



OSA No. 265 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-07-2025

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

and

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

OSA No. 265 of 2018

Central Warehousing Corporation
4/1, Siri Constitutional Area Khell Goan Marg
New Delhi 110-016
Represented by its
Regional Manager (P.E.Prasad) Chennai

Appellant(s)

Vs

1.M/s. National Lorry Transport
No.84, Trichy Main Road,
Salem 636 006

2.Shri Rajkumar
Sole Arbitrator
10/57, Silver Oaks DLF City -1,
Gurgaon, Haryana.

Respondent(s)

PRAYER

Appeal filed under clause 15 of amended letters patent read with Order 41 Rule 1 of Code of Civil Procedure, to set aside the order in OP.650/2004 on the file of this Court dated 16/03/2009.



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For Appellant (s) : Mr.A.G.Vedavikas
for Mr.V.Raghavachari
For Respondent (s) :
Mr.P.Jagadeesan (for R1)
R2-sole Arbitrator

ORDER

(Order of the Court was made by N.Senthilkumar J.)

This Appeal is filed by the Appellant to set aside the order passed by the learned single Judge of this Court in OP.650 of 2004 dated 16.03.2009, which was filed against the arbitral award.

2.The petitioner in the Original Petition is the appellant herein and respondents herein were the respondents in the Original Petition.

3.The brief facts in OP.No.650 of 2004 is as follows:

3.1.The first respondent was awarded a contract for loading, unloading, handling and transportation of food grains and fertilizers at the Central Warehousing Corporation godowns at Madurai Unit Nos. I and II, for a period of two years commencing from 24.11.1993 to 23.11.1995. The contract was extendable for a further period of six months. According to the appellant, the first respondent abruptly stopped the operations on 23.01.1995, thereby committing a breach of contract. As a result of this sudden stoppage, the



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appellant allegedly suffered substantial financial loss and damage to the goodwill they had built over the years.

3.2. Upon abandonment of the contract by the first respondent, the remaining period of the contract was executed by engaging another contractor at the risk and cost of the first respondent. In accordance with clause XIX of the contract, any dispute arising between the parties has to be referred to a sole Arbitrator appointed by the Managing Director of the Central Warehousing Corporation. Accordingly, Mr.S.K.Bhatnagar, I.A.S. (Retd.), was appointed as the sole arbitrator by the appellant. However, prior to the issuance of an arbitral award, Mr.Bhatnagar passed away on 28.08.2001. Subsequently, the appellant appointed the second respondent as the sole arbitrator in the place of erstwhile Arbitrator.

4. The Appellant Corporation raised the following claims before the Arbitrator:

1. *Losses sustained by the petitioner Corporation towards demurrage and wharfage charges amounting to a sum of Rs.23,40,265/-.*
2. *Loss sustained by the Corporation towards departmental expenditure incurred for pending clearance of wagons amounting to a sum of Rs.7,06,274/-.*
3. *A sum of Rs.2,50,738/- towards losses suffered towards the damaged stocks due to unworkmanlike performance of the Contractor.*
4. *A sum of Rs.4,340/- being the losses suffered due to payment of wages to casual labourers at differential rate for unexpired*



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period of contract.

5. *Loss suffered on account of re-booking and freight charges incurred by their depositor – Food Corporation of India, amounting to a sum of Rs.6,77,185/-.*
6. *Forfeiting security deposit and interest at 18% per annum (Security Deposit of Rs.1,00,000/-).*

The first respondent made the following counter claims against the Appellant:

1. *Non-payment of pending bills amounting to a sum of Rs.17,44,135/-.*
2. *Claim in respect of shortage of distance of 1 K.M between Railway Goods shed and Warehouse godown (Rs.18,00,145/-)*
3. *Demurrage and wharfage charges deducted by the petitioner, amounting to a sum of Rs.24,86,602/-*
4. *Loss of profit suffered for one year to termination of the contract (Rs.20,16,000/-)*
5. *A sum of Rs.10 lakhs towards loss of goodwill and reputation.*
6. *Refund of Security Deposit.*
7. *A sum of Rs.1,35,84,673.22 being the interest on all the counter claims.*

The Arbitrator passed the award dated 23.05.2004. The operative portion of the award is extracted hereunder:

- “a. The Claimants, namely M/s Central Warehousing Corporation, are entitled to be paid a total sum of Rs.3,16,380/- by the respondents, namely, M/s.National Lorry Transport. Out of this sum of Rs.2,34,027/- has been adjusted while arriving at the amount of counter-claim no:1 of Respondent -Contractor. Hence the net amount payable to Claimant-Corporation works out to Rs.82,353/-.*
- b. Claimant-Corporation are also entitled to be paid and M/s.National Lorry Transport are liable to pay simple interest @ 12% per annum as per details available under Para 6.09 till the date of this award i.e. 23-05-2004.*
- C. The Respondents, namely M/s.National Lorry Transport, are entitled to be paid a total sum of Rs.32,45,257/- by the Claimants, namely, M/s.Central Warehousing Corporation.*
- d. Respondent-Contractor are also entitled to be paid and M/s.Central Warehousing Corporation are liable to pay simple interest @ 12% per annum as per details available under Para 14.08 till the date of this award i.e. 23-05-2004.*



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e. Since the amounts payable by M/s. Central Warehousing Corporation under Sub-Para (c) and (d) above are in excess of those payable by M/s. National Lorry Transport under Sub-Para (a) and (b) above, M/s. Central Warehousing Corporation can pay the net amount only to M/s. National Lorry Transport.

f. Respondent-Contractor are also entitled to be paid and M/s. Central Warehousing Corporation are liable to pay simple interest @ 18% per annum on the amount of arbitral award (net amount mentioned in Sub-Para 'e' above), from date of this award (23.05.2004) to the date of payment as laid down under Section 31(7)(b) of Arbitration and Conciliation Act, 1996. This provision however is exempted in case the Claimant-Corporation arranges payment, as adjudicated above, to the Respondent-Contractor by 30-06-2004.

g. The following expenses in respect of arbitration proceedings shall be shared by the claimants & the respondents on 50:50 basis:

Arbitration fee	Rs.10,000
Air-fare from Delhi to Chennai & back twice	Rs.52,560
Air-fare: Delhi-Madurai-Chennai- Delhi	Rs.39,652
Travel costs to Delhi Airport & back 6 trips @ Rs.500/-	Rs.3,000
Each	
Hotel at Chennai on 12.04.2003	Rs.1,306
Hotel at Chennai on 13.04.2003	Rs.4,214
Daily allowance for 3 days @ Rs.370/- per day	Rs.1,110
Boarding & Lodging charges for remaining days at Chennai and Madurai – 9 days @ Rs.750/- per day	Rs.6,750
Stenographic assistance, stationery & misc: charges	Rs.7,920
Postage, Courier, telephone charge etc.	Rs.2,300
Stamp paper (purchased by me)	Rs. 150
Total	Rs.1,28,962

Amount already paid by claimants & respondents

@ Rs.50,000/- each Rs.1,00,000

Net amount now payable Rs. 28,962

The payment of Rs.28,962/- in the first instance, shall be made by the claimants, namely M/s. Central Warehousing Corporation and the proportionate amount payable on 50:50 basis by the respondents namely M/s. National Lorry Transport shall thereafter be recovered from them.”

5. Challenging the said findings of the Arbitrator, the appellant has filed



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O.P. No.650 of 2004 before this Court. The learned Single Judge after considering the terms of the agreement with respect to Claim No. 1 and Counter Claim No. 3, ie., *the liability of the contractor to pay the demurrage and wharfage charges*, had rightly come to the conclusion that the terms of the contract only stipulates that if the delay is not for the reasons beyond the control of the contractor, then only the contractor is liable to pay the demurrage and wharfage charges. The learned single Judge noted that the learned Arbitrator, on the basis of the evidence adduced before him, found that the charges incurred towards the demurrage charges and wharfage charges, are due to the shortcomings and mistakes committed by the Corporation and the first respondent contractor gave acceptable reasons to explain that they were not responsible for those charges. The view taken by the learned single Judge that it is purely a factual finding and therefore, this could not be gone into by this Court in the above Original Petition need not be interfered with.

