 29 October 2013. The only cure notice which had been issued to the respondents was the notice dated 10 May 2013, which envisaged a cure period of 90 days. Following this, on 13 May 2013, the Transport Commissioner suspended the respondents' right under Clause 7 of the CA to collect VRC fee directly from the vehicle owners. Consequent to the respondents showing cause and making representations in that regard, however, the Transport Commissioner *vide* subsequent order dated 6 June 2013, recording the efforts made by the respondents towards remedying the breach, withdrew the order dated 13 May 2013 and also released pending payments. The right of the respondents to collect fee from the vehicle owners was also restored. This resulted in withdrawal of the Show Cause Notice dated 10 May 2013. In fact, this fact was also acknowledged in the following passage from the termination order dated 29 October 2013:

“After the notice dated 10th May 2013, M/s Shonkh and VSL had confirmed *vide* their reply dated 3rd June, 2013 and 29th May, 2013 respectively that such breach shall not happen in future and on the basis of their commitment the Show Cause Notice was withdrawn.”

The only Show Cause Notice which provided a cure period to the respondents having thus been withdrawn, and no subsequent notice having been issued to the respondents in terms of Clause 16.1(b) of the CA, the learned arbitral tribunal found the order of termination to be invalid and violative of the said Clause.



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33. Re: Alleged Breach, by the respondents, of the CA

33.1 The respondents contended, before the learned arbitral tribunal, that there was a sequence of actions which were envisaged as having to be taken before a valid Smart Card VRC could be said to have been generated. These involved reciprocal obligations of the respondents and the GNCTD, to be fulfilled in sequence. The vehicle owner was first required to deposit the statutory fees with the GNCTD and submit supportive documents. The GNCTD had to put the documents in file. A Data Entry Operator employed by the GNCTD was, thereafter, required to enter details in the VAHAN software of the transport department. The Transport Commissioner, thereafter, was required to call upon the dealers' agent to verify the correctness of the data entered. The vehicle owner was thereafter required to sign a disclaimer/Owner Acceptance Statement, so that the respondents would not be held responsible for undue corrections after the Smart Cards were printed. The file provided by the vehicle owner was then sent for scrutiny to the RTO Inspector. The RTO Inspector could either process the file further for issuance of Registration Certificate or keep the file under objections. Once the RTO office had accorded approval, a Flat File which comprised the electronic data required to be written on the chip in the Smart Card, was generated by the Transport authority in the GNCTD. After the Flat File was thus generated, the physical documents submitted by the vehicle owner were handed over by the office of the Transport Commissioner to the



respondents for scanning. It was only thereafter that the obligation of the respondents to issue the Smart Card within four working days arose.

33.2 Having received the Flat File with the physical documents provided by the physical owner, the respondents had to scan the physical documents and send them to the MLO to verify the scanned documents of the vehicle owner. The Inspector, who was also under the Transport Commissioner, thereafter verified the scanned documents of the vehicle owner. If they were complete, the Inspector affixed his Digital Signature on the scanned file. If this was not done by the Inspector, no delay in issuing the Smart Cards could be attributed to the respondents.

33.3 At the end of the respondents, the Flat File was imported into the respondents' database to write the vehicle data on the chip in the Machine Readable Zone and the vehicle details were printed on the reverse of the Smart Card in their Visual Inspection Zone through application software. The digital signed file was inserted on the optical strip and, in this manner, a personalized Smart Optical Card was prepared. The delivery challan was generated by the respondents from the server of the Smart Optical Card and handed over, along with the Smart Optical Card, to the Transport Authorities for activation through Key Management System (KMS)



which involved insertion of a unique alphanumeric key into the microprocessor chip. It was only after such KMS activation that the Smart Optical Card became a valid Smart Optical VRS. Locking of the Smart Optical Card with the KMS work was the task of the authority of the Transport Department, specifically of the concerned MLO, who had been issued the appropriate locking key by the NIC.

33.4 The learned arbitral tribunal returned the following findings:

(i) The respondents denied the allegations that they were not maintaining sufficient stock of VRCs. In order to verify this, the learned arbitral tribunal, *vide* procedural order dated 5 August 2015, carried out verification of the blank VRCs lying in the MLO. The VRC stock verification report dated 26 September 2015 indicated adequate stock of blank VRC in all MLOs. The respondents were found to be in possession of enough sufficient stock of blank VRC as would enable them to issue Smart Cards in four days.

(ii) Insofar as the allegation of delay, by the respondents, in generating the VRCs, was concerned, the respondents had, *vide* letter dated 7 November 2013, sought details from the Transport Authorities, of the vehicle numbers in respect of which the delay was alleged. These details were provided by the Transport



Authorities *vide* reply dated 8 November 2013. After analysing the said material, the respondents prepared a vehicle-wise tabulated chart reflecting timeline of the movement of the concerned file of each vehicle to ascertain the reason for delay. This was thereafter reduced to a summary chart for the alleged delay period 1 October 2013 to 15 October 2013. By letter dated 26 November 2013, the respondents also requested the Transport Authorities to inform them if there was any discrepancy in the vehicle-wise tabulated chart so as to remove any backlog at the respondents' end. The Transport Authorities did not choose to respond.

