

Reserved on: 24.04.2024

Delivered on: 06.05.2024

Chief Justice's Court

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 DEFECTIVE No. - 167 of 2022

Appellant :- State of U.P.

Respondent :- Nath Construction And Another

Counsel for Appellant :- Siddharth Singh Shrinet

Counsel for Respondent :- Jagat Narayan Mishra

Hon'ble Arun Bhansali,Chief Justice

Hon'ble Vikas Budhwar,J.

In Re: Delay Condonation Application No. Nil of 2022

1. Heard learned counsel for the parties on delay condonation application.
2. The Stamp Reporter has reported a delay of 21 days in preferring the appeal.
3. The learned counsel for the claimant-respondent has not objected to the delay condonation application.
4. Since the delay in filing the appeal is 21 days, and the same has sufficiently been explained, thus, the delay condonation application seeking to condone the delay of 21 days is **allowed**. The delay in filing the appeal is condoned.

Order on Appeal

1. This is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') against the order dated 20.07.2022 passed by the Commercial Court, Moradabad in Arbitration Case No.14 of 2019 (Executive Engineer Madhya Ganga Canal Construction Division and others vs. Nath Constructions), whereby application purported to be under Section 34 of the Act preferred by the appellant-objector for setting aside the award passed by the sole arbitrator on 12.09.2018 was rejected.
2. Brief facts sans unnecessary details as worded in the present appeal are that the appellant-State through Executive Engineer, Madhya Ganga Canal Construction Division-15, Moradabad

floated a tender inviting bids from the bidders on 14.12.2010 for completion of the work of construction of Left Side Officer's Camp Office at Tubewell Colony, Moradabad.

3. As per the appellant-objector, the claimant-respondent along with others applied in pursuance of the tender notice and since the claimant-respondent's bid was lowest, consequently, an agreement was executed between the appellant-objector and the claimant, agreement no. 01/EE/NGC/Div.-15/Moradabad/2010-11 on 14.03.2011. The claimant-respondent was further required to deposit INR 1,41,500/- as security deposit and INR 28,000/- the earnest money along with stamp duty.

4. It is allegation of the appellant-objector that though claimant-respondent was required to complete the work entrusted to it within a period of 9 months, as per the schedule i.e. 13.12.2011, however, the claimant-respondent completed the same on 15.10.2014 after extension of time as per revised drawing and a request letter dated 24.08.2012 for executing the standard work.

5. Since dispute arose between the parties, thus as per the terms and conditions of the agreement, the Chief Engineer, Madhya Ganga Pariyojana, Aligarh on 11.09.2017 in accordance with Clause 42 of the Contract Agreement appointed Superintending Engineer, U.P. Irrigation, Eastern Ganga Canal, Construction Circle, Haridwar (Uttarakhand) as the sole arbitrator.

6. The claimant-respondent filed its claim petition claiming the award of INR 32,84,650/- along with interest @ 18% per anum from 16.10.2014 till the date of the award. The appellant-objector submitted its objection/ written statement on 04.01.2018 followed by another reply/ objection on 01.05.2018.

7. Thereafter the sole arbitrator pronounced the award dated 12.09.2018 allowing the claim of the claimant-respondent awarding INR 17,37,261.00 (Seventeen Lakhs Thirty Seven Thousand and Two Hundred Sixty One rupees) along with 6% interest per anum to be paid within three months and in case, the payments are not made within the stipulated period, future interest @6% became admissible.

8. Challenging the award dated 12.09.2018 passed by the sole arbitrator, the appellant-objector preferred an application under Section 34 of the Act, which on contest came to be rejected on 20.07.2022.

9. Questioning the order dated 20.07.2022 passed by the Commercial Court, Moradabad in Arbitration Case No. 14 of 2019, the present appeal has been preferred.

10. Sri Ankit Gaur, learned Standing Counsel appearing for the appellant-objector has submitted that the award dated 12.09.2018 as well as the order passed by the Commercial Court rejecting the application under Section 34 of the Act cannot be sustained for a single moment, particularly, in view of the fact that the present case is a classic example of patent illegality, as the sole arbitrator without recording any reason has allowed the claim of claimant-respondent.

11. In nutshell, it is urged that disputing the claim of the claimant-respondent, the appellant-objector submitted a detailed objection/reply on 04.01.2018 followed by another reply/objection on 01.05.2018 clearly setting out the fact that it was the claimant-respondent, who was responsible for the delay, which denuded the claimant-respondent for the award of the amount as claimed, but the arbitrator has proceeded to allow the claim on mere asking ignoring the vital fact that the burden to establish and substantiate the claim was upon the claimant-respondent and since it failed to discharge its burden, the claimant-respondent was not entitled for the monetary benefits.

