



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

% **Pronounced on: 12th June, 2023**

+ **O.M.P. (COMM) 488/2020 and I.A. No. 8836/2020**

DELHI DEVELOPMENT AUTHORITY Petitioner
Through: Mr.Ramesh Singh, Senior
Advocate with Ms.Prabhsahay
Kaur, Ms.Bhavna Vijay, Ms.Shilpa
Dewan, Advocates

versus

SH K R ANAND & ANR. Respondents
Through: Mr.Harish Malhotra, Senior
Advocate with Mr.Rakesh Kumar
Gupta and Mr.Anoop Kumar,
Advocates for R-1

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter "the Act, 1996") has been filed on behalf of the petitioner seeking the following reliefs:

- "a) Set aside the Impugned Award dated 27.04.2020 passed in Arbitration proceedings titles K.R. Anand v. Delhi Development Authority & Anr. To the extent it allows the Claims of the Claimant/ Respondent No.1;*
b) Award cost of the present application in favour of the Petitioner;



c) Pass such other and further order, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

FACTUAL MATRIX

2. On 10th June 1989, *vide* Agreement No. 04/EE/RPD-4/DDA/89-90, respondent No. 1 was awarded a Contract for the construction of Peripheral S.W. Drain No. 3 and the stipulated date of completion under the Contract was 10th June 1990. However, the work was actually completed on 5th June 1992.
3. Respondent No. 1 *vide* letter dated 12th September 1992 raised the bill upon completion of the work to which the petitioner *vide* letter dated 26th September 1992 informed respondent No. 1 that under Clause 7 of the Contract, respondent No. 1 is required to prepare and submit the final bill. The petitioner prepared the final bill on 12th March 1996 and requested the respondent No. 1 to visit the office of the petitioner as the respondent No. 1 allegedly did not prepare and submit the final bill.
4. The respondent No. 1 accepted the final bill on 26th April 1996 and recorded its acceptance at the end of the measurement sheets and payment was made accordingly.
5. After a span of 69 days of receiving the payment, respondent No. 1 *vide* letter dated 5th July 1996 invoked the Arbitration Clause, and *vide* letter dated 11th September 1996, the petitioner informed respondent No. 1 that certain letters/communication referred in the letter dated 5th July 1996 were never received by the petitioner.
6. The petitioner in the year 1998 appointed the Arbitrator. However, respondent No. 1 despite several notices being sent did not appear before



the learned Arbitrator and after 3 years of non-appearance of respondent No. 1, the learned Arbitrator terminated the proceedings *vide* Order dated 1st March 2001.

7. From 2002 to 2017, the parties were involved in litigation on the issue of the appointment of an Arbitrator. The claimant moved an application under Section 11(6) of the Act, 1996 in 2002 for the appointment of a new Arbitrator alleging that the earlier Arbitrator did not accept the Claim of the respondent No. 1 and *vide* Order dated 21st July 2003, this Court directed the petitioner to appoint another Arbitrator which was again challenged by the respondent No. 1 and *vide* Order dated 11th February 2004, this Court confirmed the appointment of the Arbitrator.

8. Respondent No. 1 filed a Writ Petition (C) 2760 of 2004 against the Order dated 11th February 2004 the Writ Petition was allowed *vide* Order dated 26th April 2006. The petitioner filed an SLP (C) before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court *vide* Order dated 12th April 2017 appointed a Sole Arbitrator.

9. Proceedings before the learned Sole Arbitrator commenced on 16th August 2017 and the impugned Award was passed by the learned Sole Arbitrator on 27th April 2020, which has led to the petitioner filing the present petition on being aggrieved by it.

SUBMISSIONS

(on behalf of the petitioner)

10. Learned counsel for the petitioner submitted that all of the Claims allowed by the learned sole Arbitrator are barred by limitation.



11. Learned counsel for the petitioner submitted that as per the contract, the obligation is on the contractor to raise the final bill within one month of completion of work. It is further submitted that no final bill was raised for more than 3 years (limitation period). Upon the respondent's failure, the petitioner prepared the final bill in 1996. It is further mentioned that 3 years have been clearly elapsed and that the limitation period has expired.

12. Learned counsel for the petitioner submitted that the respondent took an objection that the issue of limitation was not raised before the learned Arbitrator and, therefore, cannot be taken in the present proceedings. It is further submitted that when it is a question of law and facts are admitted, the limitation can be raised in proceedings under section 34 of the Act, 1996.

13. Learned counsel for the petitioner submitted that the respondent has fully waived/extinguished all his claims under Clause 7 and hence the claims are barred. It is further submitted that the Contract provides that the contractor has to submit the list of disputed items within 30 days of disallowance and upon his failure to do the same, the claims are deemed to be fully waived and extinguished. It is further submitted that the Clause of extinguishing/waiving claims of the contractor is right, duly applicable and valid in the present case.

14. Learned counsel for the petitioner submitted that the learned Arbitrator allowed the claims which are contradictory to Clause 7 and against the provision of Section 28 of the Indian Contract Act, 1872.

15. Learned counsel on behalf of the petitioner submitted that the Claim 1(1) for Rs.57,563/- out of the said amount of Rs.38,494/- towards



interest delayed and payment of Rs.19,069/- towards rebate was wrongly deducted from the final bill. It is submitted that the learned Arbitrator has relied on Clauses 1 to 3 and held that even if the final bill was not prepared, it was incumbent upon DDA to make the final payment within 6 months of completion of work.

16. Learned counsel for the petitioner submitted that the learned Arbitrator has also awarded a sum of Rs. 19,069/- towards an incorrect deduction of rebate of 0.10% by the petitioner. It is further submitted that there was a delay of 1242 days by petitioner in making the payment. The final bill was submitted and paid within 6 months of completion of work.