(iii) Having gone through the aforesaid material, the learned arbitral tribunal found that there was neither any delay, nor any breach of the CA, on the part of the respondents.

(iv) Assuming there was, the GNCTD had not complied with the requirement of serving a cure notice on the respondents, allowing the respondents a cure period of 90 days for curing the alleged breach. Thus, the termination order was issued in violation of the terms of the CA.

34. Re. respondents' claims for damages



34.1 The respondents claimed, before the learned arbitral tribunal, that the premature termination, by the GNCTD, of the CA, had resulted in a loss of future profits to the respondents, to which they were entitled. These profits were thus worked out by the respondents:

- (i) In 2012-2013, ₹ 8,65,987 vehicles were registered.
- (ii) Treating this as average annual registration figure, the number of vehicles registered between 22 April 2014 and 2017, which was three years, would be ₹ 25,97,961.
- (iii) Future loss of ₹ 50, which was the measure of profit per Smart Card as envisaged by Clause 4(f)(ii) of the CA, the loss of profit for the period 22 April 2014 to 2017 worked out to ₹ 12,98,98,050.

34.2 Relying on the decisions in *Chaplin v. Hicks*³, *Tai Hing Cotton Mill Ltd v. Kamsing Knitting Factory*⁴, *Frederick Thomas Kingsley v. Secretary of State for India*⁵, *Hollandia Pinmen v. H. Oppenheimer*⁶ and *Gurudev Developers v. Kurla Konkan Niwas Chs Ltd*⁷, the learned arbitral tribunal held that difficulty of assessment would not stand in the way of an award of damages and that, even if

³ (1911) 2 KB 786

⁴ (1978) 1 All ER 515 (PC)

⁵ AIR 1923 Cal 49

⁶ AIR 1924 Ran 356

⁷ AIR 2013 Bom 67



the actual damages could not be computed, where the plaintiff had proved loss, compensatory damages were required to be awarded.

34.3 The GNCTD advanced no independent submissions on the aspect of damages or its computation as proposed by the respondents. The only contention of the GNCTD was that, as the CA had expired by efflux of time, no damages could be awarded to the respondents.

34.4 Though, thus, the computation of damages, as proposed by the respondents, remained untraversed, the learned arbitral tribunal discounted the damages claimed by 25% to take care of imponderables. Accordingly, the respondents were held entitled to damages of ₹ 9,74,23,550 which was rounded off to ₹ 10 crores, under Claim 1.

34.5 The claim for damages for loss of profits (Claim 2) was rejected by the learned arbitral tribunal.

34.6 Claim 3 of the respondents was for the cost of the IT equipment procured by the respondents and currently in use by third party in the MLOs. The respondents claimed ₹ 2,76,98,000.

34.7 The learned arbitral tribunal held that, though, as the VRC project was on BOO basis, as defined in Clause 1.1.3 of the CA, the respondents, as the owners of the IT equipment installed in the MLOs,



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had a right to remove the equipment after completion of the CA. The Transport Commissioner evicted the respondents from the MLOs on 22 April 2014 and did not allow their employees to remove the IT equipment. Letters of protest by the respondents to the Transport Commissioner met with no response. Thus, held the learned arbitral tribunal, as the respondents' IT equipment was being used by the GNCTD, the respondents were entitled to the cost thereof. The respondents had provided the invoices whereunder the IT equipment had been purchased. The total project cost worked out to ₹ 2,76,98,000.

34.8 Without entering into the correctness of the said figure, the learned arbitral tribunal disposed of the claim by directing the GNCTD and the respondents to have a joint inventory of the IT equipment present, and to the GNCTD to deliver the equipment to the respondents. In the event of failure to deliver any part of the said equipment, the respondents were held to be entitled to the value of the equipment as worked out by it, subject to a depreciation of 50%. In the event that this exercise could not be carried out, the learned arbitral tribunal held the respondents entitled to the claim of ₹ 2,38,49,000.

34.9 Claim 4 of the respondents was for an amount of ₹ 66,44,904/-, representing the salaries of 272 employees who had been engaged by the respondents for the Project and to whom the respondents had to



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pay six months wages extra, owing to the premature termination of the contract by the GNCTD. As the total salary paid by the respondents to all employees employed at the MLOs per month was ₹ 11,07,484, the salary payable for six months, which worked out to ₹ 66,44,904, was claimed. The GNCTD opposed the claim on the ground that, once the CA had come to an end by efflux of time, and was further terminated on 29 October 2013, the respondents ought to have discontinued the services of their employees.

34.10 The learned arbitral tribunal noted that Clause 5(v) of the CA obligated Shonkh to deploy its personnel at each MLO for operating the hardware and was responsible for paying salaries, wages, allowances and all other remunerations to such employees during the tenure of the Project. Clause 17(b) recorded the assurance by Shonkh to the GNCTD that a dedicated team of personnel would be positioned in the counters at the RTO sites provided by the Government, in order to issue the VRCs on the smart cards within the timings stipulated. The GNCTD illegally terminated the CA before time. For failure to obtain any interim protection, the respondents had been forcefully evicted by the GNCTD. The learned arbitral tribunal observed that it was reasonable to assume that the respondents must have taken some time to terminate their employees and settle their exit. The details of the financials and salaries paid to the employees had been placed on record by the respondents, and were substantiated by the evidence of CW-1, which was not subjected to cross examination.



