



2025:DHC:7227-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 12th August, 2025*+ **FAO(OS) (COMM) 125/2025 & CM APPL. 49600/2025, CM APPL. 49601/2025, CM APPL. 49602/2025****B.G. SHIRKE CONSTRUCTION TECHNOLOGY PVT. LTD.**

.....Appellant

Through: Mr. Rajiv Kapoor and Mr. Ashit Kapoor, Advs.

versus

ARMY WELFARE HOUSING ORGANISATION & ANR.

.....Respondents

Through: Counsel appearing for the respondents (Appearance not given)

CORAM:**HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE****HON'BLE MR. JUSTICE ANISH DAYAL****JUDGMENT (ORAL)****ANISH DAYAL, J.**

1. This appeal has been filed assailing the judgment dated 30th May 2025 passed by the Single Judge of this Court in **O.M.P. (COMM) 205/2021** captioned *B. G. Shirke Construction Technology Pvt. Ltd v. Army Welfare Housing Organisation & Anr* ('*impugned judgement*').

2. A petition was filed under Section 34 of the Arbitration &



Conciliation Act, 1996 (*'A&C Act'*) objecting to the award dated 19th April 2021 (*'impugned award'*) delivered by the Arbitral Tribunal comprising of a Sole Arbitrator (*'AT'*), which was dismissed by the Single Judge. The facts in brief are as under:

- (i) Appellant submitted its bid in response to the respondent's tender on 13th April 2010 and was awarded the *Work of Construction of Residential Accommodation for AWHO at Kanamangala (Part A) Bangalore* on 04th May 2010. Time period for completion was 30 months, however, it was completed on 10th October 2015, after two extensions.
- (ii) Appellant issued a 'No Claim Certificate' on 14th November 2018; but after receipt of final payment, appellant invoked the arbitration clause on 25th November 2019, in relation to its escalation claim made under Clause 127 of the General Conditions of Contract (*'GCC'*).
- (iii) The issue related to computation of price escalation for labour component of the contract. Essentially, the Appellant claimed that the last known and published base index for minimum wage was at the rate of **Rs. 117.19**, published in March 2009. No further notification was issued in March 2010. The bid was submitted on 13th April 2010 and the contract was awarded on 4th May 2010, therefore, making the last published rate of Rs. **117.19** as the base index for working out the price



escalation on the labour component.

- (iv) In June 2010, the revised rate of **Rs. 131.60** was published and thereafter, applied by the respondent while computing the labour component. The Appellant claimed that this revised rate was published two months after the submission of tender and was not present in public domain, therefore, could not have been applied.
- (v) Previously, a draft proposal had been published on 9th July 2009 by the Labor Department, Government of Karnataka, inviting objections from the general public, to a revised rate of **Rs. 141.18**. Subsequently, this rate was published *vide* Labour Index Notification No. *KAE 95 LMW 2008* on 25th January 2011 and notified on 3rd March 2011. Thereafter, as noted in *RA Bill No. 41*, the revised rate of **Rs. 141.18** was applied by the respondent for the period of 1st April 2010 to 31st March 2011.
- (vi) Letters in this regard were issued by the respondent dated 5th September 2013 and 1st October 2013, wherein, the revised rate of **Rs. 141.18** was clarified to be the applicable rate based on the draft proposal published on 9th July 2009, which did not attract any objections and was applicable w.e.f. 1st April 2010.
- (vii) As per the appellant, the newly published rate in January 2011 of **Rs. 141.18** would also not be applicable, since the rate known and published prior to the submission of tender was only **Rs. 117.19**.



(viii) In this regard, reliance was placed on *Clause 127, Note No. 4* under GCC, which is extracted as under:

“if the increase/decrease in wages of labour is notified/ announced subsequent to the date of receipt of tender with retrospective effect without making the same publicly known by means of publicity/ media prior to the date of receipt of tender, then the value of Lo shall be as per the wage known at the time of receipt of tender.”
(emphasis added)

3. The Court is cognizant of the limited scope of inquiry in an appeal filed under Section 37 of the A&C Act. In this regard, reference may be made *inter alia* to the following decisions:

3.1. The Supreme Court in ***Somdatt Builders-NCC-NEC (JV) v. NHAI***, (2025) 6 SCC 757, held that the Court cannot reopen the merits of a case while hearing a Section 37 appeal. The relevant paragraphs are extracted as under:

“45. In MMTC Ltd. Vs. Vedanta Ltd. [(2019) 4 SCC 163], this Court held that as far as Section 34 is concerned, the position is well settled that the court does not sit in appeal over an arbitral award and may interfere on merits only on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. Even then, the interference would not entail a review on the merits of the dispute but would be limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse or when the conscience of the court is shocked or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. As far



as interference with an order made under Section 34 by the court under Section 37 is concerned, it has been held 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.

48. In Reliance Infrastructure [(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”.

(emphasis added)

- 3.2. Similarly, in **Konkan Railway Corpn. Ltd. v. Chenab Bridge Project**, (2023) 9 SCC 85, the Supreme Court reiterated that the scope of jurisdiction under Section 34 and Section 37 of the A&C Act, is not akin to normal appellate jurisdiction and interference with an arbitral award should not be done in a casual and cavalier manner. The relevant paragraph is extracted as under:

“25. *The principle of interpretation of contracts*



adopted by the Division Bench of the High Court that when two constructions are possible, then courts must prefer the one which gives effect and voice to all clauses, does not have absolute application. The said interpretation is subject to the jurisdiction which a court is called upon to exercise. 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. If this is the principle applicable to exercise of jurisdiction under Section 34 of the Act, a Division Bench exercising jurisdiction under Section 37 of the Act cannot reverse an award, much less the decision of a Single Judge, on the ground that they have not given effect and voice to all clauses of the contract. ...