17. Learned counsel on behalf of petitioner submitted that the Claim 1(2)(i) for Rs. 6,54,722/- towards alleged additional lift for stacking of excavated earth was wrongly awarded.

18. It is further submitted that the Arbitrator has allowed the Claim in complete ignorance of Clause 16. It is further submitted that no notice which is required by Clause 16 was ever issued by the contractor to DDA for taking measurements of the alleged stack.

19. Learned counsel for the petitioner submitted that in the amount of Rs. 6,54,722/-, the contractor has claimed a sum of Rs. 1,13,733/- towards backfilling and relied upon the Abstract cost. It is further submitted that the Arbitrator has allowed the Claim for backfilling without dealing with the objection of DDA. It is further submitted that learned Arbitrator has allowed the Claim merely on the calculation submitted by the contractor and there is no evidence in support of the same. It is further submitted that in cross-examination, the contractor's witness stated that photographs were clicked by the Contractor, however,



no photographs have been filed.

20. Learned counsel for the petitioner submitted that as per Clause 72, the contractor is not entitled to any claims for the purpose of execution of work in or under the water. It is further submitted that the learned Arbitrator has wrongly recorded calculations/Amounts claimed in terms of Clauses 12 and 12 A are not controverted by the DDA. It is further submitted that quantities and rates given by the contractor are inflated and contrary to the running bills. It is further submitted that the learned Arbitrator has allowed the claims merely on the calculations submitted by the contractor and the findings of the learned Arbitrator were not supported by adequate evidence.

21. Learned counsel for the petitioner submitted that the Claim for Rs.54,453/- towards incorrect deduction in the final bill in respect of stacking of surplus earth was wrongly awarded. It is submitted that under the work, the surplus earth was disposed of but in the running bills contractor made claims for stacking surplus earth and made certain payments incorrectly which were supposed to be deducted at the time of the final bill. Furthermore, it is submitted that a Claim for Rs.12,35,633/- towards extra work for banking/filling of surplus disposed of earth. It is further submitted that the contractor has raised a Claim averring that it was required to do extra work of banking/filing of surplus earth. It was further submitted that according to DDA no instructions were given for banking/filing of surplus work. In furtherance, it is submitted that the aforesaid contractor's story was a mere assumption and irrelevant factor which the learned Arbitrator has taken into consideration and allowed the claims. It is further submitted that the learned Arbitrator has recorded that



the quantity of loose earth has not been categorically disputed by the DDA but it is incorrect as the petitioner has disputed and denied the calculations under the claim.

22. Learned counsel for the petitioner submitted that learned Arbitrator held that claims 1(2)(i) and 1(2)(iv) saying that the contractor shall be entitled to escalation under Clause 10 CC. It was further submitted that all material was supplied by DDA and no Claim for escalation is maintainable.

23. Learned counsel for the petitioner submitted that the recorded submissions of the parties by the learned Arbitrator under Claim 2(2) are not based on any evidence but solely on the assertions of the contractor.

24. Learned counsel on behalf of the petitioner submitted Claim 2(3) for Rs.11,12,500/- towards pumping sub-soil water during the suspension of work was wrongly awarded. It is submitted that learned Arbitrator has allowed the Claim holding that on account of preponderance of probabilities by accepting the version of the contractor. It is further submitted that the learned Arbitrator has failed to appreciate that no such instruction/orders were issued to the contractor for suspension of work.

25. Learned counsel for the petitioner submitted that the learned Arbitrator has awarded a sum of Rs.8,63,10,117/- out of which Rs.6,39,34,821/- is for the pre-reference period. It is further submitted that no pre-reference interest ought to have been awarded. It was further submitted that the final bill was raised by the contractor and hence there was no fault on the part of DDA. Furthermore, it is submitted that the learned Arbitrator failed to appreciate the fact that the contractor kept amending the statement of claims. It is submitted that the interest



awarded is exorbitant and excessive.

26. Hence, it is submitted that the impugned Award dated 27th April 2020 may be set aside under Section 34 of the Act, 1996.

(On behalf of the respondents)

27. Learned counsel for respondent No. 1 submitted that as far as the list of dates is concerned, there is no dispute, however, the dates projected by the petitioner do not give the correct picture. It is further submitted that as per respondent no. 1, the work has been completed on 05th June 1992 but no final bill could be submitted in view of Clause 7 of the Contract Agreement.

28. Learned counsel on behalf of respondent No. 1 submitted that the first argument raised by the petitioner is to the effect that claims made by the claimant are barred by limitation and reliance is placed on the Contract Agreement. It is further submitted that the reasoning given by the learned Arbitrator is after due appreciation of the terms of the Contract and the findings are not required to be interfered.

29. Learned counsel for respondent No. 1 submitted that the learned Arbitrator has rightly relied upon the judgment of the Hon'ble Supreme Court in the case of ***RL Kalathia & Company v. State of Gujrat, (2011 AIR SC)***. In furtherance, it is submitted that there is no question of any waiver with regard to the right of the contractor to ask for Arbitration and as per settled law, there can be no waiver of statutory right available to a person.

30. Learned counsel for respondent No. 1 submitted that the second contention raised by the petitioner is that the learned Arbitrator has



observed that a plea of limitation was not even taken. It is further submitted that the said argument of the petitioner is without any substance and that the averment of the petitioner that plea of limitation is a pure question of law lacks substance.

31. Learned counsel for respondent No. 1 submitted that the third contention raised by petitioner about acceptance of final bill without any protest or objection was properly accepted by the learned Arbitrator in view of the settled law on this issue.