34.11 Treating three months – instead of six months as claimed by the respondents – as sufficient for the respondents to have settled the dues of all the employees, the learned arbitral tribunal allowed Claim 4 to the extent of ₹ 33,22,452.

34.12 Claim 5 of the respondents was for the price of the VRC Smart Cards which had gone waste owing to the termination of the CA by the GNCTD. The respondents contended that they used to import the Smart Cards from Laser Card USA and store them within the premises of the MLO. While evicting the respondents on 22 April 2014, the Transport authorities did not allow the respondents to take back the blank VRC stock lying in the MLO. As they were tailor-made for the project and preprinted with the logo and mark of the Delhi Government, they were useless for any other purpose.

34.13 Pursuant to order dated 5 August 2015 of the learned arbitral tribunal, the parties *inter se* prepared an inventory of the blank Smart Cards lying in the MLOs, totalling 58653, except for the Sarai Kale Khan MLO, where the respondents were not allowed to do verification. The respondents filed the verification report dated 26 September 2015. According to the respondents, there were 6720 Smart Cards lying in the Sarai Kale Khan MLO, as tallied by the respondents at the time of their eviction on 22 April 2014. The total number of Smart Cards, therefore, worked out to 65373. At the rate of



₹ 215 per card, as per costing details given by the respondents, the respondents were entitled to ₹ 1,39,24,449/-. The particulars in the tabulated statement provided by the respondents in this regard were substantiated by the evidence of CW-1, Brijesh Awasthi.

34.14 The learned arbitral tribunal noted that the defence of the GNCTD, to this claim of the respondents, was only that the cards could have been utilised by the respondents to comply with the requirements of the CA. They also disputed the exact quantity of the cards lying in stock.

34.15 The learned arbitral tribunal observed that, without dispute, the available cards had gone waste, and could not be used for any other purpose, having been tailor-made for the Project. As the termination of the CA by the GNCTD was already found to be illegal, the learned arbitral tribunal held that the GNCTD had to suffer the cost of the unutilised cards, which would have been utilised, had the CA been allowed to proceed to completion. Against this claim, therefore, the learned arbitral tribunal awarded ₹ 1,40,55,195.

34.16 Claim 6 was for damages consequent on wrongful termination of the CA. It was not pressed by the respondents and was, accordingly, rejected.



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34.17 Claim 7 was for costs of proceedings incurred before this Court in prosecuting OMP 1139/2013. This claim was rejected, holding that costs were a matter of discretion to be awarded by the Court which was seized of the proceedings.

34.18 Claim 8 was for costs of the arbitral proceedings. Noting that 25 sittings had been held, the learned arbitral tribunal awarded ₹ 50 lakhs as costs, under this Claim.

34.19 The learned arbitral tribunal thereafter proceeded to deal with the counter claims of GNCTD.

34.20 Counter-claim 1 related to the respondents' obligation to hand over, to the Transport Commissioner, GNCTD, scanned copies of all the registration files of the vehicles. As there were about 55 lakh registration files, and each file was approximately eight pages, and the process of retrieval of data and handing over of the data to the Transport Commissioner by the respondents was in progress, the GNCTD reserved its right to raise a final claim till the actual number of documents handed over by the respondents to the Transport Commissioner was ascertained. The learned arbitral tribunal held the GNCTD to be unjustified in raising this claim, firstly, because it was not satisfied that there was any failure, on the part of the respondents, to hand over the requisite scanned documents to the GNCTD and, secondly, assuming there was any such failure, the GNCTD had to



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allow the default to be cured by providing a 90 days cure period. This having not been done, the counter-claim was rejected.

34.21 Counter-claim 2 was for refund of the VRC fees collected by the respondents allegedly from 159619 vehicle owners, who had not been issued VRCs. Holding that delivery of the vehicle registrations was approved by the respondents on the basis of delivery challans bearing the acknowledgement of the vehicle owners, this counter-claim was also rejected.

34.22 Counter-claim 3 was for encashment of the unconditional Bank Guarantee for ₹ 50 lakhs provided by the respondents. This counter-claim was rejected on two grounds. Firstly, on merits, given the findings of the learned arbitral tribunal on the claims of the respondents, it was held that the GNCTD could not be entitled to the amount covered by the Bank Guarantee. Secondly, in any event, as the stand of the GNCTD was that the CA had expired by efflux of time, and the Performance Guarantee was required to be returned within 30 days of expiry of the CA, there could be no question of encashment at that stage.

34.23 In view of these findings, the learned arbitral tribunal rejected Counter-claims 4 and 5 of GNCTD, which were regarding interest and costs.



Grounds of challenge by the GNCTD and findings thereon

35. Detailed submissions were advanced before me by Mr. Sanjoy Ghose and Mr. Saurabh Kirpal, learned Senior Counsel for the GNCTD and the respondents respectively.