6.While considering the findings of the Arbitrator with respect to claim No.2, ie., *Loss sustained by the Corporation towards departmental expenditure incurred for pending clearance of wagons amounting to a sum of Rs.7,06,274/-*, the learned single Judge has taken note of the fact that before the Arbitrator, no documents have been submitted by the petitioner corporation to support this claim. The arbitrator has also adverted to the fact that four months expired after



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the stoppage of the work by the first respondent contractor and in the absence of any supporting documents such as the period for which the payment has not been made, etc., it was not possible for him to award this amount and accordingly, he rejected the major portion of this claim excepting a sum of Rs.14,634/- against the claim of Rs.7,06,274/- Therefore, applying the ratio 90:10, this sum of Rs.14,634/- was awarded in favour of the petitioner. As the above finding of the Arbitrator is reasonable, the learned single Judge has rightly rejected to interfere with the same.

7.As far as Claim No.3 is concerned, ie., *A sum of Rs.2,50,738/- towards losses suffered towards the damaged stocks due to unworkmanlike performance of the Contractor*, the learned single Judge upheld the decision taken by the arbitrator that the corporation ought to have given specific notice of such claims to the first respondent contractor with full details as to the damages, date, time, place of damage and actual loss/damage which occurred to the goods to enable the contractor to refute or admit the same or to compensate it then and there. As the same was not done by the Corporation, it would be unfair to hold the contractor responsible for this issue at this stage. As held by the learned single Judge, this logical view taken in the Arbitration proceedings cannot be assailed before the Court under Section 34 of the Act.

8.While considering the finding rendered in the Award in respect of claim



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No.4 raised by the Corporation ie., *losses suffered due to payment of wages to casual labourers at differential rate for unexpired period of contract*, it was noted that the appellant Corporation failed to furnish any document to establish the losses sustained by them. In such view of the matter, the learned single Judge considered the same to be beyond the scope of interference under Section 34 of the Arbitration and Conciliation Act.

9.Claim No.5 is for a sum of Rs.6,77,185/- ie., *Loss suffered on account of re-booking and freight charges incurred by their depositor – Food Corporation of India, amounting to a sum of Rs.6,77,185/-*. After examining the evidence adduced on both sides, the learned arbitrator came to the conclusion that it is the appellant corporation who is to be blamed for adverse factors which led to delay in clearance of rakes and goods. The learned single Judge found no reason to interfere with the findings of the arbitrator that the loss have to be shouldered by the appellant and the 1st respondent in the ratio of 90:10 respectively which led to the award of Rs.67,179/- for this claim.

10.While considering the claim No.6 and counter claim Nos.1 & 6, the arbitrator found that the work under the contract came to a standstill on account of continuing breach of contractual conditions by the appellant corporation and therefore, the security deposit need to be refunded to the contractor. Accordingly, this issue was decided in favour of the first respondent contractor.



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As the findings in the Award are based on evidence and sound reasoning, the learned single Judge found the same to be falling outside the narrow scope of judicial review under Section 34 of the Act. We agree with the view taken by the learned single Judge.

11. In respect of counter claim No.2, the learned single Judge has taken note of the fact that the Arbitrator after physical examination of the route has identified the post contractual development which led to the increase in distance in the route connecting two godowns. On this background, the learned single Judge concurred with the view taken by the arbitrator that the corporation was bound to revise the rate under para (h) of clause XX of the contract. Based on the evidence, he worked out a sum of Rs.9,13,920/- as the amount payable by the appellant to the first respondent in respect of shortage of distance. There is no reason to interfere with the same.

12. While considering Counter Claim No. 4, the learned Arbitrator after referring to Section 73 of the Indian Contract Act, 1872 and the judgment of the Hon'ble Supreme Court reported in AIR 1984 SC 1703, arrived at a sum of Rs.7,38,119/- as the amount of compensation to be given to the first respondent. The learned single Judge did not interfere with the above finding as the reasons given by the Arbitrator are not perverse.

13. Counter claim No.5 is for a sum of Rs.10 lakhs towards loss of



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goodwill and reputation of the 1st respondent. While this counter claim was rejected by the Arbitrator, interest at the rate of 12% was awarded in favour of the 1st respondent while considering counter claim No.7. As the award of such interest in favour of the 1st respondent was done by overlooking clause XI of the contract, the learned single Judge thought it fit to interfere in the award of interest by the Arbitrator. Thereby, the learned single Judge set aside the interest on the security deposit granted by the Arbitrator. The learned single Judge has interfered in the award only to this extent.