32. Learned counsel for the respondent No. 1 submitted that the fourth contention raised by the petitioner is with regard to the fact that one month is used in Clause 7 of the Contract Agreement. It is further submitted that according to respondent No. 1, the 'one month' does not form part of Clause 7 as reproduced by the petitioner.

33. Learned counsel for the respondent No. 1 submitted that Claim 1(1) for Rs.57,563/- out of Rs 38,491/- towards interest on delayed payment and Rs.19,069/- towards rebated is wrongly deducted from the final bill. It is submitted that the contention raised by the petitioner is that the contractor is not entitled to interest for the delayed period of 1242 days on the ground that the final bill was prepared by the DDA. It is further submitted that delay in preparation of the final bill is explained by the department in their own inter se communications of 1996.

34. Learned counsel for the respondent No. 1 submitted that Claim 1(2)(i) for Rs 6,54,722/- towards alleged additional lift for stacking of excavated earth is justified and petitioner's plea that the contractor is not entitled to the cost of the extract is completely frivolous. It is submitted that the learned Arbitrator has rightly allowed the claim.



35. Learned counsel for the respondent No. 1 submitted that the arguments raised by the petitioner with regard to Claim 1(2)(iii) is in view of Clause 72 of the special conditions. It is further submitted that the learned Arbitrator has duly noticed the evidence in this regard which is in the form of question no.70-75. It is further submitted that the MCD conditions makes it clear that the amount awarded by the learned Arbitrator was in consonance with the Clause of the Contract along with evidence on record.

36. Learned counsel for the respondent No. 1 submitted that the Claim for Rs 54,453/- with regard to the disposal of earth in the Rohini area was wrongly taken by the petitioner as the amount was with regard to disposal of surplus earth in the Rohini area. It is further submitted that the findings recorded by the learned Arbitrator in this regard are completely logical as per the pleading's records.

37. Learned counsel for the respondent No. 1 submitted that Claim 1(2)(iv) of Rs.12,35,633/- towards extra work for banking/filing for surplus disposed earth was wrongly awarded. It is submitted that the Claim is for the extra work for banking and filling of surplus disposed earth.

38. Learned counsel for the respondent No. 1 submitted that Claim 1(3) for Rs 12,73,749/- and Claim 2(4) for Rs 11,74,427/- towards escalation is applicable only in case there was a price escalation and the contractor has not adduced any evidence in support of the alleged Claim of increase in prices.

39. Learned counsel for respondent No. 1 submitted that Claim 2(1) for Rs 6,80,000/- was for extra work of pumping out the water and



because of stoppage of work in the absence of cement such amount was not payable and reliance was made on Clause 10 of the Contract Agreement, it is further submitted that the said Clause does not deal with the shortage of stores to be supplied by the department.

40. Learned counsel for the respondent No. 1 submitted that as far as Claim No.2(2) for Rs 61,18,000/- is concerned, it is again on account of extra work executed because of stoppage of work and the extra work which respondent No. 1 had to do in the form of pumping of sub soil water. It is submitted that the findings recorded by the learned Arbitrator at page 127 of the Award is rational and has been recorded after proper appreciation of the evidence on record.

41. Learned counsel for the respondent No. 1 submitted that Claim 2(3) for Rs 11,12,500/- towards pumping sub soil water during suspension of work is rightly awarded because the work was held up under the instructions issued by the engineer in charge on 4th May 1991 and the contractor had to pump sub soil water for 14 days. It is further submitted that the findings by the learned Arbitrator in the Award is after proper appreciation of pleadings and evidence on record and does not call for any interference.

42. Learned counsel for the respondent No. 1 submitted that Claim 3(i) to 3 (vii) for Rs. 73,46,433/- towards extra expenditure incurred on idle pumping of sub soil water and price escalation under Clause 10 on the said work is rightly awarded by the learned Arbitrator. It is submitted that the petitioner department has again relied on the same submissions with regard to extra work undertaken by the contractor in the form of idle pumping sub soil water because of the delay on the part of the petitioner



department to take a decision with regard to either shifting or supporting the MCD main water supply.

43. Learned counsel for the respondent No. 1 submitted that Claim 7 at interest at the rate of 12 % of pre-reference period, at the rate of 9 % for respondent no. 1 as *pendent-lite* and future interest and Claim 8 at the rate of cost of Rs.5,00,000/- is rightly awarded. It is submitted that the list of dates mentioned is on record and final bill was paid by the department and the Arbitration dispute was raised by the claimant. It is submitted that the quantum of interest awarded by the learned Arbitrator is strictly within purview of the Arbitration and the interest awarded is strictly in accordance with law.

44. Learned counsel for the respondent No.1 submitted that therefore, this petition is devoid of any merit and is liable to be dismissed by this court.

45. The relevant clauses from the aforementioned Contract Agreement is reproduced hereinbelow:

RELEVANT CLAUSES:

CLAUSE 7.

