



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 01st June, 2023**

+ **O.M.P. (COMM.) 229/2021**

INDIAN RAILWAY CATERING & TOURISM CORP. LTD.

Through Group General Manager,
B-148, 11th Floor, Statesman House,
Barakhamba Road,
New Delhi-110001.

..... Petitioner

Represented by: Mr. Saurav Agrawal, Ms.
Divya Hirawatz, Mr.
Anshuman Chowdhary,
Advocate.

versus

M/S GOEL & GOEL

Through its Partner,
Sh. Suresh Goel,
7th Lane, Itarsi – 461111,
Madhya Pradesh

..... Respondent

Represented by: Mr. S. Ravi Shankar, Ms.
Meghna Mukherjee,
Ms. Yamunah Nachiar,
Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J

1. The present Petition has been filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to*



as 'A&C Act') for setting aside the Award dated 08.03.2019 passed by the Sole Arbitrator vide which the claim of the respondent for damages has been allowed.

2. The **facts in brief** are that the petitioner, a Public Sector Undertaking working under the aegis of the Ministry of Railways, (*which was the respondent before the Arbitrator*) issued a Tender Notice dated 11.09.2006 for allocating license to operate Food Plazas at the CST (Main and Sub-urban) Station in Mumbai. The Respondent herein (*who was the claimant before the ld. Arbitrator*) being the highest bidder, was awarded the license for the Food Plazas for a license fee of Rs.31,31,313/- and Rs.44,00,000/-, which was operational for a period of 9 years as provided in the General Conditions of License, vide letter of Award dated 23.11.2006 and 24.11.2006 respectively. Following the same, the parties entered into an Agreement dated 20.03.2008 which came into effect on the commencement of operation in the respective units on 01.10.2008 and 28.02.2009.

3. The respondent vide its letter dated 27.10.2012 sought permission of the petitioner to sub-license 75% the designated premises i.e. the Food Plaza, to M/s Kishore H Caterers which was duly countenanced by the petitioner vide letter dated 07.11.2012.

4. The respondent vide letters dated 30.12.2012 followed by letter dated 30.01.2013 informed the petitioner that M/s B. Rajasaheb, an unauthorized third party, had forcibly taken possession of the remaining 25% of the Food Plaza at CST (Sub-Main) and sought the aid of the petitioner to obviate such unauthorized occupation. Pursuant thereto, the petitioner promptly took action by filing a complaint to the Railway



Police Force (RPF) vide letter dated 30.12.2012 and to GRP vide letter dated 01.04.2013.

5. However, M/s B. Rajasaheb filed a Civil Suit No. 4 of 2013 on 05.01.2013 in the Small Causes Court of Bombay against the petitioner and the respondent herein, claiming that vide an MoU dated 04.01.2012 signed by two partners of the respondent Firm, it had been granted a sub-lease for a period of 7 years to operate and manage the remaining 25% of the premises for which it deposited a sum of Rs. 43,00,000/-in the respondent's current account in ICICI Bank. It sought a declaration that the MoU dated 04.01.2012 was legal, valid, and binding and that it may be declared as the licensee in respect of disputed premises.

6. The petitioner on becoming au courant about the subletting of the premises by the respondent without its permission vide Agreement dated 04.01.2012 through the suit filed before the Small Causes Court, issued a Show Cause Notice dated 23.04.2013 with respect to the alleged breach of Clauses 6.3 and 12.5 of the General Conditions of License and to take necessary action as per the Conditions of Tender, within 15 days. Respondent gave its Reply dated 03.05.2013 stating that the Agreement dated 04.01.2012 is a forged document and the entry and use of the premises by B. Rajasaheb in December, 2012 was forced against which action was taken by filing a complaint with the Government Railway Police (*hereinafter referred to as 'GRP'*) and also sought the help of the petitioner was sought to take action against the illegal occupant.

7. The petitioner then sent a letter dated 02.05.2014 requiring the respondent to file an affidavit declaring that the Firm or its partners did not enter into the Sub-License Agreement without the approval of the



petitioner and submit details in regard to the action taken by the respondent against the illegal occupant.

8. Based on the personal hearing granted to the respondent on 16.07.2014 as well as the information on record, the Contract dated 20.03.2008 was terminated vide Termination Order dated 04.08.2014 under Clause 8.1 of the General Conditions of License, by the petitioner.

9. Thereafter, by a letter dated 05.08.2014, the respondent admitted that the Agreement/MoU dated 04.01.2012 with M/s B. Rajasaheb was executed by its two Partners namely, Shri. Suresh Goel and Shri. Pankaj Goel.

10. The respondent then invoked arbitration in terms of Clause 10.1 of the General Conditions of Contract challenging the Termination order issued by the petitioner.

11. Shri V.N. Mathur was appointed as the Sole Arbitrator to adjudicate upon the dispute vide letter No.2013/IRCTC/FP/CSTM /SCN dated 24.09.2014. The Statement of Claim and Statement of Defence were filed before V.N. Mathur. He resigned thereafter and Shri Chander Prakash was appointed as the sole arbitrator by the Chairman and Managing Director of IRCTC.