36. Insofar as the claims of the respondents are concerned, quite obviously, the following three principal issues arise:

(i) Did the CA expire with efflux of time at the end of five years from 2008, as contended by the GNCTD, or was the period of five years to be computed from 2012, when the Under Hill Road HQ commenced issuance of Smart Card VRCs?

(ii) Was the Termination Order dated 29 October 2013 validly issued?

(iii) Had the respondents breached the CA?

The sustainability of the impugned award, in respect of the amounts awarded to the respondents, would depend, in the first instance, on the answers to these questions.

37. Scope of interference with arbitral awards



37.1 I have, in my recent decision in *N.H.A.I. v. G.V.K. Jaipur Expressway Pvt Ltd*⁸, dwelt on the scope of interference, by the Court under Section 34 of the 1996 Act, with the manner in which an arbitral tribunal chooses to interpret the contract before it. There is no gainsaying the position that the parties before me are essentially at issue regarding the manner in which the learned arbitral tribunal has interpreted the clauses of the CA.

37.2 The principles in this regard are trite and well settled. Pared down to essentials, there are three stellar guiding principles. Firstly, the Court does not sit in appeal over the decision of the arbitral tribunal. Secondly, absent perversity or patent illegality, the interpretation, by the arbitral tribunal, of the contract, is impervious to interference. Thirdly, the Section 34 Court does not embark on its own exercise of interpreting the contract, as the Court cannot interfere with the award merely because it feels that the contract ought to be interpreted differently from the manner in which the arbitral tribunal has interpreted it.

37.3 Perversity and patent illegality are extreme expressions, and are not to be readily inferred. The decision to have that the disputes are settled by arbitration is an autonomous decision taken by the parties

⁸ Judgment dt. 11 December 2023 in OMP (Comm) 540/2020



inter se. Even where the arbitrator is appointed by the court, it is in accordance with the arbitral dispensation contained in the contract between the parties. Having chosen to settle the disputes by arbitration, the parties have fundamentally to live with the decision of the arbitrator. Arbitration is intended to be a one-step process, and Section 5⁹ of the 1996 Act is a statutory indicator in this regard. Judicial intervention with the arbitral process, whether during its continuance or after its conclusion, is ordinarily to be eschewed. Illegality in the award cannot, by itself, be a ground for interference. It is only when the illegality is patent that the court can step in. The Court has to remain aware of the distinction between mere illegality and patent illegality. Patent illegality has to be such as shocks the conscience of the Court, or is contrary to the most essential and basic tenets of the law, which would include the law laid down by the Supreme Court. The decision of the arbitral tribunal must be such as no person, instructed in the law and aware of the facts, would arrive at it. Perversity exists only where the decision is unsupported by, or clearly contrary to, the evidence on record, or where the award takes into account extraneous factors or omits to take into account essential considerations.

37.4 Even where the arbitral tribunal omits to take an issue into consideration, even though it is urged before it, the decision in

⁹ **5. Extent of judicial intervention.** – Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.



*Ssangyong Engg & Construction Co. Ltd v. N.H.A.I.*¹⁰ holds that a case for interference under Section 34 would exist only where the Court is satisfied that, had the issue been taken into consideration, the conclusion would have been different.

37.5 Thus, where arbitral awards are concerned, the prevailing philosophy of the Section 34 Court has to be a “hands off” approach.

37.6 Thus, in the present case, the Court is only required to assess, for itself, whether the submissions of the GNCTD make out a case for interference with the manner in which the learned arbitral tribunal has dealt with the law and the covenants of the contract before it. The Court cannot be provoked by the submissions of the GNCTD into embarking into a re-examination of the facts, the law, or the covenants of the CA.

37.7 I will not, while undertaking this exercise, repeat the findings of the learned arbitral tribunal, which already stand set out in paras 31 to 34.23 *supra*.

38. Re. expiry of the CA by efflux of time

38.1 The GNCTD seeks to contend that the learned arbitral tribunal

¹⁰ (2019) 15 SCC 131



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has erred in reading, into the words of Clause 1.1.7 of the CA, the word “last”. The Clause did not compute the period of five years from the date when the issuance of Smart Card VRCs would commence in the last MLO. Rather, it specifically applied only in respect of the MLOs in which Smart Card VRCs were “presently” – meaning, at the time of execution of the CA in 2004 – being issued. The commencement of issuance of Smart Card VRCs at the Under Hill Road HQ in 2012 could not, therefore, extend the CA. Besides, the learned arbitral tribunal had also erred in distinguishing between issuance of VRCs in respect of commercial and non-commercial vehicles at the HQ. Reliance was placed, in this context, on a Notification dated 29 September 2004 issued by the Transport Authority which notified eleven Zonal Offices/Registering Authorities as on the date of execution of the CA, among which was included, the Rajpur Road MLO. The Under Hill Road HQ, or even the HQ *per se*, was not notified as a separate registering authority. Besides, even in the written submissions filed by the respondents, it had been admitted that the Under Hill Road HQ and the Rajpur Road MLO were one and the same. The respondents’ contention that there existed, at the Under Hill Road HQ, two MLO offices, of which the Rajpur Road MLO was issuing Smart Card VRCs at the time of execution of the CA and the Under Hill Road HQ commenced issuing Smart Card VRCs in 2012, from which date the period of five years for the purposes of Clause 1.1.7 would commence, did not, therefore, commend itself to acceptance. Interestingly, in para 4 (I) (vi). of its written submissions



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dated 12 July 2021, the GNCTD has contended as under:

“As such it is proved that the Headquarter and/or the Rajpur Road Authority were one and the same and even if these were taken as 2 separate units, both were functional and issuing VRCs for the vehicles from the year 2004 and as such all the MLOs and HQ were operational when the termination notice was served.”