"No payment shall be made for a work estimated to cost rupees five thousand or less till after the whole of the work shall have been completed and certificate of completion given. But in the case of a work estimated to cost more than rupees five thousand, the contractor shall, on submitting the bill be entitled to receive a monthly payment proportionate to the part thereof these executed to the satisfaction of the Engineer-in-charge, whose certificate of the sum so payable shall be final and conclusive against the contractor. But all such intermediate payments shall be regarded as payments by way of advance against the final payment only and not as payments for work actually done and completed, and shall



not preclude the requiring of bad, unsound and imperfect or unskilled work to be removed and taken away and reconstructed, or re-erected or be considered as an admission of the due performance of the contract, or any part thereof in any respect or the accruing of any claim, nor shall it conclude, determine, or affect in any way the powers of the Engineer-in-Charge under these conditions or any of them as to the final settlement and adjustment of the accounts or otherwise or in any other way vary or affect the contract. The final bill shall be submitted by the contractor within one month of the date fixed for completion of the work or of the date of the certificate of completion furnished by the Engineer-in-Charge and payment shall be made within three months if the amount of the contract plus that of the additional items is upto Rs. 2 lakhs and in 6 months if the same exceeds Rs. 2 lakhs of the submission of such bill. If there shall be any dispute about any item or items of the work then the undisputed item or items only shall be paid within the said period of three months or six months as the case may be. The contractor shall submit a list of the disputed items within thirty days from the disallowance thereof and if he fails to do this, his claim shall be deemed to have been fully waved and absolutely extinguished. Wherever there is likely to be delay in recording detailed measurements for making a running payment in the case of residential buildings, advance payments without detailed measurements of work done (other than foundation and finishing items) upto (a) lintel level (including sun shades etc.) and (b) slab level for each floor, worked out at 75% of the tendered rates may be in running account bills by the Engineer-in-Charge at his discretion on the basis of a certificate from the Assistant Engineer to the effect that the work has been completed upto the level in question. The advance payments so allowed shall be adjusted in the subsequent running bill by taking detailed measurements thereof. Final payment shall be made only on the basis of detailed measurements.”



ANALYSIS AND FINDINGS

46. The petitioner has raised objections against the impugned Award dated 27th April 2020 on the ground of patent illegality and because the impugned Award is alleged to be contrary to the fundamental policy of India and public policy.

47. The law regarding patent illegality, public policy, and fundamental policy of India is no longer *res integra*. The Act, 1996 has been well interpreted with regard to Section 34 through various judicial precedents. The scope of Section 34 being very limited in nature, has been thoroughly explored by the Indian legal system and the foreign legal system.

48. The challenge of an Award under Section 34 arising out of Arbitration proceedings must satisfy the tests laid down by virtue of the provisions of the Act, 1996, and the law settled by way of pronouncements by the Hon'ble Supreme Court.

49. It is pertinent to reiterate that the intention of the legislature while enacting the Act, 1996 was the expeditious and effective disposal of matters. The Act has been set forth with the intention to limit the interference of the Courts in the Arbitral Proceedings.

50. In order to facilitate this process and to maintain a check on it, a provision to set aside the Award was included. But even then, the Award may only be set aside if it fulfils certain criteria to qualify as being bad in law.

51. The Arbitrator, who in his wisdom, passes an Award, upon conducting the arbitration proceedings with the participation of parties to the dispute, considering the Statement of Claim and Statement of Defence presented by and on behalf of the parties, the relevant documents placed



on record by the parties, is considered a Court for the purposes of adjudicating the dispute before him. An unfettered scope of intervention in his functioning would defeat the spirit and purpose of the Arbitration Act. Therefore, the Hon'ble Supreme Court has time and again reiterated that the scope of intervention of the Courts is limited in the cases of challenge under Section 34.

52. Before delving into the judicial decisions, it is pertinent to reproduce the relevant portion of Section 34 of the Act, 1996:-

"34. Application for setting aside arbitral award.—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and subsection (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application [establishes on the basis of the record of the arbitral tribunal that]—

(i) a party was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or



(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India. [Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,— (i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or (ii) it is in contravention with the fundamental policy of Indian law; or (iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the court, if the court finds that the award is vitiated by patent illegality appearing on the face of the award: Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]"

53. In ***UHL Power Co. Ltd. v. State of H.P.***, (2022) 4 SCC 116, the Hon'ble Supreme Court reiterated the narrow scope under Section 34 of the Act, 1996 and held as under:



“16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words : (SCC pp. 166-67, para 11)

“11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the “fundamental policy of Indian law” would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, “patent illegality” itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.”

17. A similar view, as stated above, has been taken by this Court in K. Sugumar v. Hindustan Petroleum Corpn. Ltd. [K. Sugumar v. Hindustan Petroleum Corpn. Ltd., (2020) 12



SCC 539] , wherein it has been observed as follows : (SCC p. 540, para 2)

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

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

38. “Secondly, it is also made clear that reappraisal of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality on the face of award.”

55. A reference to the above-stated pronouncements makes it clear that this Court while exercising its jurisdiction under Section 34 of the Act, 1996 shall not sit in appeal and/or re-examine the facts and evidence of the case.



56. In *Ssangyong Engineering & Construction Co. Ltd. (Supra)*, the Hon'ble Supreme Court while explaining the scope of the expression 'public policy of India' made the following pertinent observations:

"23. What is clear, therefore, is that the expression "public policy of India", whether contained in Section 34 or in Section 48, would now mean the "fundamental policy of Indian law" as explained in paragraphs 18 and 27 of Associate Builders (supra), i.e., the fundamental policy of Indian law would be relegated to the "Renusagar" understanding of this expression. This would necessarily mean that the Western Geco (supra) expansion has been done away with. In short, Western Geco (supra), as explained in paragraphs 28 and 29 of Associate Builders (supra), would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in paragraph 30 of Associate Builders (supra).

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25. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paragraphs 18 and 27 of Associate Builders (supra), or secondly, that such award is against basic notions of justice or morality as understood in paragraphs 36 to 39 of Associate Builders (supra). Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that Western Geco (supra), as understood in Associate Builders (supra), and paragraphs 28 and 29 in particular, is now done away with.

26. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2A), added by the Amendment Act, 2015, to Section



34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within “the fundamental policy of Indian law”, namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

27. Secondly, it is also made clear that re-appreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.

28. To elucidate, paragraph 42.1 of Associate Builders (supra), namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Paragraph 42.2 of Associate Builders (supra), however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.