12. The ***Terms of Reference*** made to the Sole Arbitrator were as following:

- (i) *Whether the dispute in question is arbitrable?*
- (ii) *If point no. 01 is decided in affirmative, whether termination of license vide letter dated 04.08.2014 was illegal and arbitrary, if so its effect.*

13. In terms of reference, the Claimant sought for restoration the license and in the alternative, claimed as under:



Claim No.	Head of Claim	Amount Claimed
A	Restoration of License for unworked balance period of 12 years	If this claim is accepted by Respondent and allowed by the Tribunal then claims under head B indicated below would be deemed to have not been made.
B-1	Refund of un-worked license fee for 2014/15	Rs. 52,66,180/-
B-2	Refund of Security Deposit	Rs. 15,00,000/-
B-3	Removal/rent/cost of Food reimbursement of Plaza	Rs.1,25,00,000/- reimbursement of cost or removal of structure or rent @ Rs.5,00,000/- per month
B-4	Compensation for loss of expected profit	Rs.11,58,65,225/-
B-5	Refund proportionate L.F. of area made available	1,12,97,975/-
B-6	Interest Pendente lite	24% per annum
	Cost of Arbitration and Litigation	Rs.10,00,000/-
	TOTAL	Rs. 14,74,29,380/-



14. The petitioner filed a **Statement of Defence** claiming that the respondent had breached Clause 12.5 of the Terms and Conditions of the Contract by sub-licensing the Food Plaza to B. Rajasaheb about which it came to know only from Suit for Declaration and Permanent Injunction filed before the Court of Small Causes, Mumbai. The parties relied on the documents presented before the learned Tribunal during their pleadings and they elected not to lead any oral evidence. Based on this consensus, the Arbitral Tribunal proceeded to determine the dispute solely on the basis of the pleadings and the documents submitted by the parties.

15. The learned Tribunal held the termination of license vide letter dated 04.08.2014 to be illegal and arbitrary. The Claims were allowed as under:

16. **Claim A** *for restoration of License for unworked balance period of 12 years was not pressed* by the claimant/respondent herein; hence no award was passed re the restoration of the license Agreement.

17. **Claim B-1** *for Refund of un-worked license fee for 2014/15 was partially awarded at Rs. 29,24,067/-* in view of the license fee of Rs. 31,31,313 and Rs. 44,00,000 paid for a period from 01.10.2013 to 30.09.2014 for the Main Line Food Plaza and the Suburban Food Plaza respectively by calculating the unworked period from 5.08.2014 (termination of the licence) to 30.09.2014.

18. **Claim B-2** *for refund of unworked license fee was awarded in favour of the claimant/respondent herein at Rs.15,00,000/- since the Termination of License dated 04.08.2014 was arbitrary.*



19. **Claim B-3** for infrastructure reimbursement was rejected as the claimant was still entitled to remove their material lying as dead stock in the stores of IRCTC.

20. **Claim B-4** for loss of expected profit was partially awarded. According to the IRCTC catering policy, License Fee is determined at 12% of the Annual Turnover. However, since the claimant/respondent herein was awarded the contract based on the tender, the license fee quoted by the respondent in the bid could have been an amount that is beyond 12% of the expected turnover. Hence, the learned Sole Arbitrator ascertained the turnover by using the minimum license fee payable as the base. The Loss of expected profit of damages were awarded at 40% of the identified annual turnover from the remaining period at Rs. 1,53,94,519/-.

21. **Claim B-5** seeking refund of proportionate license fee for less area being made available to the claimant/respondent herein was rejected as there was an embargo on raising such claims when a termination of license has been effectuated.

22. **Claim B-6** seeking pendente lite interest at 24% per annum was rejected since the claimant was not entitled to any interest as per Section 3(b) of the Interest Act, 1978.

23. The sole arbitrator vide the Award dated 08.03.2019 partially allowed the claims of the respondent by directing the petitioner herein to pay damages to the extent of **Rs. 1,83,18,586 /-** along with refund of security deposit of **Rs. 15,00,000/-** with effect from date of termination within 45 days from the date of receipt of the award as opposed to the claim of Rs. 13,62,63,790/-.



24. Aggrieved by the Award, the petitioner (*which was the respondent before the Arbitrator*) had filed the present objections under Section 34 of the A&C Act initially at Patiala House Court on 07.06.2019 and in view of the objections taken to the jurisdiction, the objections were withdrawn on 07.04.2021 and thereafter filed the present Objections accompanied with an application under Section 14 of the Limitation Act, 1963.

25. The **petitioner has submitted** that the respondent had entered into an Agreement/MoU dated 04.01.2012 for sub-licensing the premises of the Food Plaza to M/s B Rajasaheb without its prior permission which amounted to a breach of Clause 6.3 of the General Conditions of License. The learned sole arbitrator has failed to appreciate that the permission of the petitioner before sub-licensing even a part of licensed premises to a third party, is a mandatory pre-requisite.

26. They became aware of the Agreement dated 04.01.2012 with B. Raja Saheb only during the pendency of the Suit before the Small Causes Court and came to realize that certain material facts had been suppressed by the respondent by creating a false picture in their complaints. The respondent has not refuted the factum of consideration of Rs. 43,00,000 being deposited in his ICICI bank account in his reply to the Show Cause Notice dated 23.04.2013.

