

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**COMMERCIAL APPEAL No.1 of 2023**

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1. The State of Bihar through the Secretary, Transport Department, Government of Bihar, Vishweshwaraiya Bhawan, Bailey Road, Patna.
2. The State of Transport Commissioner, Transport Department, Government of Bihar, Vishweshwaraiya Bhawan, Bailey Road, Patna.

... .. Appellant/s

Versus

1. M/s Agros Impex (1) Pvt. Ltd, having its registered office at 201-202 Composite House, 170, Prajapati Nagar, Opposite B-2, Gulmohar Park, New Delhi 110049, through its authorised representation, lead partner in joint venture with.
2. M/s Frost International Ltd., having its registered office at 402-403, Kalpana Plana, 24-147b, Birhana Road, Kanpur, 208001 and.
3. M/s Trinity Engineer Service-II C, having its registered office at Post Box 8807, Dubai, UAE.

... .. Respondent/s

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**Appearance :**

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| For the Appellant/s  | : | Mr. P. K. Shahi, AG<br>Mr. Vikas Kumar, Advocate<br>Mr. Parijat Saurav (AC to AAG-10) |
| For the Respondent/s | : | Mr. Nand Kishore Singh, Advocate<br>Mr. Abneesh Kumar, Advocate                       |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE MR. JUSTICE PARTHA SARTHY**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 21-08-2024**

The Commercial Appeal arises from the order of the District Judge, Patna in Miscellaneous (Arbitration) Case No. 27 of 2019; which affirmed the award of the Arbitrator. The appellant, is the State and the respondents are the claimants before the Arbitrator who conducted the arbitration proceedings.

2. By virtue of the amendment to Rule 50 of the



Central Motor Vehicles Act, 1989, New Security Number Plate (hereinafter referred to 'HSRP') was to be introduced in respect of new and also the motor vehicles in use, throughout the country. Based on the directions of the Hon'ble Supreme Court in *Maninderjit Singh Bitta v. Union of India and Others*, the Transport Department, Government of Bihar, invited bids to manufacture, supply and installation of 'HSRP' both in newly registered vehicles and also for replacing already registered vehicles, within the State of Bihar. The claimants were successful in the tender process and provided a bank guarantee of Rs. 50 lakhs. The operation of the contract was the dispute arising between the parties; which contract stood terminated for reason of the work having not been commenced. The claimants allege that they were not provided sufficient facilities to commence the work. We are not looking into the merits of the matter; which in any event, in the instant proceedings, can be looked into only on the restricted grounds available in Section 34 of the Arbitration and Conciliation Act, 1996. In the appeal, the compelling contention of the State Government is the gross violation of principles of natural justice.

3. The learned Advocate General appearing for the State informed us that the arbitration award was an ex-parte



award. There was a Counsel appointed to conduct the case but due to the illness of the Arbitrator, proceedings were adjourned intermittently & indefinitely. There were no proper notices issued when the proceedings were re-commenced. The Advocate who was engaged, quit in consternation and the State sought for further time to engage another Counsel and also to make written submissions. Without considering the same, an ex-parte award was passed on the ground that the one year period was fast approaching. It is argued that with consent of the parties, time could have been extended for 6 months and again the parties could have approached the Court for further extension. The ex-parte award has to be set aside, is the contention.

4. The learned Counsel appearing for the respondent/claimant, however, contended that sufficient opportunity was provided to the State and despite passage of eight months, there was not even a written statement filed. The claimants appeared on all the posting dates and there can be no ground raised of insufficient notice or violation of principles of natural justice or opportunity of hearing not having been afforded. The learned Counsel for the petitioner also contends that the entire expense of the arbitration was borne by the



claimants and that the cost ordered by the arbitrator was also not paid. There is no ground available to set aside the arbitration award, is the compelling argument.

5. We have gone through the records of the case keeping in mind the fact that the challenge is confined to the specific grounds available under Section 34 of the Act.

6. The supplementary counter affidavit filed by the State has produced Annexure-2 letter of the Advocate and the adjournment application as Annexure-3. In Annexure-2, the Advocate has referred to a letter issued on 23.08.2018 by the learned Arbitrator pursuant to which he had visited the venue fixed for arbitration. However, on account of illness of the Arbitrator, the matter was adjourned. It has been stated that the Secretary of the Arbitrator informed the Advocate that arbitration would be recommenced only after the recovery of the Arbitrator. The Advocate also indicated that despite several communications made to & interactions with the Secretary of the learned Arbitrator, no response was received. It is also stated that though there was appearance on earlier dates, due to the ill health of the learned Arbitrator, the matter could not be taken up and despite this a cost of Rs. 10,000/- was imposed on the State of Bihar. It is in this context that the learned Advocate recused



from the matter. By Annexure-A3, the State requested the learned Arbitrator to grant further time, citing the recusal of the Advocate engaged and sought for time to file the written statement. Annexure-3 was on 19.11.2018.