If the interpretation canvassed by the respondents and accepted by the learned arbitral tribunal were to be upheld, submits the GNCTD, it would result in the CA being extended in perpetuity, as every time a new MLO would commence issuing Smart Card VRCs, the respondents could seek a fresh renewal of the five year period under Clause 1.1.7.

38.2 I am unable to agree with Mr. Ghose. The learned arbitral tribunal has correctly interpreted Clause 1.1.7. The clause differentiates between the “service” and “undertaking of vehicle registration”. It clearly envisages the CA as remaining alive for five years from the commencement of the “service” in all MLOs and at the HQ office at Under Hill Road, where vehicle registration was being undertaken at that time. Vehicle registration, unquestionably, was being undertaken at the Under Hill Road HQ independently of the Smart Card VRCs which were being issued at Under Hill Road by the Rajpur Road MLO. The difference was that the Rajpur Road MLO’s office at Under Hill Road HQ was issuing only paper-based VRCs whereas the Rajpur Road MLO, situated in the said premises, was issuing Smart Card VRC’s. Thus, there were two offices from which



vehicle registration was being undertaken at Under Hill Road. The Under Hill Road HQ was separately registering vehicles, but was providing paper-based VRCs. Clause 1.1.7 envisaged the period of five years as commencing from the date all MLOs and the Under Hill Road HQ commenced the service. “Service” is defined in Clause 1.1.30 of the CA as meaning “provision of all the services indicated which is to be provided by Shonkh to the GNCTD for the Project on the terms and conditions detailed herein”. Clause 2 of the CA clearly stipulates that the GNCTD was engaging the services of Shonkh “for preparation and issue of Vehicle Registration Certificate on Smart Optical Cards”. The period of five years, for the purposes of Clause 1.1.7 would, therefore, commence from the date when the service of vehicle registration on Smart Cards commenced in all MLO offices and at the HQ office at Under Hill Road. Thus, Clause 1.1.7 itself distinguishes between the MLOs and the Under Hill Road HQ as separate offices for the purposes of vehicle registration. Admittedly, Smart Card vehicle registration at Under Hill Road HQ commenced only in 2012. There is, therefore, nothing even erroneous, much less patently illegal or perverse, in the decision of the learned arbitral tribunal to commence the period of five years, for the purposes of Clause 1.1.7, from 2012.

38.3 Mr. Ghose is also in error in his submission that, if such an interpretation were to be accepted, the CA would continue in perpetuity, so long as any new MLO commenced providing Smart



Card VRCs. He submits that it would become open to the respondents to contend, every time the provision of Smart Card VRCs starts at any new MLO, or even any existing MLO, that a fresh period of five years, for the purposes of Clause 1.1.7 would start.

38.4 The contention is erroneous. The period of five years, as per Clause 1.1.7 would be reckoned from the date of initial commencement of the service of providing Smart Card VRCs *in the then existing MLOs and the Under Hill Road HQ office*. If, therefore, after the date of execution of the CA, any new MLO was to open, which provided VRC service, the date of commencement of Smart Card VRCs in such an MLO would not be of any relevance, as it was not an MLO which was “presently undertaking” vehicle registration at the time of execution of the CA. If, on the other hand, there was any MLO, which was providing vehicle registration though not through Smart Cards at the time of execution of the CA – like the Under Hill Road HQ office – and that MLO, at a later point of time, commenced providing Smart Card VRCs, then the respondents would certainly be within their right in contending that the period of five years would have to reckon from the date when Smart Card VRCs commenced being issued by said MLO.

38.5 Even if this were to result in extension of the life of the CA considerably beyond five years from 2003 or 2004, that is the



consequence of the statutory covenant to which both parties have consciously assented. There is no equity in business relations. Howsoever unreasonable a contractual covenant may seem, the parties to the contract bind themselves to it, and it is not permissible for either party to urge that the covenant be interpreted otherwise than the plain interpretation which flows from its wording, only so as to arrive at a more equitable dispensation.

38.6 To reiterate, the plain import of Clause 1.1.7 of the CA is that the CA would remain alive for five years from the date of commencement of the service of Smart Card VRCs in the MLOs and the Under Hill Road HQ office which, at that point of time, were providing vehicle registrations, whether Smart Card or paper-based.