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30. What is important to note is that a decision which is perverse, as understood in paragraphs 31 and 32 of Associate Builders (supra), while no longer being a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.”



57. In the case of *Associate Builders vs. Delhi Development Authority*, (2015) 3 SCC 49, the Hon'ble Supreme Court clarified the meaning and scope of 'Fundamental Policy of Indian Law' in the context of Section 34 of the Arbitration Act in the following manner:

"28. In a recent judgment, ONGC Ltd. v. Western Geco International Ltd., 2014 (9) SCC 263, this Court added three other distinct and fundamental juristic principles which must be understood as a part and parcel of the fundamental policy of Indian law. The Court held-

35. What then would constitute the "fundamental policy of Indian law" is the question. The decision in ONGC [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the purport of the expression "fundamental policy of Indian law", we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the fundamental policy of Indian law. The first and foremost is the principle that in every determination whether by a court or other authority that affects the rights of a citizen or leads to any civil consequences, the court or authority concerned is bound to adopt what is in legal parlance called a "judicial approach" in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the court or the authority does not have to be separately or additionally enjoined upon the for a concerned. What must be remembered is that the importance of a judicial approach in judicial and quasi-judicial determination lies in the fact that so long as the court, tribunal or the authority exercising powers that affect the rights or obligations of the



parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bona fide and deals with the subject in a fair, reasonable and objective manner and that its decision is not actuated by any extraneous consideration. Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a court, tribunal or authority vulnerable to challenge.

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38. Equally important and indeed fundamental to the policy of Indian law is the principle that a court and so also a quasi judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Besides the celebrated audi alteram partem rule one of the facets of the principles of natural justice is that the court/authority deciding the matter must apply its mind to the attendant facts and circumstances while taking a view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording reasons in support of the decision which the court or authority is taking. The requirement that an adjudicatory authority must apply its mind is, in that view, so deeply embedded in our jurisprudence that it can be described as a fundamental policy of Indian law.

39. No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a court of law. Perversity or irrationality of decisions is tested on the touchstone of Wednesbury principle of reasonableness. Decisions that fall short of the



standards of reasonableness are open to challenge in a court of law often in writ jurisdiction of the superior courts but no less in statutory processes wherever the same are available. 40. It is neither necessary nor proper for us to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is not severable from the rest.”

xxxxxx

31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

- 1. a finding is based on no evidence, or*
- 2. an arbitral tribunal takes into account something irrelevant to the decision which it arrives at; or*
- 3. ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.*

xxxxxx

33. It must clearly be understood that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not



be held to be invalid on this score . Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts.....”

58. It is, therefore, clear that the decisive test is that *first*, the learned Arbitrator had to adopt a judicial approach; *second*, the principles of natural justice had to be upheld; *third*, the decision must not have been egregious, or rather, perverse.

59. The Hon’ble Supreme Court in *Associate Builders (supra)*, while explaining the meaning and scope of patent illegality, held as follows:

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

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

*“28. Rules applicable to substance of dispute.—
(1) Where the place of arbitration is situated in India,— (a) in an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;”*

42.2 (b) a contravention of the Arbitration Act itself would be regarded as a patent illegality- for example if an arbitrator gives no reasons for an award in contravention of section 31(3) of the Act, such award will be liable to be set aside.



42.3 (c) Equally, the third sub-head of patent illegality is really a contravention of Section 28 (3) of the Arbitration Act, which reads as under:

*“28. Rules applicable to substance of dispute.—
(3) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.”*

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

60. It is to be understood that Sub-section (2-A) to Section 34 of the Act, 1996 states that the Arbitral Award may be set aside by the Court if the Court finds the impugned Award is vitiated by patent illegality appearing on the face of the Award. The proviso stipulates that the Award shall not be set aside merely on the ground of erroneous application of law or by misappreciation of evidence. An Award can also be set aside under sub-clause (ii) to Clause (b) of Section 34(2) on the ground that it is in conflict with the public policy of India, which expression has been explained in the Explanation(s) to the said section.

Patent illegality

61. The Hon'ble Supreme Court in *Delhi Airport Metro Express Pvt. Ltd.v. Delhi Metro Rail Corporation Ltd.* 2021 SCC OnLine SC 695 has



explained the term “patent illegality”. The relevant portion of the judgment is reproduced below:

“26. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression 'patent illegality' Likewise, erroneous application of law cannot be categorized as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression 'patent illegality'. What is prohibited is for courts to appreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34 (2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression 'patent illegality'.”

62. To analyze whether the impugned Award is patently illegal, the relevant portion of the Award is reproduced below:

“Claim No. 2(3) for Rs.11,12,500/-

i. This claim has been preferred by the Claimant on account of suspension of work as per letter dated 4.5.1991. The communication dated 31.5.1991 sent by the claimant is stated to be categorical to the effect that the work was



