



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5551 OF 2007

North Maharashtra University,
Umavi Nagar, Jalgaon, Dist. Jalgaon
Through its Registrar

.. Petitioner

Versus

Uttar Pradesh Jal Nigam
Construction & Design Services
(A Statutory Corporation)
Through its Authorised Signatory, (Unit-13)
C & D Services, U. P. Jal Nigam,
A-4/97, Vishal Khand, Gomti Nagar,
Lucknow (Uttar Pradesh)

.. Respondent

**WITH
CIVIL APPLICATION NO. 7486 OF 2019
IN
WRIT PETITION NO. 5551 OF 2007**

Uttar Pradesh Jal Nigam
Construction & Design Services
(A Statutory Corporation)
Through its Authorised Signatory, (Unit-13)
C & D Services, U. P. Jal Nigam,
A-4/97, Vishal Khand, Gomti Nagar,
Lucknow (Uttar Pradesh)

.. Applicant

Versus

North Maharashtra University,
Umavi Nagar, Jalgaon, Dist. Jalgaon
Through its Registrar

.. Respondent

Mr. Ajay G. Talhar, D.S.G.I. for the Petitioner (through V.C.).
Mr. S. V. Natu, Advocate for Respondent.

CORAM : KISHORE C. SANT, J.

Date on which reserved for judgment : 04th October, 2025.

Date on which judgment pronounced : 25th November, 2025.

JUDGMENT :-

1. Rule was granted in this writ petition on 20.08.2008 .
2. A challenge in the petition is to an order dated 25.04.2007 passed by the learned District Judge, Jalgaon on an application below Exh. 22 in Misc. Civil Application No. 76/2005. The learned District Judge by way of impugned order has rejected the application filed by the petitioner seeking review of the order passed by the learned District Judge dated 19.12.2006 below Exh. 1. The learned District Judge had passed an order rejecting the application of the petitioner seeking production of documents on record and to remand the matter to the learned Arbitrator with a direction to consider those documents and to pass fresh award.
3. The petitioner is the university established under the Maharashtra Universities Act presently Maharashtra Public Universities Act. The respondent was appointed as a contractor to

construct the buildings for the university in Jalgaon. The dispute arose out of the said contract and therefore, the respondent initiated the arbitration proceedings claiming compensation from the university. The learned Arbitrator by his award allowed the claim of the respondent and dismissed the counter claim of the university. By award dated 30.09.2004 the petitioner was directed to pay to respondent an amount of Rs. 24,27,888/- along with interest at the rate of Rs. 18% per annum from the date of award till the amount is paid, on the unpaid balance amount and other directions. The learned Arbitrator also passed additional award under section 33 (4) of the Arbitration and Conciliation Act, 1996 (for short "the said Act") on 18.12.2004 directing the petitioner to pay interest at the rate of Rs. 10% per annum on the escalation amount as per the arbitration award from 2001 till passing of the award on 30.10.2004.

4. The petitioner filed an application under section 34 of the said Act in the Court of learned District Judge, Jalgaon challenging an award. In the said application, the petitioner filed an Arbitration Application bearing No. 76/2005. During the pendency of the said application, the petitioner filed an

application for adjournment of the proceeding. It was the case of the petitioner that some material is not considered by the learned Arbitrator which was on record before him supporting the counter claim of the petitioner. It was submitted that opportunity needs to be given to the Arbitrator to rectify the impugned award so as to eliminate some grounds for setting aside the arbitral award and for setting aside the observation of the Arbitrator wherein, it was observed that not a single piece of document is filed by the petitioner in support of counter claim. It was the case of the petitioner that, there was a certificate of petitioner's Architect as regards incomplete work and the amount that was spent by the university for the balance work. It was the case that, there was such certificate on record, however, it was wrongly placed in miscellaneous file and it escaped the attention of the learned Arbitrator.

5. The said application came to be rejected by order dated 19.12.2006 by the learned District Judge. It is thereafter the petitioner filed an application seeking review of the order dated 19.12.2006. The said application also came to be rejected by order dated 25.04.2007 making the petitioner to approach this

Court.

6. The learned D.S.G.I. Mr. Talhar appearing for the petitioner vehemently argued that, the learned District Judge has committed an error apparent on the face of record by passing earlier order which was sought to be reviewed. The learned District Judge also failed in appreciating the review application in its proper perspective and has rejected the same. It is a matter of fact, in his submission, that the certificate of the Architect about incomplete work by the contractor was produced and was available on record. Inadvertently, the said certificate was kept in the file of miscellaneous papers before the Arbitrator and therefore, it was not pointed out. He submits that, the observation of the learned Arbitrator in paragraph No. 9 of the order is not correct. It is this observation which made the learned Judge to pass incorrect order. The observations are made contrary to the record. Therefore, the petition deserves to be allowed.

7. The learned advocate Mr. Natu for respondent vehemently argued that, the case of the petitioner that Architect's certificate was on record itself is not correct. In the counter claim, there is

no pleading as regards the Architect's certificate. He further submits that, in view of provisions of section 34 (4) of the said Act, such application is not entertainable. A very limited scope is available while interfering with the arbitration award under section 34 of the said Act. By way of application, the respondent wants to introduce altogether a different case when there is no whisper in the pleadings. He relied upon the following judgments :

(i) **Kinnari Mullick and another Vs. Ghanshyam Das Damani** reported in **(2018) 11 SCC 328**.