38.7 The submission of Mr. Ghose that according such an interpretation to Clause 1.1.7 would amount to reading, into the Clause, the word “last”, which is not to be found therein, is also misconceived. The English language is such that certain stipulations emanate from the wordings of a clause, and it is not necessary that every stipulation must expressly find place in the clause. Once Clause 1.1.7 envisaged the period of five years commencing from the date of initial commencement of the service of Smart Card VRCs in all offices which, on that date, were providing vehicle registrations, it goes without saying that the five year period would start from the date when the last such office *commenced* issuing Smart Card VRCs. This



is the plain interpretation of Clause 1.1.7, and the absence, in the clause, of the word “last” can make no difference.

38.8 In fact, para 4 (I) (vi) of the written submissions of GNCTD, reproduced hereinabove, acknowledges the fact that there were two offices at Under Hill Road HQ, both of which were functional and issuing VRCs in 2004. This submission knocks the proverbial wind entirely out of the sails of GNCTD’s stand. If there were two offices, both of which were functional and issuing VRCs, located at Under Hill Road – which is precisely the respondents’ stand – then the period of five years would start from the day the service of Smart Card VRCs was commenced in each of the said offices. The Under Hill Road HQ commenced issuing Smart Card VRCs only in 2012. Ergo, the life of the CA would continue at least till 2017.

38.9 I am, therefore, entirely in agreement with the learned arbitral tribunal in its finding that the life of the CA expired only in 2017 and that there was no prior expiry by efflux of time.

39. Re. Validity of termination order dated 29 October 2013

39.1 Mr. Ghose seeks to sustain the termination order dated 29 October 2013 on the basis of Clause 4(f)(i) of the CA. It is contended that Clause 4(f)(i) restricted the validity of the CA to a fixed number of 40 lakh VRCs. The respondents were entitled to extend the validity



of the CA, if the target of 40 lakh VRCs could not be achieved in five years. As such, the CA was to continue to remain in force till five years from the date of its commencement or till the issuance of 40 lakh VRCs, whichever was earlier. Between 2003 and 2013, the respondents issued 58 lakh VRCs, which was much in excess of the prescribed limit of 40 lakhs. As the tenure of five years, and the target of 40 lakh VRCs were both achieved, the GNCTD validly terminated the CA on 29 October 2013.

39.2 As always, these are merely the findings in the dissenting award, which the GNCTD adopts as its arguments. The submissions are completely unacceptable, as they are contrary to the termination order dated 29 October 2013. The termination order does not even obliquely purport to have been issued because the target of 40 lakh VRCs had been achieved. It is clearly a punitive order, which alleges that there were various defaults on the part of the respondents including, primarily, failure to issue VRCs within the time envisaged in that regard and failure to maintain a sufficient balance stock of blank VRCs. The order has been issued, not under Clause 4(f)(i), as the GNCTD would seek to contend, but under Clause 5(xiii) of the CA. The learned arbitral tribunal is perfectly correct in its finding that the termination order could not have been issued under Clause 5(xiii) without providing, prior thereto, a cure period of 90 days to the respondents. There is not a whisper, in the submissions of the GNCTD, with respect to the actual findings of the learned arbitral



tribunal on this issue. I am entirely in agreement with the learned arbitral tribunal. The finding, in the impugned award, that the order of termination dated 29 October 2013 was invalid is upheld in its entirety.

40. Re. alleged breach of the CA by the respondents

40.1 The GNCTD has not chosen to advance any submission, questioning the correctness of the findings of the learned arbitral tribunal on this issue. Even otherwise, as the learned arbitral tribunal has correctly found, even if it were to be assumed that the petitioner was in breach of the CA, the remedy with the GNCTD was to grant a cure period of 90 days to the respondents to remedy the breach and thereafter terminate the CA if the breach was never remedied. This was never done.

40.2 Moreover, in its submissions, the GNCTD sought to adopt the surprising stance that the termination of the contract on 29 October 2013 was not owing to breach of the CA by the respondents, but because the target of 40 lakh CVRs had been achieved. The issue of whether the respondents were in breach of the CA, therefore, lost importance.

41. The findings of the learned arbitral tribunal on each of the three issues noted in paras 31 to 34.23 *supra*, therefore, are required to be



accepted.

42. With that, I proceed to examine the challenge, by the GNCTD, to the decision of the learned arbitral tribunal, claim- and counter-claim wise.

43. In doing so, I bear in mind the decision of the Division Bench of this Court in *N.H.A.I. v. Oriental Pathways (Nagpur) Pvt Ltd*¹¹, which holds that, where the contract between the parties does not stipulate the manner in which damages are to be computed, the arbitral tribunal possesses the discretion to adopt any reasonable method of computation. The method of computation adopted by the arbitral tribunal cannot be questioned under Section 34, unless it is contrary to the contractual covenants binding the parties.

44. Re. Claim 1

44.1 Apropos the decision of the learned arbitral tribunal on Claim 1, the GNCTD has sought to contend that, as the respondents issued Smart Card VRCs in excess of the number envisaged in the CA, they earned profits and could not, therefore, be said to have been adversely impacted in any way, even if it were to be presumed that the CA was invalidly terminated on 29 October 2013.