suspended w.e.f. 4.5.1991 as per order of the engineer in-charge, which resulted in continuous pumping of sub-soil water for 14 days. According to the Claimant, the respondent/DDA has imply denied this letter, but has not produced the site order book to show that no such instructions were issued, which calls for an adverse inference against them. There is some confusion regarding the dates as the letter is dated 31.5.1991 which is on record, which was duly received by. the respondent/DDA on 10.6.1991 in which there is a specific mention that as per the site order book dated 4.5.1991, the contractor was told to stop the work which required dewatering of sub-soil water. For the reasons best known to the respondent/ DDA they have not produced site order book to controvert the averments. All the three claims under the head 2.1 to 2.3 are duly supported by the bills having been raised at that relevant time. Copies of these bills are already on record. The department has made no effort to controvert the bills raised by the claimant with regard to the work which they had undertaken because of delay on the part of the respondent/DDA as specified under claim No.2 and they have withheld not only the relevant record, but they have also withheld the measurement book. It has come on record that the respondent/DDA was supposed to enter each work done by the claimant whether it was admissible or inadmissible and even this is also provided in the PWD instructions. The respondent/DDA had made no effort to dispute the bills raised by the claimant in this regard by producing the relevant measurement book or even the site order book or indent register etc. No official record has been produced to controvert the averments made by the claimant. The claimant cannot lead any negative evidence and could only rely upon his statement which is duly supported by the communications and the bills raised by the claimant at the right time. It was for the respondent/DDA to controvert these averments by producing the relevant records, but they have failed to do so. The allegation of the respondent that the compensation on account of loss cannot be paid unless the



loss is proved, is fallacious. The claimant may have used the word 'loss' but it is not the loss as understood by the respondent/DDA. The claimant is claiming the payments under Item claim No.2 for the additional work which the claimant had to do in the form of de-watering of sub-soil water to ensure that the trenches dug do not collapse.

ii. This claim has also been refuted by the respondent/DDA alleging as under in its written submission which allegations have been reproduced hereinafter verbatim:

“Before replying to the aforesaid claim on merits it is to be submitted that qua the aforesaid claim which appears on page 8 of the claim petition, the claimant has attempted to justify the same on two counts. The claimant has stated that the aforesaid short supply was duly intimated to the respondent DDA by way of the letter of the claimant dated 31.05.1991. However, a perusal of the records of the DDA and the clear, unequivocal and categorical stand of the DDA the aforesaid letter dated 31.05.1991 was never received by DDA. Thus, it is the stand of the respondent DDA that the letter dated 31.05.1991 was a forged and a fabricated letter which has now been created by the claimant to some of the other attempt to substantiate its false and frivolous claims.

The claimant has attempted to substantiate the aforesaid claim on the basis of the pleadings on page 51/52 of the claim petition, a perusal of which pages 51 and 52 show that there is not even a single pleading which could substantiate the aforesaid claim of the claimant. Thus, in the absence of any pleading to substantiate its claim as has been claimed by the claimant the claim of the claimant is liable to be dismissed. It is respectfully submitted that the Respondent-DDA had never stopped the work as is being alleged by the Claimant or at all. Thus, if it being alleged by the Claimant that the Respondent-DDA had asked the claimant the work, it is for the claimant to prove that the claimant had stop the work on the asking of the respondent DDA has also that because of the work being stored by the claimant on the asking of the respondent DDA, the claimant had suffered a



loss of a sum of Rs. 11,12,500. As the claimant has failed to prove either of the aforesaid, the present false, frivolous and misconceived claim of Rs. 11,12,500 deserves to be outrightly dismissed. It is also to be respectfully submitted that the claimant though had obtained all the documents from the respondent DDA under the Right to information Act yet chose not to file the documents before this honourable tribunal as filing of the aforesaid documents would have demolished the own stand of the claimant, short supply of cement. Thus the aforesaid claim of Rs. 11,12,500 is liable to be outrightly rejected. It is further to be submitted that there is neither any basis nor any justification for the claimant to claim the sum of Rs. 11,12,500 for the alleged stopping of the work. In the present case the claimant has not made even in averment in its claim petition qua the aforesaid claim of Rs. 11,12,500 thus there is no reason or occasion for the claimant to have filed any documents to prove the aforesaid illegal and wrongful contention of the claimant. It is further submitted that had the claimant made any averment to the aforesaid effect, the respondent could have responded to the same. However as is apparent from the entire pleadings of the claimant and the documents filed by the claimant that there is not even a whisper qua the alleged periods of time during which there was any work which was alleged to be stopped and which alleged stopping of work had in turn caused loss to the Claimant, the aforesaid claim thus deserves to be outrightly rejected.

It is also to be reached the submitted that even if the forged and fabricated letter of the claimant dated 31.05.1991 is considered, it does not at all by any stretch of imagination help the cause of the claimant. Thus, a solitary letter which letter is even otherwise forged and fabricated by no stretch of imagination helps the cause of the Petitioner. It is further to be submitted that had there actually been any direction by the Respondent-DDA to stop the work, as alleged by the Claimant or at all, the claimant would for sure had not only made a grievance but the claimant would have also brought out as to the loss which the claimant has/ had suffered



because of such work being ordered to be stopped by the Respondent-DDA. As neither has been done, it is writ at large that there was neither any direction by the DDA to stop the work nor there was any alleged loss which was caused to the Claimant to the tune of Rs.11,12,500, for the claimant to have claimed an amount of Rs. 11,12,500 as has illegally and wrongfully been claimed by the claimant. It is settled law that if any claim is being made by a party, the party should have actually suffered the loss for making the claim as is being made by the party. In the present case thus the owners of proving that the claimant had actually suffered a loss of Rs 11,12,500 was solely with the claimant. As the entire pleadings read with the documents would show that the claimant has not been able to show as to how the aforesaid amount of Rs. 11,12,500 was a loss suffered by the claimant, the present claim is liable to be outrightly rejected."

iii. The Claimant has provided the calculation of the Claim based on the record which is as under:

Due to orders dated 04.06.91 to suspend the work (Details sent vide our letter dt. 31.06.91 loss incurred Rs. 11,12,500/- as per details as under:-

No of days for which Pumps installed =14 days in 3 shifts.