27. After the issuance of the Show Cause Notice, the petitioner accorded the respondent with another opportunity vide letter dated 02.05.2014 to submit an affidavit stating that the respondent or its partners did not sign the Agreement dated 04.01.2012 and submit the details of the action taken by the respondent on the illegal occupant. However, the respondent failed to reply to the same or comply with the



requirement of a solemn affirmation on affidavit. Further, in its letter dated 05.08.2014 the respondent has admitted that the Agreement/MoU dated 04.01.2012 which had no mention of any prior permission being sought from IRCTC to sublet the premises, was signed by the two partners of the respondent and was notarized. Yet, the learned Sole Arbitrator failed to take cognizance of these facts.

28. Owing to the breach committed by the respondent, it was apposite for the petitioner to terminate the Agreement dated 20.03.2008 under Clause 8.1 of the General Conditions of License.

29. The respondent, in reply dated 03.05.2023 to the Show Cause Notice dated 23.04.2013 claimed that the alleged Agreement with B. RajaSaheb, was forged. However, the respondent never took the stand to prove the same or to adduce any proof of any FIR filed by them.

30. Furthermore, despite there being no reference, the learned Sole Arbitrator erred in granting the damages as the reference was limited to the validity of Termination Order dated 04.08.2014. Since the respondent had never challenged the terms of reference, the right to raise a claim on Loss of Profits or Damages stood waived under Section 4 of the A& C Act. Moreover, the damages have been granted sans any evidence as well as contrary to the specific terms of the Contract which constitute the substantive law. Reliance was placed on Hindustan Zinc Ltd. Vs. Friends Coal Carbonization, (2006) 4 SCC 445.

31. It is further submitted that the Award dated 08.03.2019 is contrary to Sections 4, 8, 22, 23 of the Indian Partnership Act, 1932. The Sole Arbitrator has exceeded his mandate in the Award dated 08.03.2019. Reliance was placed on State of Goa Vs. Praveen Enterprises,



(2012) 12 SCC 581 to submit that the arbitrator's jurisdiction is limited to the scope of reference.

32. Lastly, it was submitted that the Award is unlawful as the learned Arbitrator initially rejected the claim for interest, but still went ahead and awarded the same in the operative part of the Award.

33. The **petitioner in its written submissions**, has placed reliance on PSA Sical Terminals Pvt. Ltd. vs. The Board of Trustees of V.O. Chidambranar Port Trust, Tuticorin & Ors., 2021 SCC Online SC 508; Patel Engineering Ltd. vs. North Eastern Electric Power Corporation Ltd., 2020 (7) SCC 167; Associate Builders vs. DDA, (2015) 3 SCC 49; Ssangyong Engineering & Construction Company Ltd. vs. NHAI, (2019) 15 SCC 131; Sharma & Associate Contractor Pvt. Ltd. vs. Progressive Construction Ltd., (2017) 5 SCC 743; Delhi Development Authority vs. R.S. Sharma and Co. New Delhi., (2008) 13 SCC 80; Ahluwalia Contract (India) Limited vs The Union of India, 244 (2017) DLT 360; GTM Builders and Promoters Pvt. Ltd. vs Sneh Developers Pvt. Ltd., 2018 (4) ARBLR 429 (Delhi) in support of their contentions.

34. The **respondent in their written response** contended that the grounds raised by the petitioner do not fall within the scope of Section 34 of A&C Act. The Sole Arbitrator has considered the contention of the violation of Clause 6.3 of the General Conditions of License and passed a well-reasoned Award after perusing all the documents. The Court while exercising jurisdiction under Section 34 cannot interfere with the findings on facts as the arbitrator is the final authority to determine the facts and merits of the case as held in Associate Builders vs. Delhi Development Authority Civil, (2015) 3 SCC 49.



35. Further, the learned Tribunal was unconvinced with the averments of the petitioner regarding the breach of Clause 12.5 of the General Conditions of License as it was contrary to the averments made before the Small Causes Court. The Sole Arbitrator has thus, rightly rejected the averment of sub-licensing as the petitioner and the respondent were jointly taking action against the illegal entry. In any case, these facts cannot be re-appreciated by the court. The question of the Award being violative of Sections 4, 18, 22, 23 of the Indian Partnership Act does not arise.

36. The contention on the award of damages/loss of profit being beyond scope of reference, was claimed to be unsustainable as the reference clearly specified the effects of the decision of illegal termination which rightfully entitled the respondent to claim the Loss of Profit.

37. The submission of the petitioner on the lack of proof of actual damages for claiming Loss of profit is incorrect. Reliance is placed in McDermott International Vs Bum Standard Contractor Ltd, (2006) 11 SCC 181, held that the Arbitrator is permitted to apply any formula to quantify the damages and there is no requirement of actual proof of damages in all cases.

38. The Petitioner has failed to specify the provisions of the Contract Act ignored by the Sole Arbitrator while passing the Award, making it an obscure and untenable contention. In the present case, the Arbitrator has used the Department formula of fixing the license fee based on the estimated turnover as specified in catering policy, which is the industrial practice and trade usage and permitted as per Section 28(3) of the A&C Act. Moreover, the profit in Food Industries is about 40% but the Arbitrator has granted a reasonable damage of 15%.



