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

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Judgment reserved on: 08.04.2025

Judgment delivered on: 22.04.2025

+ **FAO(OS) (COMM) NO. 275/2023**

RT AND ASSOCIATES PVT LTD

...Appellant

Through: **Ms. Renu Gupta and Ms.
Pratiksha Jalan, Advocates.**

versus

BHARAT SANCHAR NIGAM LTD

...Respondent

Through: **Mr. K.P. Sundar Rao, Mr.
Shubham Choudhary and Mr.
Udesh Puri, Advocates.**

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The instant appeal under Section 37(1) of the **Arbitration and Conciliation Act¹, 1996** assails the **judgment² dated 27.09.2023** in O.M.P.(Comm.) No. 15/2015, titled '*R.T. & Associates Pvt. Ltd. v. Bharat Sanchar Nigam Ltd.*' passed by the Ld. Single Judge dismissing the petition under Section 34 of the Act. The impugned judgment was rendered in the challenge against the **arbitral award³ dated 27.06.2015**.

2. The primary grievance of the Appellant is with regard to Claim no. 1 raised by the Appellant/Claimant before the Ld. **Arbitral**

¹ The Act

² Impugned judgment

³ Award



Tribunal⁴. The Appellant contends that the Agreement dated 12.08.2009 executed between the parties did not intend that the Appellant was obliged to facilitate the execution of title documents in favour of the Respondent by the concerned authorities so as to give effect to various clauses of the Agreement for its successful execution. The Appellant contends that the Agreement was limited to requiring the Appellant to apply to the authorities on behalf of the Respondent for a change of land use, based on the title documents of the Respondent.

3. At this juncture, it would be apposite to advert the necessary facts leading up to the institution of the present appeal.

4. On 17.07.2008, the Respondent/**Bharat Sanchar Nigam Limited**⁵ published a **Notice Inviting Tender**⁶ for “*Architectural Consultancy Service for Construction of Corporate Complex at CTS Compound, Netaji Nagar, New Delhi*”. The Appellant participated in the tender process by attending the pre-bid meetings and submitting its bid.

5. The contract was awarded to the Appellant by the Respondent on 24.07.2009.

6. On 12.08.2009, an Agreement was executed between the parties, which prescribed, *inter alia*, the timelines of 6 months, 21 months and 3 months to the execution of the work assigned in three phases, *namely*, pre-commencement, construction and post-completion.

⁴ AT

⁵ BSNL

⁶ NIT



7. Clause 5.2 of the agreement stipulated the scope of the consultancy. According to Clauses 5.2.1 and 5.2.3(g), the scope of the consultancy included obtaining land ownership documents, approval from local/ statutory authorities, mutation in the name of BSNL from the Department of Telecommunications and change in land use, if required.

8. It is the case of the Appellant that to carry out mutation and change of land use, the Appellant asked the Respondent to provide the title documents of the project land. Instead of providing the same, the Respondent asked the Appellant to obtain them. The Appellant took steps in furtherance of the same and approached the **Land and Development Office**⁷. On the Appellant's persuasion, the office of the L&DO requested the Ministry of Communication and Information Technology to verify and establish the title of project land in BSNL's name; however, the attempt was futile.

9. Meanwhile, the Appellant raised part-bill, which was paid by the Respondent.

10. Alleging inaction on the part of the Appellant, the Respondent issued a **Show Cause Notice**⁸ on 15.11.2010 asserting breach of contract due to delay in completion of work. The Appellant sent two replies dated 16.11.2010 and 25.11.2010 to the said SCN stating that the delays were procedural and primarily attributable to the Respondent.

11. A dispute arose between the parties pertaining to obtaining the land ownership documents.

⁷ L&DO

⁸ SCN



12. *Vide* notice dated 29.11.2010, the Appellant invoked Clause 5.16 Agreement dated 12.08.2009 seeking appointment of an Arbitrator.
13. By memorandum dated 07.01.2011, the Respondent intimated the Appellant about the appointment of the sole Arbitrator.
14. *Vide* letter dated 29.11.2011, the Respondent terminated the contract relying on Clauses 5.15(iv), 5.7(i) and 5.7(ii) of the Agreement dated 12.08.2009.
15. The dispute was referred to Arbitration and the Ld. AT passed the Award dated 27.06.2015 and the correction Award dated 03.07.2015 allowing Claim no. 2(c) partially and Claim no. 5 of the Appellant and Counterclaims nos. 4, 6 and 7 of the Respondent.
16. Being aggrieved, the Appellant filed a petition under Section 34 of the Act impugning the award on limited grounds. The Ld. Single Judge dismissed the petition. In the impugned judgment, the Ld. Single Judge recorded the contentions of the parties and held as under:

“SUBMISSIONS BEFORE THIS COURT

28. Consultant restricted its challenge in the present petition to the misinterpretation of Clauses 5.2.1 and 5.2.3(g) of the Agreement by the AT, which, according to the Consultant, has rendered the finding patently illegal. Consultant has argued that the obligation under Clauses 5.2.1 and 5.2.3(g) only obliged it to apply to the authorities on behalf of BSNL for change of land use based on title documents of BSNL. It could not have been the intent behind Clauses 5.2.1 and 5.2.3 that the Consultant was obliged to facilitate execution of title documents in favour of BSNL by the concerned authorities. It is contended that, to this extent, the AT's reading of the aforesaid clauses is unreasonable and hence patently illegal.

A contention was raised, although half-heartedly, suspecting the competence of the Arbitrator to act as an arbitrator in the dispute. It was alleged that he was an ex-employee of BSNL and was involved in the preparation of tender documents pertaining to this very contract. However, the challenge was given up by the Consultant conceding that it did not have any evidence to substantiate the allegation.



29. BSNL contended that AT's finding regarding Consultant's obligation under Clause 5.2.3(g), is consistent with the letter and spirit of aforesaid clauses. What was expected of the Consultant under Clause 5.2.1 and 5.2.3(g) was fully emphasised in the pre-bid meeting dated 24.02.2009, where BSNL clarified that the Consultant had to obtain the land ownership documents as well as mutation and change of land use. It is contended that there was no scope for any ambiguity regarding the scope of Clause 5.2.3(g). Consultant's contention therefore is contrary to the facts and intention of the parties. It was further argued by BSNL, that termination of the contract was also on account of the Consultant abandoning the site with its personnel thereby abandoning the contract itself.

DISCUSSION AND CONCLUSION

30. The ground of patent illegality came to be interpreted by Supreme Court in Delhi Airport Metro Express (P) Ltd. v. Delhi Metro Rail Corporation Ltd. [(2022) 1 SCC 131] in the following words: -

“29. 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 categorised 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 reappreciate 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”.”



31. The contention raised herein requires interpretation of Clause 5.2.3(g) of the Agreement which is extracted hereunder:

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“g. The Architectural Consultant shall be responsible for pursuing and obtaining of all approvals from all Local/ Statutory authorities according to prevailing bye- laws, Laws, and Regulations etc including obtaining land ownership documents, mutation and change in land use if required. The BSNL shall pay all statutory fees required for obtaining the approvals from various local bodies/statutory bodies.

(emphasis added)

32. The aforesaid clause was interpreted by the AT to observe that the clause was incorporated after a number of pre-bid conferences. A plain reading of the clause (g) would show that the Consultant was obligated to obtain ownership documents as well as mutation and change of land use. Minutes of pre-bid meeting have been relied upon by the AT to conclude that the Consultant was obliged to obtain title documents from the authorities. The scope of Clause 5.2.3(g) has been interpreted by the AT and the interpretation seems to be reasonable. Consultant’s contention that the interpretation adopted by AT would lead to absurd consequence since the Consultant was expected to “create” title documents in favour of BSNL, is not borne out to be correct from the award. AT has only held that the Consultant was obliged to obtain title documents from the authorities and apply for land use etc., if required.

33. It is seen that the AT has neither travelled beyond the contract between the parties, nor are its findings unreasonable much less suffering from any patent illegality known to law. The award is based on evidence produced by the parties, with opportunity of hearing given to the parties, and thus, the AT adopted a judicial approach in deciding the claims.

34. With no other ground raised, the petition merits dismissal.

(emphasis supplied)

17. It is a settled position that the appellate power of this Court under Section 37 of the Act is limited and cannot be exercised in a cavalier manner. The Hon’ble Supreme Court in **MMTC Ltd. v. Vedanta Ltd.**⁹ contemplated upon the narrow scope of appeal under Section 37 of the Act and observed that:

⁹ (2019) 4 SCC 163



“14. As far as interference with an order made Under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference Under Section 37 cannot travel beyond the restrictions laid down Under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court Under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court Under Section 34 and by the court in an appeal Under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.”