No. of pumps installed=7

No. of pumping days 7 x 14=98 days in 3 shifts

*No. of pumping hours of 3H.P. Pumping sets-7Nos. > 14days
× 24 = 2352 hrs.*

Average discharge/ hr.= 45 KL/hr

Total discharge in KL (2352 x 45)=105840KI

Cost (105840KL @ Rs.10/KL)=10,58,400.00(A)

Idle Labour 134 Nos / Each days

Total Labour 134 x 14=1876 Nos.

Cost of labour (1876Nos. @ 28.85/day)=54,122.60 (B)

Total (A + B)=11,12,522.60

Say= 11,12,500/-



iv. In reply to these calculations, the respondent in its written submission dated 18th February, 2020 has alleged as under:

"Claim No. 2(3) are wrong & denied. The bill submitted by the claimant amounting to Rs.11,12,500/- is not relevant"

The respondent/DDA has made similar allegations as had been made while refuting the claim no. 2 (1) and 2 (2) which have been negated by this Tribunal. All these allegations of the respondent/DDA are also rejected in this claim and the reasons have not been repeated here for the sake of brevity. The claimant has qualified that the claim is not so much for the loss' but for the extra work which the claimant had to do on account of lapses on the part of the respondent/DDA and its own order suspending the work. The claimant has also produced the relevant bills for the relevant period which have not been controverted by the respondent/DDA except making bald denials. No cogent and legally acceptable reason has been given by the respondent/DDA for not producing the relevant records. This is not the case of respondent/DDA that the records were not maintained nor it has been alleged that the record has been destroyed and weeded out. Utterly ridiculous reason which has been given is that the record is voluminous. The witness of the respondent/DDA had refused to answer the questions put to him in the cross examination. Such behaviour substantiates the doubt that the respondent/DDA deliberately did not adjudicate the Claims of the Claimant since 1996 and have delayed the proceedings by raising legally unsubstantiated pleas.

v. For the foregoing reasons and in the facts and circumstances on the basis of preponderance of probabilities the version of the claimant is accepted and repudiations by the respondent/DDA are rejected and the claim of the claimant for Rs. 11,12,500/- is allowed and the said amount is awarded to the claimant against the respondent/DDA and the claim no. 2 (3) is decided accordingly."



63. A bare reading of the above-quoted portion of the Award proves that the learned Arbitrator has very well considered the evidence placed on record. This Claim is with regard to the pumping of subsoil water as the work was suspended as per orders of the Engineer In-charge. Learned Arbitrator has duly considered the pleadings in this regard and since the calculations were not disputed, the finding recorded in the Award, which is after proper appreciation of the pleadings and the evidence on record, does not call for any interference.

64. Following the triple test of perversity, it is evident that the Arbitrator, being a creature of the contract, has rightfully stayed between the lines of the Contract to adjudicate the dispute. The facts of the matter have been harmoniously applied with the parallel reading of the Contractual Clauses.

65. The learned Arbitral Tribunal has clearly adopted a judicial approach and adjudicated the dispute whilst keeping the principles of jurisprudence and natural justice alive.

66. In ***Delhi State Industrial & Infrastructure Development Corpn. Ltd. v. Well Protect Manpower Services (P) Ltd., 2022 SCC OnLine Del 901***, the High Court of Delhi held as under:

“34. The scope of examination under Section 34(2-A) of the A&C Act is limited. This Court is not required to reevaluate and reappreciate the evidence and supplant its opinion over that of the Arbitral Tribunal. Unless the decision is found to be patently illegal, no interference with the Arbitral Award is called for. In Delhi Airport Metro Express (P) Ltd. v. Delhi Metro Rail Corpn. Ltd. [Delhi Airport Metro Express (P) Ltd. v. Delhi Metro Rail Corpn. Ltd., (2022) 1 SCC 131 : (2022) 1 SCC (Civ) 330] , Supreme Court had authoritatively explained that even an erroneous view would



not vitiate the Arbitral award on the ground of patently illegality unless the error is manifest and one that strikes at the root of the matter. It is trite law that an Arbitral Tribunal is a final adjudicator of the evidence and its conclusion cannot be interfered with except where it is found to be patently illegal or in conflict with the public policy of India. In Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] , the Supreme Court had held that courts would not interfere merely because an alternative view on facts exists. Similarly, in Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , the Supreme Court had observed that “a possible view by the Arbitrator on facts has necessarily to pass muster as the Arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his Arbitral award”.

67. In view of the aforementioned judgment, it is evident that the Arbitrator, being the ultimate master of the Arbitration, can adjudicate the Claims in a manner that is on the lines of basic tenants of Law and the Principles of Natural Justice and Jurisprudence. As long as the Award does not shock the conscience of the Court, there warrants no interference of the Court.

68. In the instant case, a perusal of the Award, as well as the findings which have also been reproduced above, shows that the learned Arbitrator has passed an extremely elaborate and comprehensive Award after dealing with each Claim raised on behalf of the parties, the facts of the case, the material on record, including documents referred to, the precedents cited on behalf of the parties.



69. A key ground raised by the petitioner is that the claims were barred by limitation and ergo, the Arbitrator exceeded his mandate while admitting these claims.

Claims barred by limitation

70. Since the plea of limitation was not raised before the Arbitrator, it is to be understood that this plea cannot be admitted by this Court.

71. Since the plea of limitation was not taken, by virtue of the express provision of Section 4 of the Act, 1996, the petitioner has waived the said defence and cannot agitate the same.

72. If the plea of limitation was to be taken then there was no requirement of appointment of an Arbitrator. But the plea of limitation was not taken before the learned Single Judge in the petition filed by the respondent under section 11 (6) of the Act, 1996, nor it was taken subsequently before the Hon'ble Supreme Court who had appointed an Arbitrator practically after a period of more than 20 years of the demand of arbitration raised by the respondent.