39. It is asserted that the Award is well reasoned, and the objections are liable to be dismissed.

40. **Submissions Heard.**

41. The petitioner has assailed the Award dated 08.03.2019 on the grounds that it is in contravention of the specific terms of the contract, the Indian Partnership Act, 1932, terms of reference to arbitration and also suffers from patent illegality as the award for damages is based on no evidence.

Scope of Section 34

42. The scope of a challenge under Section 34 of the A&C Act, 1996 is limited to the grounds stipulated in Section 34 as held in MMTC Limited v. Vedanta Ltd., (2019) 4 SCC 163. Comprehensive judicial literature on the scope of interference on the ground of Public Policy under Section 34 was postulated in Associate Builders (supra). The Apex Court placed reliance on the judgment of ONGC v. Saw Pipes, 2003 (5) SCC 705 to determine the contours of Public Policy wherein an award can be set aside if it is violative of ‘*the fundamental policy of Indian law*’, ‘*the interest of India*’, ‘*Justice or morality*’ or leads to a ‘*Patent Illegality*’. For an Award to be in line with the ‘*the fundamental policy of Indian law*’, the Tribunal should adopt a judicial approach which implies that the Award must be fair, reasonable and objective. This ground requires an Arbitral Tribunal to deliver a reasoned Award which is substantiated on evidence.

43. It was further held in Associate Builders (supra) that when a decision is made to set aside an award on the basis of *public policy*, the term “*justice*” simply refers to an Award that shocks the conscience of the court. A court cannot possibly include what it determines to be unfair,



given the circumstances of a case, by replacing the Arbitrator's decision with what it sees as just.

44. The ground of '*patent illegality*' is applied when there is a contravention of the substantive law of India, the Arbitration Act or the Rules applicable to the substance of the dispute. In *Friends Coal Carbonisation* (supra), the Apex Court referred to the principles laid down in *Saw Pipes* (supra) and clarified that it is open to the court to consider whether an Award is against the specific terms of contract, and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India. Though the Supreme court in *State of Chattisgarh & Anr. vs. SAL Udyog Pvt. Ltd.* (2022) 2 SCC 275 as well, held that an award in blatant disregard of the express terms of the Agreement suffers from patent illegality, the court had also made a reference to *Associate Builders* (supra) wherein it was observed that the term "*patent illegality*" does not apply to every legal mistake made by the arbitral Tribunal. A mere difference of opinion in interpreting the contract or the applicable law, could not be classified as patent illegality. Furthermore, the term "*patent illegality*" does not apply to legal violations that are unrelated to matters of public policy or interest.

45. Based on the aforementioned well settled law under Section 34, it needs to be examined if the Award 08.03.2019 is in contravention of the substantive law. Before considering the rival contentions it is pertinent to mention that in the present case the parties had made a statement before the learned Sole Arbitrator that they did not want to lead any evidence in respect of the Claims which may be decided on the basis of documents. Both the parties had thus mutually against their rival contentions.



46. The **main grounds of challenge** of the petitioner are that the Respondent had entered into an Agreement/ MOU dated 04.01.2012 for sub-licensing of premises of Food Plaza without prior permission of petitioner, which amounts to a breach of Clause 6.3 of General Conditions of Licence. The Respondent herein had taken the stand before the Ld. Arbitrator that B. RajaSaheb had occupied the Food Plaza illegally, forcefully and unauthorizedly. On the contrary, the petitioner had taken the stance that the respondent has granted possession of the Food Plaza to B. RajaSaheb.

47. From the initial complaints of the respondent, it believed that B. Rajasaheb has forcibly entered into the premises on 31.12.2012 but the petitioner became aware of the Agreement dated 4.01.2012 between the respondent and B. Rajasaheb only during the proceedings before the Small Causes Court. It immediately issued a Show Cause Notice dated 23.04.2013, in Reply to which it had not denied that a consideration of Rs.43 lakhs were deposited in ICICI bank account. It is their case that the averments of B. Rajasahab that they had entered the premises pursuant to the Agreement dated 04.01.2012 are prima facie correct and the respondent had not made any attempt to evict unauthorised persons by filing an FIR against B. RajaSaheb. The grounds of challenge may be considered separately.

A. Subletting

i. Sub-letting without Prior Consent:

48. The petitioner's **first ground of challenge** to the Award is that the learned Arbitrator has failed to appreciate that the premises were sublet without the prior consent of the petitioner in contravention of the



Agreement. He has erroneously rejected the contentions of the petitioner to hold that the respondent had not committed any breach of the License Agreement despite the respondent's admission that the Agreement dated 04.01.2012 with B. Rajasaheb had the signatures of two of its partners and was notarized and an amount pursuant thereto had also been deposited in the account of the respondent.