(ii) **I-Pay Clearing Services Private Limited Vs. ICICI Bank Limited** reported in **(2022) 3 SCC 121**.

8. Before going to the discussion on merits of the present petition, it is necessary to first consider the legal position as regards scope available with the District Court under section 34 of the said Act. Section 34 of the said Act reads as under :

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 sub-section (3).

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

(a) the party making the application 1[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.

¹[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[(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 re-appreciation of evidence.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to

resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award. (emphasis supplied)

¹[(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]

9. In the case of **Kinnari Mullick and another** (*supra*), the full Bench of the Hon'ble Apex Court considered the scope of section 34 (4) of the said Act and as to when the remand order can be passed and the objective behind the provision. While discussing, the Court has also considered the limitations upon the powers. The said judgment was in the facts that, the appellant therein entered into two development agreements with the respondent therein for construction of multi-storeyed building. Further agreement was entered into between the parties on completion of construction of buildings distributing the owner's allocation. The respondent thereafter fully sold and transferred his share of the premises to various perspective buyers with proportionate area of

land as well as common area. Registered conveyance were also executed. The dispute arose about the entitlement of the respondent to execute and register conveyance in respect of 50% of built up area on the ground floor of the premises. The said claim came to be rejected by the appellant. Therefore, the arbitration started. The counter statement was also filed. The award was passed allowing the claim of the respondent thereby directing the appellant to execute and register appropriate deed/deeds as proposed by the respondent and to execute conveyance and award was passed. The application was filed under section 34 of the said Act for setting aside the award. The Single Judge of the High Court set aside the award observing that, there was no material to disclose any reason to support the claim. In an appeal the Division Bench of the High Court affirmed the finding of the learned Single Judge holding that, award did not contain any reason to support the claim. In the appeal, cross objections were also filed. The said came to be rejected. Therefore, the appellant approached the Hon'ble Apex Court. The Hon'ble Apex Court held that, a very limited power is available to the Court under section 34 (4) of the said Act.

10. In the case of I-Pay Clearing Services Private Limited (*supra*), the Hon'ble Apex Court again considered the question of section 34 (4) of the said Act. The judgment in the case of Kinnari Mullick and another (*supra*) is also considered. It is held that, the power under section 34 (4) of the said Act is limited only to remit the matter only for the purpose of curing the defects in the award. Merely because filing of the application under section 34 (4) does not cast any obligation on the Court to remit the matter to Arbitrator Tribunal. Such discretion is to be exercised where there is inadequate reasoning or to fill up the gaps in the reasoning. It is in support of the findings which are already recorded in award. It is further held that, under the guise of additional reasons and filling up the gaps in the reasoning, no award can be remitted to the Arbitrator. It is only when there are no findings in the contentious issues in the award or there are no finding on the contentious issues in the award or if any findings are recorded ignoring the material evidence on record, the same can be done and when such grounds are acceptable for setting aside the award itself. The power cannot be used to relegate the matter to the Arbitrator. It is ultimately held that, it is only in appropriate cases

the Court can give opportunity to Arbitrator to resume the arbitral proceedings for giving reasons or to fill up gaps in the reasoning in support of finding. For that there has to be reasons already rendered in the award.

11. This Court thus finds that, it needs to examine in the present case as to whether, any case is made out to allow the application under section 34 (4) of the said Act and further, as to whether any ground was made out to entertain the application seeking review of the order passed by the learned District Judge.

12. In the present case, the petitioner's case is that, presently it is a case where the petitioner contends that the Architect's certificate was very much produced before the learned Arbitrator, but the same keeps the attention of the learned Arbitrator. There is no case that the said certificate was specifically produced and pointed out to the learned Arbitrator and proved in the trial. As rightly pointed out by the learned advocate Mr. Natu for the respondent that, there is no whisper of such certificate in the pleadings of the petitioner – university. When there is no pleading itself on record to support the case of the petitioner, there is no

question of remanding the proceedings to the learned Arbitrator. In the award, it is specifically observed by the learned Arbitrator that, no document is produced on record in support of the case of the petitioner. There is nothing to show that the said document was brought to the notice of the learned Arbitrator. There is no scope to believe that, the learned Arbitrator need to correct the mistake or to eliminate the ground of objection.

13. By way of application before the learned District Judge, the petitioner, in fact, wants to produce the document by way of evidence about which there is no pleading itself. It is clearly to produce on record a new document. If it is the case of the petitioner that the document was before the learned Arbitrator, but was kept in the miscellaneous papers file, there is nothing to indicate as to what efforts were made by the petitioner to bring it to the notice of the learned Arbitrator and why it was not sought to be proved. Taking in over all view this Court finds that, no case is made out to allow the present writ petition. The writ petition stands dismissed. Rule is discharged.

14. In view of disposal of writ petition, nothing survives in the

civil application. The civil application also stands disposed of.

15. The application under section 34 of the said Act is pending since 2005. It is expected of the learned District Judge to dispose of the same as expeditiously as possible and preferably within six months from today.

(KISHORE C. SANT, J.)

PS.B.