73. Clause 7 which is reproduced above, does not support the case of the petitioner the way it has been projected. This is apparent from the following dates:

- (i) The work was completed on 5th June 1992 but the issue regarding measurements of the work was not resolved, in the absence of which the final bill could not be raised by the respondent.
- (ii) On 23rd March 1996 even the competent authority of the petitioner was still asking for sanction of the rates claimed which



was required to be paid to the petitioner.

(iii) There was further inter se correspondence between two Executive Engineers with regard to payments to be made to the respondent.

(iv) On 15th April 1996 the final bill was allegedly prepared.

(v) On 29th April 1996 the bill was finally paid.

74. Clause 7 of the Agreement says that the payment has to be made within 3/6 months from the date of the final bill and the dispute can be raised within 3/6 months for the undisputed items. The inter se communication in the month of March and April 1996 shows that the final bill was only paid on 29th April 1996 and the respondent was well within its rights to raise the dispute within a further period of 3 to 6 months of the final bill. There is no question of any waiver in this regard.

75. In any case it is the admitted case of the parties that no certificate of completion was issued by the Engineer-in-Charge and as such the petitioner cannot invoke Clause 7 of the Agreement. Learned Arbitrator has dealt with this issue rightly by relying upon the judgement of the Hon'ble Supreme Court in the case in the case of ***Durga Charan Rautray Vs. State of Orissa, 2012 AIR (SC) page 442***. The relevant portion has been reproduced below:

“8. Since the plea of limitation had been decided in favour of the Appellant and against the Respondents, the only question to be adjudicated upon, in the present appeal filed by the Appellant, is, whether the disputes/claims raised by the Appellant could have been referred for arbitration, after the Appellant had received payment after the preparation of the final bill, without raising any objections. The answer to the instant query must necessarily flow from the relevant clause



of the agreement which entitled the Appellant to seek redressal of disputes through arbitration, as it is the arbitration clause alone which defines the parameters of the disputes which rival parties can raise for adjudication before an arbitrator (or arbitral tribunal). In so far as the instant aspect of the matter is concerned, Clause 23 of the agreement dated 31.12.1975 is relevant. The same is being extracted hereinbelow:

Clause 23 - Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions hereinbefore mentioned and as to the quality of workmanship of materials used on the work, or as to any other questions, claim, right matter, or thing whatsoever, if any way arising out of, or relating to the contract, designs, drawings, specifications, estimates instructions, orders or these conditions, or otherwise concerning the work or the execution, or failure to execute the same, whether arising during the progress of the work, or after the completion or abandonment thereof shall be referred to the sole arbitration of a Superintending Engineer of the State Public Works Department unconnected with the work at any stage nominated by the concerned Chief Engineer. If there be no such Superintending Engineer, it should be referred to the sole arbitration of the Chief Engineer concerned. It will be no objection to any such appointment that the arbitrator so appointed is a Government Servant. The award of the Arbitrator so appointed shall be final, conclusive and binding on all parties to these contract."

76. Ergo, the petitioner has failed to prove that the aforementioned ground warrants the interference of this Court, and hence, this Court is of the opinion that there is no reason or rhyme to set aside the impugned Award under Section 34 of the Act, 1996.

77. It is thus inferred from the simultaneous reading of the facts and evidence on record along with the impugned Award, that the learned



Arbitral Tribunal has not erred in a patently illegal manner, and thus has not rendered an Award which has perversity on the face of it.

78. Therefore, it can be understood by the discussions in the foregoing paragraphs that the learned Arbitral Tribunal has not exceeded its jurisdiction or mandate and has duly considered all the evidence placed before it and rendered a well-reasoned Award.

79. Therefore, following the principles of natural justice and equity, it is apparent that the learned Arbitrator has acted well within his power to adjudicate the dispute effectively, by working within his mandate and giving due consideration to the “Birth-giver” Contract and the evidence placed on record, and thus, it does not warrant the interference of the Court under Section 34 of the Act, 1996.

CONCLUSION

80. In light of the facts, submissions, and contentions in the pleadings, this Court finds that the petitioner has failed to corroborate with evidence, as how, the learned Arbitrator had erred in adjudicating the dispute.

81. The law which has been settled by the Hon’ble Supreme Court is, that the scope of interference with an Arbitral Award under Section 34 of the Act, 1996 is fairly limited and narrow. The Courts shall not sit in an appeal while adjudicating a challenge to an Award which is passed by an Arbitrator, the master of evidence, after due consideration of facts, circumstances, evidence, and material before him.

82. In the instant petition, it was argued that the impugned Award is patently illegal and thus liable to be set aside. As stipulated by the aforementioned precedents, it is essential that there be illegalities or



deficiencies at the face of the Award and/or shock the conscience of the Court in order for it to qualify to be set aside by an act of this Court.

83. The petitioner has failed to make out such a case and was unable to show that the Award is patently illegal on the face of it.

84. A perusal of the impugned Award dated 27th April 2020 makes it evident that there is no patent illegality or error apparent on the face of the record. The learned Arbitrator has passed the impugned Award after considering all the relevant material placed before it during the arbitral proceedings. The Award is well-reasoned and is not in contravention of the fundamental policy of Indian law, and thus there is no reason for interference in the impugned Award.

85. The petitioner has failed to show that any grounds that are stipulated under Section 34 of the Arbitration Act are being met.

86. In view of the above discussion of facts and law, this Court finds no reason to set aside the impugned Arbitral Award dated 27th April 2020.

87. The petition is, accordingly, dismissed along with pending applications, if any.

88. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

JUNE 12, 2023
SV/AS