49. The Termination Order dated 04.08.2014 categorically stated that the respondent had breached Clauses 6.3 and 12.5 of the General Conditions of License by entering into an Agreement with B. RajaSaheb without the approval of the petitioner. The relevant provisions of the Agreement are Clauses 6.3 and 12.5 which read as under:

*"6.3 Sub-Licence: Licencee may sub-licence a portion of the Food Plaza to any other food retailer as specified earlier for the purpose of expanding the food variety for the customers. The selection of the sub-licencee would be as per the eligibility criteria laid out for them. **The selection/ change of any sub-licencee would be permitted only after the approval of the IRCTC.** IRCTC will grant such approval in case the Sub-licencee fulfills the criterion laid down in article-5 of special conditions.*

*12.5 Assignment of Licence: **Licencee shall not, without the prior consent of the IRCTC, assign the Licence or any part thereof, or any benefit or interest therein or there under.**"*

50. B. Rajasahab had alleged before the Small Causes Court that it had entered into the premises pursuant to an MOU/Agreement dated 04.01.2012. However, this document had been categorically denied and



disputed by the respondent who had asserted that this alleged Agreement was a forged document. To buttress this contention, it was claimed that it evidently had signatures of two Partners, when in fact the respondent Company had three partners.

51. The alleged Agreement of 04.01.2012 having been denied by the respondent, was required to be proved by the petitioner. The onus to prove the Agreement was on the petitioner since the respondent had denied having ever entered into the Agreement with B. Rajasaheb and claimed it to be a forged document. However, no cogent evidence or documents were produced by the petitioner to discharge their onus. In addition to this, it was observed that the Enquiry Officer appointed by the respondent/petitioner herein while arriving at its decision, acted in a mechanical manner and ignored vital documents that consisted several communications of the petitioner and the respondent. Therefore in the absence of any evidence led by the petitioner, it would either be deemed as not proved or non-existent as asserted by the respondent. When the petitioner had chosen not to lead any evidence, either oral or documentary, to prove that there was a valid Agreement between B. Rajasahab and the respondent, it cannot claim this Agreement to be the basis for the breach of Clauses 6.3 and 12.5 of the General Conditions of License.

52. The connected argument of the petitioner was that once a document is admittedly signed by one or more partners, it is deemed to be for and on behalf of the Partnership Firm and therefore, the respondents cannot now deny its authenticity merely by claiming that it is not signed by the third partner. The respondent herein have denied the document in toto and has



claimed it to be a forged document and, therefore, the onus was on the petitioner to prove this document by oral or documentary evidence, which it has failed to do and therefore, has been rightly not considered by the Arbitral Tribunal.

53. Significantly, the Agreement/MoU was allegedly executed on 04.01.2012, but the possession of the premises was allegedly taken by B. Rajasaheb on 30.12.2012. If actually an Agreement was executed, it is quite unnatural that the possession would be handed over after a period of 12 months. This also lends credibility to the claim of the respondent that B. Rajasaheb had forcibly entered possession.

54. In such a scenario, the Arbitral tribunal rightly evaluated the supplemental circumstances which are duly supported by the documents and the pleadings of the parties and provided cogent reasons to have come to the conclusion that the termination of Agreement was illegal and arbitrary.

ii. No registration of FIR by the respondent about forcible occupation:

55. The plea that bonafide of the respondent's claim of evicting *Raja Saheb*, was also not established since no separate FIR was registered by it, was rejected by the Sole Arbitrator. The relevant part of the Award reads as under:

"16. The documents clearly demonstrate that the Claimant initiated the action against the illegal occupant Raja Saheb by filing a Complaint on the same day to IRCTC followed by various Complaints including Annexure C-3, Annexure C-4, Annexure C -5 , Annexure C-7 etc. The contention of the Claimant that if the Claimant was cooperating with Raja Saheb, he



would not have initiated the said Complaint on the same day of the attack by the said Raja Saheb, is a convincing contention.

17. The Respondent contended that the Claimant did not take any concrete action against the above said Raja Saheb either by registering an FIR or by approaching the Court etc., the Claimant stopped their actions by just making the Complaints to the Respondent. The Counsel for the Claimant responded that the requirement of filing a separate FIR did not arise because on the Complaint received by the Respondent, the Respondent itself filed Complaints before RPF and GRP. In addition to that, the Sub-Contractor Kishor H. Caterers filed a Complaint to the Police Commissioner, Government Railway Police, Mumbai on 31.12.2012 (Annexure C-4). The Claimant also filed a subsequent Complaint to Senior Police Inspector, GRP-CSTM on 08.01.2013 (Annexure C-7). It was further contended that when the Respondent itself is leading the eviction process of the illegal occupant and hence filing of an FIR separately would not have created any special result. I am of the opinion that the termination cannot be justified just because the Claimant did not file a separate FIR in the light of the fact that the Claimant without any delay made a Complaint to the Respondent and continuously worked with the Respondent to evict the illegal occupant. Hence, I do not see any merit in the contention of the Respondent with regard to a separate FIR by the Claimant.”