14.The learned counsel appearing for the appellant contended that the Corporation has suffered a huge loss, the Arbitrator and the learned single Judge have not dealt with the actual loss incurred by the appellant herein.

15.Per contra, the learned counsel for the first respondent refuted the above argument and relied upon the Judgment of the Hon'ble Supreme Court in ***Gayatri Balasamy Vs. ISG Novasoft Technologies Limited***, reported in 2025 SCC Online SC 986, wherein it was observed as follows:

“264.3. The power to set aside will not include the power to modify since the power to modify is not a lesser power subsumed in the power to set aside and, as held hereinabove, the power to set aside and power to modify do not emanate from the same genus and are qualitatively different powers in the context of the A&C Act.”

16.It is to be noted that in an Appeal filed under Section 37 of the Arbitration and Conciliation Act, the scope of interference by the Appellate



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Court is very limited. For the sake of convenience, Section 34 and Section 37 of the Arbitration and Conciliation Act are extracted hereunder:

“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 [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



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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.]

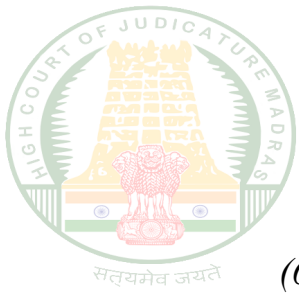
[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award: Provided that an award shall not be set aside merely on the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

(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.

[(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.



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(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.]”

“37. Appealable orders.

(1) [Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

*[(a) refusing to refer the parties to arbitration under section 8;
(b) granting or refusing to grant any measure under section 9;
(c) setting aside or refusing to set aside an arbitral award under section 34.]*

(2) Appeal shall also lie to a court from an order of the arbitral tribunal—

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or takeaway any right to appeal to the Supreme Court.”

17. It is pertinent to refer to the judgment of the Hon'ble Supreme Court in ***Punjab State Civil Supplies Corporation Limited and Another Vs. Sanman Rice Mills and others*** reported in ***2024 SCC Online SC 2632***, wherein the Hon'ble Supreme Court has observed that the award of the Arbitrator cannot be touched unless it is contrary to the substantive provision of law, any provision of the Act or the terms of the agreement. The relevant portions are extracted hereunder:

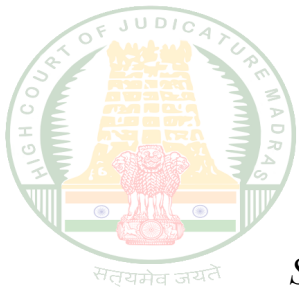
“20. In view of the above position in law on the subject, the



scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.

21. It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement.

22. In the case at hand, the arbitral award dated 08.11.2012 is based upon evidence and is reasonable. It has not been found to be against public policy of India or the fundamental policy of Indian law or in conflict with the most basic notions of morality and justice. It is not held to be against any substantive provision of law or the Act. Therefore, the award was rightly upheld by the court exercising the powers under



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Section 34 of the Act. The Appellate Court, as such, could not have set aside the award without recording any finding that the award suffers from any illegality as contained in Section 34 of the Act or that the court had committed error in upholding the same. Merely for the reason that the view of the Appellate Court is a better view than the one taken by the arbitral tribunal, is no ground to set aside the award.”

The Hon'ble Full bench of the Apex Court in ***Konkan Railway Corpn. Ltd. v.***

Chenab Bridge Project, reported in (2023) 9 SCC 85, observed as follows:

“25. ... While exercising jurisdiction under Section 37 of the Act, the Court is concerned about the jurisdiction that the Section 34 Court exercised while considering the challenge to the arbitral award. The jurisdiction under Section 34 of the Act is exercised only to see if the Arbitral Tribunal's view is perverse or manifestly arbitrary. Accordingly, the question of reinterpreting the contract on an alternative view does not arise....”

The Hon'ble Apex Court in the case of ***Somdatt Builders-NCC-NEC (JV) v.***

National Highways Authority of India and others, reported in (2025) 6 SCC

757, while considering the jurisdiction of the appellate court under Section 37 of the Arbitration and Conciliation Act when the award has been upheld under Section 34 of the Act, relied upon the following judicial pronouncements and restored the arbitral award.