(emphasis added)

4. In consonance with the letter and spirit of the settled law, what the Court needs to assess is whether, the impugned judgment examined objections raised by the appellant in the right perspective and within the parameters of what is permitted for an inquiry under Section 34 of the A&C Act.

5. The Single Judge in the impugned judgment narrowed down the controversy basis *Clause 127 Note No. 4*. This also telescoped the inquiry carried out by the AT to arrive at the conclusion that the minimum wage fixed for the month of April 2010 was already publicized and put out in public domain in July 2009, way before it



was gazetted in June 2010. The impugned judgment noted the respondent's contention that the notification was based on a draft notification published in Part 4-A of the Karnataka Gazette dated 09th July 2009, which therefore, proved that the anticipated minimum wage for the month of April 2010 had already been put out in the public domain in the month of July 2009 itself and as a result, would be squarely covered by *Clause 127 Note No. 4*, and accordingly would apply for the month of April 2010.

6. It was noted that the AT had referred to Section 5 of the Minimum Wages Act, 1948 (*'MW Act'*) and concluded that the revision of minimum wages is preceded by appointment of committees and publication of proposals in the Official Gazette for public response and feedback. The draft proposal dated 09th July 2009, preceding the notification dated 25th February 2011, were relied upon as relevant pieces of evidence. The AT expressed doubts regarding *Ex.CD-7* and *Ex.CD-8*, which were relied upon by the appellant and were found to be discrepant with each other. In this scenario, post assessment, the Single Judge concluded as under:

"25. The reasoning adopted by the AT to evaluate evidence is reasonable and judicious. The AT's interpretation of Clause 127 is only judicious interpretation that could be conceived since the text of the Clause does not seem to be open to diverse interpretation."

7. Even on the issue of escalation pertaining to Steel, Cement, Fuel and Lubricants (FOL) and other material, the Single Judge noted its conclusions as under:



“26. Regarding the applicability of indices for calculating escalation pertaining to Steel, Cement, Fuel and Lubricants (FOL), and other material, the AT, observed that Clauses 125, 126 and 130, which deal with the escalation in these components, are unambiguous in their intent. According to the plain language of these clauses, the indices prevalent on the last day of submission of tender would be applied for calculation. AT rightly rejected any attempt to interpret the said causes by booting the explanatory Notes from Clause 127-which pertain to labour escalation, into the above clauses to change the plain meaning of the language of these clauses. 27. AT's interpretation of the Clauses 125, 126 and 130 seems to be the only obvious interpretation, since the language of the clauses does not permit diverse interpretations. In any case, the present challenge has only been confined to the finding with respect to the labour component.”

(emphasis added)

8. A perusal of the award would show that the conclusion arrived at by the AT is as under:

“82. Vide its letter dated 01.10.2013 the Labor Department, Government of Karnataka has clarified that the notification dated 25.01.2011 was published in the Gazette on 03.03.2011. The respondent has claimed in its reply that notification dated 25.01.2011 is based on draft proposal published in Part-4 (A) of Karnataka Gazette Notification dated 09 Jul 2009 and that the claimant knew and was fully aware of the said draft proposal at the time of quoting his offer. The claimant has denied that any draft notification was published on 09.07.2009 and that the respondent has brought no evidence on record that the draft notification was published on 09.07.2009.

83. It is settled law that official acts are presumed to be done lawfully and one who challenges has to rebut this presumption. It is important to note that notification



25.01.2010 was issued under the Minimum Wages Act 1948 and the statutory procedure prescribed is as per Section 5 which reads:

5. Procedure for fixing and revising minimum wages-

(1) *In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate Government shall either-*

(a) appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be, or

(b) by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration.

(2) *After considering the advice of the committee or committees appointed under clause (a) of sub-section (1), or as the case may be, all representations received by it before the date 'Specified in the notification under clause (b) of that sub-section, the appropriate Government shall, by notification in the Official Gazette, fix, or, as the case may be, revise the minimum rates of wages in respect of each schedule employment, and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue:*

Provided that where the appropriate Government proposes to revise the - minimum rates of wages by the mode specified in clause (b) of sub-section (1), the appropriate Government shall consult the Advisory Board also."

(emphasis added)

9. This Court does not find any reason to entertain this appeal against the impugned judgment, considering that it does not suffer



from any infirmity on grounds of public policy of India or patent illegality. Grounds taken in the appeal concern the minimum wage which would be valid and applicable as per *Clause 127 Note No. 4*, regarding which an interpretation was arrived at by the AT and further, upheld by the impugned judgment.

10. These issues raised by the appellant, do not fall within the parameters of what is permitted under a Section 34 inquiry and further, under Section 37 of the A&C Act, considering that these are aspects relating to the merits of the matter. Moreover, the conclusion reached by the AT is a reasonable and plausible view, backed with reasoning and cogent assessment.

11. The appeal is therefore, dismissed and matters must, therefore, rest.

12. The impugned judgment is upheld and consequently the impugned award as well.

13. Pending applications, if any, are rendered infructuous.

14. Order be uploaded on the website of this Court.

**ANISH DAYAL
(JUDGE)**

**NITIN WASUDEO SAMBRE
(JUDGE)**

AUGUST 12, 2025/MK/sp