56. The observations of the Ld. Arbitrator that since the respondent herein itself had initiated the action against B. Rajasahab for illegal occupation by writing a complaint to the petitioner on the very same day, there was no requirement for the respondent to file a separate FIR when action was being taken by the respondent/petitioner herein in respect of



the same incident, cannot be flawed as illegal. Likewise, the Ld. Sole Arbitrator's reliance on the co-operation and the participation of the claimant/respondent along with the petitioner for removal of B. Rajasahab from the premises to conclude that they were not in cahoots with B. Rajasahab, cannot be held as perverse.

iii. Contrary Stand in Different Pleadings:

57. Further, the learned Sole Arbitrator found that there was a contradiction made by the petitioner before the Arbitral Tribunal and the Small Causes Court. The petitioner claimed to have become aware of the Agreement dated 04.01.2012 only during the proceedings of the Small Causes Court. The contents of the affidavit of petitioner (which was respondent No.2 in the said suit) filed before Small Cause Court has to be perused to determine if this is a possible view, which reads as under :

"1. ...Further no consent / permission is given by the said Respondent No. 2 to the Applicant to occupy or carry on business in the government premises.

xxx

xxx

xxx

*5. ... The Applicant has illegally, forcefully, unauthorizedly entered and occupied the space at the both Food Plazas at CSTM of the approved sub-license M/s. Kishore M. Caterers who is permitted by this Respondent to run catering service. **Respondent No. 1 has no authority to appoint directly or indirectly any sub licensee for any portion of the space/counter in said Two Food Plaza without prior written permission of Respondent No.2 as per the tender agreement. The Applicant is, trespasser and has illegally and criminally occupied. the premises of Food Plaza belonging to Central Government i.e. Railways. The occupation of the***



premises by the persons like the Applicant is security hazard and health threat to passenger and public. The Respondent No. 2 is duty bound to evict the unauthorized occupant in accordance with law as applicable for such premises. The applicant has forced his entry by displacing the authorised person and occupying the space. Hereto annexed and marked Exhibit "B" is a copy of the complaint made by Respondent No. 1 to Respondent No. 2.....

*6. With reference to para 1, 2, 3 and 4, it is **denied that the Applicant has been handed over any space in the Food Plaza by Respondent No: 1 as alleged: Further the facts relate to Respondent No. 1 and Respondent No. 2 is not aware of the same.** It is denied that the Applicant is in settled possession of the said Food Plaza as alleged therein. The Applicant has forcibly, illegally and unauthorizedly entered and has occupied the portions in Two Food Plazas; which has been given on license basis to Respondent No. 1.*

*9. **The Respondent No. 2 is the licensor of the suit premises at Railway Station as the place belongs to the Indian Railways (Central Govt.).** The Applicant is in illegal possession of the portion of suit premises. **There is no contract or any agreement signed by Respondent No. 2 with the Applicant:** As on record Defendant No. 1 is the only authorized licensee and M/s. Kishore H. Caterers is the approved only Sub-Licensee for the Two Food Plazas premises at Railway Station platform at CSTM. The Applicant is therefore not entitled to any relief as prayed."*



58. The Sole Arbitrator observed a volte face in written reply of the petitioner filed in the arbitration proceedings where the stand taken was as under:

“20. That it is most humbly submitted that in utter disregard to the terms and conditions, the Claimant herein had entered into an agreement with one Mr. B. Rajasahab, Proprietor of Khana Khazana Food Products on 04.01. 2012 for a period of seven years to sub-license the remaining area of Food Plazas for valuable consideration and thus has sub-licensed the public premises without approval of the answering respondent, which is a violation of Clause 12.5 of the terms and conditions of the tender document and thus has breached the terms and conditions of the contract.”

59. The learned Arbitrator thus, accepted that respondent had not breached the Agreement as there was an incongruity in the stance taken by the petitioner in his affidavit filed before the Small Causes Court wherein no such plea was taken and a contrary plea had been set up in the arbitration proceedings. The petitioner cannot be allowed to approbate and reprobate and thus, his contention was rejected. The relevant part of the Award reads as under:

“21. The Respondent took a stand before Small Causes Court at Bombay that the said anti-Social Element Raja Sahab Badoria took the control over the food plaza by force and hence he should be evicted but in the Arbitration it took a stand that the Claimant gave the possession of the Food plaza to the said Raja Sahab Bhadoria by way of a Lease deed. Such a different stand cannot be taken by the Respondent for winning an arbitration case. The relevant paras of the reply affidavit filed by the Respondent in



SMALL CUASES COURT AT BOMBAY is reproduced below:

The applicant has illegally, forcefully, unauthorisedly entered and occupied the space at both the food plazas at CSTM of the approved sub-licensee M/S. Kishore H Caterers who was permitted by this Respondent to run catering service . . . ”

Para. 9

*“The Respondent No.2 is the licensor of the suit premises at Railway Station as the place belongs to the Indian Railways (Central Government). The Applicant is in illegal possession of the portion of suit premises. **There is no contract, or any agreement signed by Respondent No.2 with the Applicant** . As on record, Defendant No.1 is the only authorised licensee and M /s Kishore H. Caterers is the only approved sub-licensee for the two Food Plazas premises at Railway Station Platform at CSTM ”*

But the Same Respondent changes the stand and takes an opposite stand in the written reply of the Respondent and states in Paragraph 20 as follows:

“20. That it is most humbly submitted that in utter disregard to the terms and conditions, the Claimant herein had entered into an agreement with one Mr. B.Rajasahab, Propreitor of Khana Khazana Food Products on 04.01. 2012 for a period of seven years to sub-license the remaining area of Food Plazas for valuable consideration and thus has sub-licensed the public premises without approval of the answering respondent, which is a violation of Clause 12.5 of the terms and conditions of the tender document and thus has breached the terms and conditions of the contract.