7. The arbitration was initiated on 15.01.2018 and the one year period was expiring on 14.12.2018. The award produced as Annexure-2 was passed on 14.12.2018; on the last date.

8. The learned District Judge had cited decisions of the Hon'ble Supreme Court and various High Courts; on the two grounds raised; one interference to an arbitral award and then the violation of principles of natural justice. The learned District Judge found that the claim petition was served on the State on 17.01.2018 and they were required to file their defense or counter statement by 26.02.2018. However, none appeared on the said date despite various adjournments granted by the learned Arbitrator. The State dragged its feet which resulted in imposition of cost of Rs.10,000/-. An Advocate appeared on 27.08.2018 and sought for adjournment; which though granted, no defense or written statement was filed even then. The arbitral proceedings were then held on 27.10.2018 and 29.10.2018 and subsequent dates. On 20.11.2018, the learned Arbitrator passed a



reasoned order rejecting the prayer for adjournment for one month; in view of the time constraints.

9. We have looked at the final award passed by the Arbitrator produced along with the memorandum of appeal which itself, however, project a different picture. The proceedings were initiated on 15.01.2018 and the claim petition was served on the opposite parties on 17.01.2018 for compliance on 26.02.2018. On 26.02.2018, the claimants appeared and produced proof of service and since none appeared for the opposite parties, they were directed to serve copy of the order dated 26.02.2018. It is recorded that due to the illness of the learned Arbitrator, the case was then posted only on 26.06.2018 after four months. Again, a fresh notice was issued on 26.06.2018 fixing the case on 07.07.2018 on which date none appeared. Again, the matter was adjourned to 28.07.2018 when the application for adjournment was filed, specifically pointing out that the Advocate engaged had recused from the case. In fact, the proceedings recorded in the order of the Arbitrator validates the claim of the Advocate that the matter was adjourned due to the illness of the Arbitrator and despite his repeated communication with the Secretary of the learned Arbitrator, no date was fixed.



**10.** Further, the award records that on 28.08.2018, one Advocate appeared and made an oral prayer for adjourning the case. The Arbitrator again records that since he was not feeling well, an oral order of adjournment was granted and no steps were taken to file the pleadings. The proceedings were resumed only on 22.10.2018 after about two months, on which date again notice was issued affording opportunity to submit their due pleadings. Matter was posted on 19.11.2018 and 20.11.2018 and a detailed order is said to have been passed ex-parte since, the time was to expire on 14.01.2019.

**11.** Considering the fact that six months had elapsed due to the illness of the learned Arbitrator, we are of the opinion that it was not proper to have peremptorily decided to proceed ex-parte. There is clear violation of principles of natural justice, according to us. We cannot but, also find that the State had not been very diligent in pursuing the matter since despite the illness of the Arbitrator, a written statement of defense could have been filed in the ensuing period, which could also have been sent by registered post in the address of the learned Arbitrator. Violation of principles of natural justice being writ large, we are of the opinion that an interference is to be caused under Section 34; which also speaks of interference, if the



arbitral award is in conflict with the public policy of India; which has been clarified to be also one in contravention of the fundamental policy of Indian law, as per the first Explanation to the provision.

12. We need only refer to the decision of the Constitution Bench of the Hon'ble Supreme Court in ***Mohinder Singh Gill v. Chief Election Commissioner; AIR 1978 SC 851***, from which we extract paragraph 76 of the said judgment:-

77. We have been told that wherever the Parliament has intended a hearing it has said so in the Act and the Rules and inferentially where it has not specified it is otiose. There is no such sequitur. The silence of a statute has no exclusionary effect except where it flows from necessary implication. Article 324 vests a wide power and where some direct consequence on candidates emanates from its exercise we must read this functional obligation.

[underlining by us for emphasis]

13. Principles of natural justice is hence a fundamental policy of Indian law and finding the same having been violated, the arbitration award is set aside. We have not made any observation on the merits of the matter. We find that the State has also not been diligent in defending the matter and no written statement was filed, as found above. In such circumstances, we are of the opinion that the respondent would be entitled to a cost of Rs.25,000; which would include the cost of Rs.10,000/- as directed by the Arbitrator. Considering the fact



that the charges of the earlier proceedings was borne by the claimants, the expenses for the present proceeding shall be borne by the State including the fees of learned Arbitrator.

14. On consent, we appoint Hon’ble Mr. Justice P. K. Sinha, a retired Judge of this Court as the Arbitrator. We also request the learned Arbitrator to expedite the proceedings. The State would be entitled to pay the costs to the claimants or their authorized representatives in the presence of the Arbitrator; on the very first day of hearing. The appeal stands allowed with the above directions; leaving the learned Arbitrator appointed to deal with the issues raised by both parties.

**(K. Vinod Chandran, CJ)**

**( Partha Sarthy, J)**

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