¹¹ (2016) 3 Arb LR 448 (DB)



44.2 This submission is, fundamentally, legally unsound. The entitlement of a party to a contract, to damages in the event of its repudiation by the other, is not dependent on the first party suffering loss, overall, in performance of the contract. What has to be shown is that, owing to the breach of the contract by the opposite party, the first party suffered financial damage. The learned arbitral tribunal has held in favour of the respondents on this issue, on valid grounds. The impugned award notes that the CA was otherwise valid till 20 April 2017, and was illegally terminated on 29 October 2013. The respondents, therefore, unquestionably suffered financial loss as a result. That financial loss was computed by the respondents by applying, to the remaining period of the CA, the annual number of vehicles registered during 2012-2013, which constituted the most proximate basis to assess the loss and multiplying that with the profit of ₹ 50 per Smart Card envisaged in Clause 4(f)(ii) of the CA. The evidence of CW-1 Brijesh Awasthi was also relied upon. Clause 4(f)(ii) specifically provided for payment, to the respondents, of ₹ 50 for each card, if the CA was not extended under Clause 4(f)(i). This amount, therefore, constituted a reasonable basis to assess damages, even as per the CA.

44.3 Besides, the learned arbitral tribunal has observed, in para 9.1.6 of the impugned award, that the GNCTD did not choose to advance any submissions, before it, on the respondents' claims to damages, except to contend that the CA had expired by efflux of time. The



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GNCTD does not dispute the correctness of this observation in the present petition, or even during oral arguments or in its written submissions. In my opinion, a challenge which was never raised before the arbitral tribunal and, therefore, on which the arbitral tribunal had no occasion to cogitate or return a finding, cannot be made a ground to challenge the results in award under Section 34 of the 1996 Act.

44.4 I am not, therefore, inclined to interfere with the findings of the learned arbitral tribunal on Claim 1 of the respondents.

45. Re. Claim 3

45.1 This claim pertains to the cost of the IT equipment which the respondents were not permitted to remove from the MLOs and which, therefore, were being used by third parties. Admittedly, letters of protest, in this regard, were sent by the respondents to the Transport Commissioner, GNCTD. The learned arbitral tribunal has displayed considerable objectivity, while dealing with this claim. It has not chosen to award, straightaway, the amount claimed by the respondents. Rather, it has granted one more opportunity to the GNCTD to deliver the IT equipment of the respondents, which continued to remain in its power and possession, in the MLOs. It is only in the event of such delivery not being effected that the claim of



the respondents has been awarded.

45.2 It is unfortunate that the GNCTD has also chosen to raise an objection to the impugned award apropos Claim 3 on the ground that there is an arithmetic error in the computation of the amount to which the respondents are entitled under Claim 3 as, having allowed 50% depreciation on the value of the IT equipment, the learned arbitral tribunal has, in para 9.3.11 of the impugned award, awarded ₹ 2,38,49,000/- instead of ₹ 1,38,49,000/-. The final award of the learned arbitral tribunal awards, against Claim 3, only ₹ 1,38,49,000/-. This objection, too, therefore, has no substance.

46. Re. Claim 4

46.1 The only ground urged by the GNCTD, before the learned arbitral tribunal, apropos Claim 4 of the respondents, was that the respondents sought to have laid off the services of the employees when the GNCTD terminated the CA on 29 October 2013. The learned arbitral tribunal has held that, as the termination was sudden and illegal, the respondents could not have been expected to act immediately, shown their employees the door, and a reasonable period for discontinuing their services had to be allowed to the respondents. Till then, the respondents' salaries would have had to be paid.



46.2 The GNCTD has objected to the award of ₹ 33,22,452/- under the said head on the ground that no details regarding the wage register, salaries or balance sheets of the respondents had been placed on record. As against this, the respondents have pointed out that the details of the financials and salaries paid to their employees were on record and had been substantiated by the evidence of CW-1, which was never subject to cross-examination by the GNCTD. On perusal of the record, this is found to be correct. As such, this objection of the GNCTD, too, is without substance.

46.3 No occasion, therefore, arises to interfere with the impugned award apropos Claim 4 of the respondents.

47. Re. Claim 5

47.1 Claim 5 of the respondents related to the cost price of VRC Smart Cards which had been imported by the respondents and could not be used owing to premature termination of the CA by the GNCTD. The learned arbitral tribunal had an inventorisation done by the parties, *inter se*, of the number of blank Smart Card lying in the MLOs. 58,653 Smart Cards were found lying unused in all MLOs except the Sarai Kale Khan MLO at which, according to the respondents, 6720 Smart Cards were lying unused. The learned arbitral tribunal worked out the amount payable by multiplying the total number of unused Smart Cards with the cost per card of ₹ 215.



On this basis, an amount of ₹ 1,40,55,195/- was awarded to the respondents against Claim 5.

47.2 The GNCTD's challenge to the award of the above amount of ₹ 1,40,55,195 to the respondents against Claim 5 is that the zone wise pendency figures as on 21 April 2014 disclosed that 159619 VRCs were pending for issuance by the respondents, for which they had collected a fee of ₹ 416/- per card from the vehicle owners. The alleged extra stock of 65646 smart cards could, therefore, have been utilized for issuing the said VRCs.