22. It is settled law that a party which made a statement before a Court of law is estopped from taking a different



stand before another forum. The Supreme Court of India, in Agri Gold Exims Ltd vs. Sri Lakshmi Knits & Wovens (2007) 3 SCC686 it held as follows:

“The appellant evidently has taken before us an innocent stand. If he was satisfied with the payment of the said DDs he need not have pursued the suit. It could have said so explicitly before the High Court. It cannot be allowed to approbate and reprobate.”

60. Hence, the Respondent which is a State under Article 12 of the Constitution of India, the conduct of which should be more responsible, is bound by its affidavit filed before the Court of law, cannot take a different stand to frustrate the claim of the Claimant in the arbitration.

61. The Id. Arbitrator has given his own reasoning in the light of contradictory stand taken by the petitioner in the arbitration proceedings and the Small Cause Court. Once a plausible reasoning has been given by the Id. Arbitrator, this Court cannot re-appreciate the merits in exercise of its jurisdiction under S.34 of A&C Act. When a court evaluates an Arbitral Award under the "*Public Policy*" standard, it is not functioning as a court of appeal and consequently, factual errors cannot be addressed. A conceivable interpretation of the facts by the arbitrator must inevitably pass muster because the arbitrator is the ultimate arbiter of the quantity and quality of evidence to be considered when issuing his arbitral ruling. When it is determined that the Arbitrator's method is neither arbitrary nor capricious, he has the final say on the matter as held in P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd., (2012) 1 SCC (Civ) 342.



62. An arbitrator's inference on facts must at least be a possible one if not the sole inference as held in ONGC Ltd. vs Western Geco International Ltd., 2014 (9) SCC 263. Further, the Apex court in Associate Builders (supra), (2015) 3 SCC 49, observed a juristic principle that a decision which no reasonable person would arrive at and which is based on a finding of no evidence or takes into account something irrelevant to the decision is perverse.

63. The Id. Arbitrator's conclusions cannot be termed as perverse liable for interference in exercise of powers under S.34 of A&C Act.

B. Notice of Termination given under Clause 9.2 of the General Conditions of License was illegal

64. The **next** ground that prevailed with the learned Arbitrator was that the Notice of Termination dated 04.08.2014 was illegal as a prior Notice to cure the breach before effecting the termination of licence, was not served in terms of Clause 9.2 of the General Conditions of License. Clause 9.2 reads as under:

“9.2 - Notice of termination - In case of any event of default mentioned in Clause 8 having occurred, it shall be lawful for the IRCTC anytime thereafter to terminate the Licence Agreement and forfeit the Security Deposit, SUBJECT HOWEVER to the IRCTC having given to the Licensee fifteen (15) days prior notice in writing to remedy or make good such breach and inspite of such notice the Licence having failed to remedy the breach. Upon termination of this Licence agreement as aforesaid, the licensee shall deliver vacant and peaceful possession of the premises to the IRCTC Railways.”



In such a situation, termination letter dated 04.08.2014 issued by the Respondent is illegal since it did not follow the procedure of issuance of cure notice prescribed in the contract.”

65. Clause 9.2 required the petitioner to give a notice 15 days prior to the issuance of a Termination Order. The learned Sole Arbitrator came to the conclusion that the Show Cause Notice dated 23.04.2013 does not provide the claimant/respondent herein with an opportunity to cure the alleged breach.

66. *In Rashtriya Ispat Nigam Ltd. vs. Dewan Chand Ram Saran, (2012) 5 SCC 306*, the Apex Court had held that the interpretation of the contract falls within the jurisdiction of the arbitrator. The mere possibility of an alternate interpretation cannot entitle a court to replace the interpretation of the tribunal. Even an error in interpretation cannot be interfered with as it is an error within the jurisdiction of the Tribunal.

67. Thus, this court cannot interfere with the interpretation and compliance standard of Clause 9.2 as adopted by the Sole Arbitrator.

C. Challenge to grant of Loss of Profits

(i) Damages granted beyond the terms of Reference:

68. The petitioner has objected to the award for Loss of Profits/ Damages on the ground that it is beyond the terms of reference to arbitration. Terms of reference were made as under:

(i) Whether the dispute in question is arbitral?

(ii) If point no. 01 is decided in affirmative, whether termination of license vide letter dated 04.08.2014 was illegal and arbitrary, if so its effect.



69. Based on the terms of reference, the respondent had specifically sought for restoration of license in the Statement of Claim and in the alternative sought for the following:

- i. *Refund of Unworked License Fee*
- ii. *Refund of Security Deposit*
- iii. *Reimbursement for removal of structures*
- iv. *Compensation for loss of expected profit*
- v. *Refund of proportionate license fee for less area being made available*
- vi. *Pendente lite interest at 24% per annum*

70. The reference in the present case is not limited to determining whether the Termination of License dated 04.08.2014 was illegal and arbitrary. It also sought to explore the implication of such a termination.