(emphasis supplied)

18. A three-judge Bench of the Hon’ble Supreme Court in ***UHL Power Co. Limited v. State of Himachal Pradesh***¹⁰ observed the following:

“15. This Court also accepts as correct, the view expressed by the appellate court that the learned Single Judge committed a gross error in reappreciating the findings returned by the Arbitral Tribunal and taking an entirely different view in respect of the interpretation of the relevant clauses of the implementation agreement governing the parties inasmuch as it was not open to the said court to do so in proceedings Under Section 34 of the Arbitration Act, by virtually acting as a court of appeal.

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.”

(emphasis supplied)

19. Similarly, the Hon’ble Supreme Court in ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills***¹¹ held that:

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.

¹⁰ (2022) 4 SCC 116

¹¹ 2024 SCC OnLine SC 2632



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.

(emphasis supplied)

20. The limited contention advanced by the Appellant in the present appeal is with regard to the alleged misinterpretation of Clause 5.2.3(g) of the Agreement. The Appellant has, in essence, argued that its obligation under Clause 5.2.3(g) required them to apply for change in land use to requisite authorities based on title documents already under the name of the Respondent and this clause did not mean that the Appellant had to obtain the said documents in order for it to proceed further and carry out its obligations under the Contract. The Appellant also contends that it was ready and willing to perform the contract, but the lack of the ownership documents stood in its way to proceed further.

21. The general scope of the consultancy under the contract was provided in Clause 5.2.1 of the Agreement dated 12.08.2008, which, *inter alia*, states as under:

“5.2.1. the Scope of Consultancy provides for
..... and obtaining approval from



local/statutory authorities i/c land use change if required and mutation in the name of BSNL from DoT.....”

(emphasis supplied)

22. The general scope as provided under Clause 5.2.1, was further elaborated in the subsequent clauses. This fact is clear from the phrase used after Clause 5.2.2 which states that “....***the details of services to be provided by the consultant shall, inter-alia, include the following***”.

23. Clause 5.2.3 specifically sets out, in detail, various obligations under the heading ‘Architectural Design’.

24. Sub-clause (g) of Clause 5.2.3, in particular, is relevant for the present purposes and reads as follows:

“g. The Architectural Consultant shall be responsible for pursuing and obtaining of all approvals from all Local Statutory authorities according to prevailing bye- laws, Laws, and Regulations etc including obtaining land ownership documents, mutation and change in land use if required. The BSNL shall pay all statutory fees required for obtaining the approvals from various local bodies/statutory bodies.”

(emphasis supplied)

25. To our mind, Clause 5.2.3(g), in unambiguous terms, vests upon the Appellant the obligation of “...*including obtaining land ownership documents, mutation and change in land use if required*”. It is, in fact, the case of the Appellant, that in order to obtain all necessary approvals, the land ownership documents would be required. If the land ownership documents were already with the Respondent, there would have been no necessity for the sentence quoted hereinabove. This, viewed in conjunction with the pre-bid meetings where this aspect had been discussed and deliberated upon, leaves no scope for “interpretation” of the said clause. The said clause



is expressly inclusive of the obligation of the Appellant to obtain the land ownership documents.

26. There is further aspect that the Appellant's initial Claim no. 1 before the Ld. AT which was, in the following terms, '*...the termination letter no.02/EE(C)/BSNL/CTS/ND/146 dated 29.11.2011 of the agreement dated 12.8.2009 is illegal, null and void*' was, on 21.12.2011, amended in the following terms, '*Direct the respondent to cooperate with the claimant and to provide all necessary documents with regards to the property in question to enable the claimant to obtain the necessary permissions, CLU, NOCs etc. so as to give effect to the various clauses of the agreement for the successful execution of the agreement dated 12.08.2009; and that the termination letter no.02/EE(C)/BSNL/CTS/ND/146 dated 29.11.2011 of the agreement dated 12.8.2009 is illegal, null and void*'.

27. The said amended claim, to our mind, is a clear admission of the abject failure on the part of the Appellant to perform its agreed terms of the Agreement.

28. The termination letter dated 29.11.2011 was the natural corollary of the resulting failure and the consequence thereof.

29. In view of our discussion above, while affirming the judgment of the Ld. Single Judge, we are of the considered view that there is no merit in the present appeal and the same is, consequently, dismissed.

30. No orders as to costs.

SUBRAMONIUM PRASAD, J.

HARISH VAIDYANATHAN SHANKAR, J.
APRIL 22, 2025/sm/er/as