47.3 This submission is obviously not acceptable as the GNCTD itself terminated the CA on 29 October 2013. No other contention regarding this claim has been raised by the GNCTD.

48. Re. Claim 8

48.1 Under Claim 8, the learned arbitral tribunal has awarded ₹ 50 lakhs as costs to the respondents. This is entirely a matter of subjective satisfaction of learned arbitral tribunal and cannot, therefore, be said to suffer from any patent illegality, much less perversity.

49. Re. Counter Claim I



49.1 The learned arbitral tribunal rejected this counter claim essentially on the ground that there was no substantial material to indicate that there was failure on the part of the respondents to handover scanned documents relating to 55 lakh VRCs, as claimed by the GNCTD. Additionally, it has been held that, as even if there were any default in that regard, the GNCTD was bound to grant a cure period of 90 days to the respondents to remedy the default, which was not done.

49.2 The finding of the learned arbitral tribunal on this counter claim is entitled to be accepted even for the reason that no cure period was granted to the respondents to remedy any default in handing over of documents, even if it existed. The only response of the Transport Commissioner, GNCTD is that the Show Cause Notice dated 10 May 2013 granted a cure period of 90 days. This aspect has already been dealt with earlier. It is an admitted case of the GNCTD that the Show Cause Notice dated 10 May 2013 was withdrawn. As such, no reliance can be placed on the cure period provided in the said Show Cause Notice.

49.3 Insofar as the objection, of the GNCTD, that the decision of the learned arbitral tribunal is unreasoned, is concerned, the boot seems, actually, to be on the other foot.



49.4 The onus to establish its counter claim was on the GNCTD. Para 10.1.11 of the impugned award clearly notes that, while making an averment that the respondents had failed to handover scanned data pertaining to 45344 files, forming subject matter of Counter Claim No. 1, no supportive material in that regard had been furnished by the GNCTD. This finding has not been traversed either in the present petition or in the written submissions or oral arguments advanced at the Bar. That being so, it cannot be said that the decision of the learned arbitral tribunal not to grant Counter Claim No. 1 of the respondents suffers from want of sufficient reasons.

50. Re: Counter Claim II

50.1 Counter-Claim II, by GNCTD, was for refund of VRC fees collected from 159619 vehicle owners, to whom VRCs had not been issued but from whom, allegedly, the respondents had collected fees.

50.2 The learned arbitral tribunal noted that the CA did contain any clause entitling the GNCTD to claim the VRC fee collected from applicants to whom VRCs had not been issued. That apart, the status report filed by the respondents indicated that in respect of 50494 vehicle owners, fee had not been collected; in respect of 32218 vehicle



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owners, fee had been collected by the respondents but VRCs could not be printed for want of Flat File or the corresponding physical file from the transport authorities, and with respect to 76897 VRCs, the VRCs could not be validated as the transport authorities failed to lock the VRC with the KMS, which was the responsibility of the Transport authorities. VRCs which were issued to customers without locking them with the KMS were not shown on the database as valid VRCs, which is why, submitted the respondents, the said number of VRCs were still being reflected as pending.

50.3 The learned arbitral tribunal has noted that the MLO, Surajmal Vihar had, in his letter dated 16 December 2011, acknowledged the fact that 4252 smart cards were issued to vehicle owners without the KMS. Notice has also been taken of numerous communications addressed by the respondents to the transport authorities not to issue VRCs without KMS. On 3 August 2015, the respondents had offered to print and exhaust their blank VRC stock, but there was no response to the proposal from the GNCTD. The learned arbitral tribunal has noted that, though VRC fees had been collected from 113 vehicle owners, VRC cards could not be printed as the GNCTD abruptly stopped the respondent on 22 April 2014.

50.4 In fact, the transport authorities were also claiming refund of the fee charged from vehicle owners to whom VRCs had actually been



issued.

50.5 It was in these circumstances that the learned arbitral tribunal rejected Counter Claim II of the GNCTD. The GNCTD has not, either in its oral submissions, or its written arguments, traversed these figures.

50.6 No occasion, therefore, arises for the court to interfere with the findings of the learned arbitral tribunal apropos Counter-Claim II.

51. Re: Counter Claim III

51.1 Counter Claim III, by the respondents, was for encashment of the Bank Guarantee for ₹ 50 lakhs provided by the respondents. As this Court has upheld the decision of the learned arbitral tribunal that the termination of the CA, by the GNCTD on 29 October 2013, was illegal, the GNCTD cannot be permitted to enrich itself by encashing the bank guarantee. The decision of the learned arbitral tribunal, rejecting Counter Claim III, is also, therefore, liable to be upheld.

Conclusion

52. For all the aforesaid reasons, this Court finds no occasion to interfere with the impugned award, within the limited scope of



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jurisdiction vested in it by Section 34 of the 1996 Act.

53. The award is, accordingly, upheld in its entirety.

54. The petition stands dismissed accordingly, with no orders as to costs.

C.HARI SHANKAR, J

DECEMBER 18, 2023

ar/rb

Click here to check corrigendum, if any