71. Since the claims made by the respondent flow from the alleged arbitrary and illegal termination of the contract, it cannot be said that the claims that have been made by the respondents are beyond the terms of reference.

72. Thus, this court does not find merit in this ground of challenge by the petitioner.

(ii) Damages awarded without any evidence being adduced by the claimant:

73. The petitioner has asserted that the damages have been awarded without any evidence being adduced by the respondent. The petitioner had placed reliance on Ahluwalia Contract (supra) wherein this court upheld an award that rejected the claim for Loss of Profits or damages due to the lack of any substantial material or proof to obviate the damages.



However, the same cannot be contended in the present case as the learned Sole Arbitrator has sufficiently explained the basis of the calculation. The arbitrator has also reasoned the decision of not adopting the actual license fee while computing the Loss of Profit.

74. Reference was also made to GTM Builders (supra), which found that despite the petitioner raising an objection on the claim of Loss of Profits due to the on lack of evidence adduced by the claimant, the arbitral tribunal failed to pay heed to this contention and awarded the same by presupposing the profits to be 10% of the uncompleted contractual value. This judgement is distinguishable from the facts at hand as the parties had consciously chosen that the disputes be settled on the basis of documents and no evidence whatsoever has been led by either party which implies it is not a case of absence of evidence.

75. As already mentioned above, both the parties had opted not to lead any evidence and that their claims be decided on the basis of the documents on record. At this stage, they now cannot make any grievance of no formal evidence having been led by both the parties, when they themselves had agreed to this procedure. Moreover the Arbitrator has given cogent reasons for granting the damages and no perversity in the calculations of the damages has been highlighted.

76. Furthermore, it is evident from the Award dated 08.03.2019 that the petitioner failed to raise this as a ground of objection before the learned Tribunal. In Union of India (Railways) vs. Suska (P) Ltd. 2017 SCC OnLine 1436 it was observed that new pleas or objections with respect to law or fact that were not raised before the Arbitral Tribunal cannot be raised at the stage of Section 34 as had these objections been raised before



the learned Arbitrator, he would have been better equipped to deal with such contentions at the appropriate stage.

77. The learned Arbitrator has given full justification for arriving at the damages and for determination of all the claims. No perversity or illegality has been shown in the findings of the learned Arbitrator and they are duly supported with reasons and documents and therefore, the petitioner fails in his challenge to calculation of damages.

D. Award for Interest

78. The learned Sole Arbitrator has arrived at the finding that respondent herein is not entitled to any *pendente lite* or post award interest in view of the following:-

“Claim No. B-6

*The Claimant has made interest claim of 24 % per annum from the date of termination of the contract till the date of Award and post Award interest of 18%per annum. The counsel for the Respondent relying on Sec 3(b) of the interest Act,1978 contended that since the proceedings do not relate to any debt then the interest can be applied only from the date of the written notice. It is not in dispute that no notice under the interest act was given by the Claimant at any point of time and as such the Claimant cannot claim any interest on the alleged amount being barred under section 3(b) of the Interest Act 1978. **Since no ground has been made out for award of compensation, the Claimant is not entitled to any interest as alleged. I, therefore, reject this claim.**”*

79. The Tribunal by giving cogent reasons, in his discretion declined grant of interest. However, inadvertently in the concluding part of the award in paragraph 28 of the Award, while summing up the Claims



allowed, it is stated that interest to the claimant/respondent @ 24% *pendente lite* interest and simple interest at 12% per annum for any delay in payment beyond 45 days from receipt of the award, is granted. The concluding paragraph of the award reads as under:

“28. In nutshell the Respondent i.e. IRCTC shall pay a sum of Rs. 1,83,18,586/- (Rs. One crore eighty three lakh eighteen thousand five hundred eighty six only) along with release of security deposit of Rs. 15,00,000/- (Rs. Fifteen Lakh) in full and final settlement of claimed amount of Rs. 13,62,63,790/- (Rs. Thirteen crore sixty lakh sixty three thousand seven hundred ninety only) plus 24% interest w.e.f. date of termination to the Claimant M/s. Goel & Goel within 45 days from the date of receipt of the award failing which IRCTC shall pay 12% simple interest per annum from the date of award till date of payment.”

80. This court is of the view that this is merely inadvertent error in the concluding part summing up the findings on the claims. The finding of the Ld. Arbitrator were summed up in paragraph 28 as is evident from the paragraph reproduced above. The final conclusion of findings cannot be beyond the claims as decided with supporting reasons. Hence, there arises no doubt or confusion regarding the finding of the learned Arbitrator of declining the interest. No clarification is required on this aspect, and thus the respondent is not entitled to any interest.

Conclusion:

81. In the light of above discussion, it is held that the appellant has not been able to establish any ground for challenge of the Award. There is no merit in the Objections under Section 34 of the A & C Act, 1996 which is hereby dismissed but with the clarification that the mistake in paragraph



28 of the Award is rectified and observed that interest has been denied under Claim B-6 of the Award of the Ld. Arbitrator.

(NEENA BANSAL KRISHNA)
JUDGE

JUNE 1, 2023

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