“48. In Reliance Infrastructure [Reliance Infrastructure Ltd. v. State of Goa, (2024) 1 SCC 479], this Court referring to one of its earlier decisions in UHL Power Co. Ltd. v. State of H.P. [(2022) 4 SCC 116], held that scope of interference under Section 37 is all the more circumscribed keeping in view the limited scope of interference with an arbitral award under Section 34 of the 1996 Act. As it is, the jurisdiction conferred on courts under Section 34 of the 1996 Act is fairly narrow.



Therefore, when it comes to scope of an appeal under Section 37 of the 1996 Act, jurisdiction of the appellate court in examining an order passed under Section 34, either setting aside or refusing to set aside an arbitral award, is all the more circumscribed.

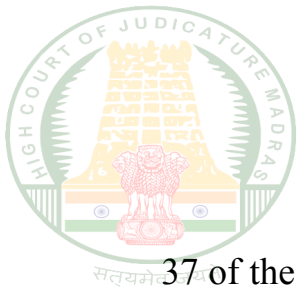
49. Again in *Larsen Air Conditioning & Refrigeration [(2023) 15 SCC 472]*, this Court reiterated the position that Section 37 of the 1996 Act grants narrower scope to the appellate court to review the findings in an arbitral award if it has been upheld or substantially upheld under Section 34.

50. This Court in *Hindustan Construction [Hindustan Construction Co. Ltd. v. NHAI, (2024) 2 SCC 613]* declared that it is the settled jurisprudence of the courts in the country that arbitral awards which contain reasons especially when they interpret contractual terms ought not to be interfered with lightly. An error in the interpretation of contractual terms by an arbitrator is an error within his jurisdiction and would, therefore, not be a ground to interfere with an arbitral award.

51. As already discussed above, the Arbitral Tribunal had interpreted Clause 51 in a reasonable manner based on the evidence on record. This interpretation was affirmed by the learned Single Judge exercising jurisdiction under Section 34 of the 1996 Act. Therefore, the Division Bench [*NHAI v. Som Datt Builders-NCC-NEC (JV)*, 2009 SCC OnLine Del 3692] of the High Court was not at all justified in setting aside the arbitral award exercising extremely limited jurisdiction under Section 37 of the 1996 Act by merely using expressions like “opposed to the public policy of India”, “patent illegality” and “shocking the conscience of the court”.

52. As reiterated by this Court in *Reliance Infrastructure [Reliance Infrastructure Ltd. v. State of Goa, (2024) 1 SCC 479]*, it is necessary to remind the courts that a great deal of restraint is required to be shown while examining the validity of an arbitral award when such an award has been upheld, wholly or substantially, under Section 34 of the 1996 Act. Frequent interference with arbitral awards would defeat the very purpose of the 1996 Act. ”

18. The above judgments clarify that the powers conferred under Section



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37 of the Arbitration and Conciliation Act can be exercised by this Court only to ascertain whether the learned single Judge has acted within the ambit of Section 34 of the Act or failed to exercise the powers conferred thereon.

19. When the findings of the Arbitrator are based on facts and not on any legal aspects, the scope of Section 34 is very limited. All the reasons stated by the learned single Judge for dismissing the claim made by the appellant herein are also purely factual. As stated supra, the learned single Judge while considering the case of the appellant, concurred with the findings rendered by the Arbitrator as the findings are based on the contractual terms agreed between the parties and the evidence available on record.

20. In view of the dictum laid down by the Hon'ble Supreme Court in the cases cited supra, the findings rendered by the arbitral tribunal, which were upheld by the learned single Judge of this Court by order dated 16.03.2009 passed in OP.650 of 2004 are in accordance with law, which does not need any interference, as the appellant failed to make out a case for interference. Hence, the Appeal filed by the appellant is hereby dismissed. There is no order as to costs.

(A.S.M., J)

(N.S., J)

17-07-2025

Index: Yes



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Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

1.M/s.National Lorry Transport
No.84, Trichy Main Road,
Salem 636 006

2.Shri Rajkumar
Sole Arbitrator
10/57, Silver Oaks DLF City -1,
Gurgaon, Haryana.



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