12. While referring to Sub-section (3) of Section 31 of the Act, it is submitted on behalf of the appellant-objector that the duty is cast upon the arbitrator to state the reasons upon which the award is based, however, the said condition precedent would not apply in those contingency when the parties have agreed that no reasons are to be given or in the case of consented award. Since these two exceptions are lacking, arbitrator committed patent illegality in passing the award in the direct teeth of the above noted statutory provision. Reliance has also been placed upon the judgment in the case of *M/s. Som Datt Builders Ltd. Vs. State of Kerala, 2009 (6) Supreme 723*, and *Dyna Technologies Pvt. Ltd. Vs. Crompton Greaves Ltd., (2019) 20 SCJ 501*, so as to contend that in case, the award lacks reasons, then it is vulnerable and is liable to be set aside.

13. Countering the said submission, Sri Jagat Narayan Mishra, learned counsel who appears for the claimant-respondent has submitted that the perusal of the award of the sole arbitrator dated 12.09.2018 would clearly go to show that the same is a reasoned award in view of the fact that as many as 14 issues were framed by the arbitrator and the claims, which are 8 in numbers and after

detail discussion stood allowed in favour of the claimant-respondent while awarding INR 17,37,261/- along with interest. It is also submitted that the reply/ objections of the appellant-objector was considered in right perspective and thereafter award was passed.

14. Additionally, it has been argued that from a plain reading of the objection/ reply of the appellant-objector before the Arbitral Tribunal and also before the Commercial Court under Section 34 of the Act would show that virtually there was no serious dispute raised with regard to the claims of the claimant-respondents as for the sake of denying the same evasive reply was given. However, the learned sole arbitrator after meticulously analysing the record has passed a reasoned award, which needs no interference.

15. Aid has been taken to the judgment of the Hon'ble Apex Court in the case of ***Reliance Infrastructure Ltd. Vs. State of Goa, 2023(0) Supreme (SC) 495***, while contending that the powers encapsulated under Section 34 have limited scope of interference in the arbitral award and the same is not to be lightly interfered with, until and unless there is patent illegality or the award is perverse either in proceeding under Section 34 or 37 of the Act and since the present case does not fall under the said exceptions thus, the orders impugned need no interference and the appeal is liable to be set aside.

16. We have heard learned counsel for the parties and perused the record carefully.

17. It is not in dispute that the claimant-respondent was awarded a contract on 14.03.2011 for construction a Left Side Officer's Camp Office at Tubewell Colony, Moradabad. It is also not in dispute that the work under the said agreement was to be completed by 13.12.2011, however, the same stood completed on 15.10.2014 after extension by the appellant-objector. Parties are in agreement that the said dispute was arbitral in view of Clause 42 of the Contract Agreement.

18. The bone of contention between the rival parties is whether the learned Arbitrator had committed illegality while awarding the said amount without considering the objections of the appellant-objector or not.

19. To test the said submission, this Court is required to go through the pleadings set forth by the respective parties. Perusal of the record reveals that two objections were submitted by the appellant-

objector before sole Arbitrator, firstly, on 04.01.2018 and secondly, 01.05.2018. Carefully going through the objections/ reply of the appellant-objector, it reveals that the same is not specific and sans details. Though in the reply/ objections of the appellant-objector annexures have been referred to in various paragraphs, but the same has not been appended. Moreso, in the application under Section 34 of the Act, filed before the Commercial Court only this much has been said that the award is totally non-speaking and unreasoned. Furthermore, paragraph-13 of Section 34 application filed before the Commercial Court refers to Ground No(s). A to J. A bird-eye of the same reveals that the grounds assailing the award are general, not specific and untenable, as if it was taken for name sake for disputing the claim of the claimant-respondent. Nonetheless, the award of the sole arbitrator depicts that as many as 14 issues were framed, which were discussed in detail and while allowing the claims, reasons were also indicated. Even before this court, in the present proceedings neither any material has been placed on record, nor any argument has been advanced as to what is the factual basis and foundation, which renders the award to be suffering from patent illegality.

20. This Court has to bear in mind the contours of the appellate proceeding under Section 37, since it is also limited to the scope and ambit of the challenge under Section 34 of the Act. To put it otherwise, the awards are not required to be set aside on the ground of erroneous application of law or by reappraisal of the evidence until and unless it suffers from patent illegality.

21. So far as the reliance and the reference placed by the learned Standing Counsel appearing for the appellant upon the judgment in the case of *M/s. Som Datt Builders Ltd. (supra)*, and *Dyna Technologies Pvt. Ltd. Vs. Crompton Greaves Ltd. (supra)* that the arbitral award shall contain reasons as per the mandate of Section 31(3) of the Act, to such a proposition there is no quarrel. However, the same depends upon the pleadings and the documents available on record. Once the appellant-objector had neither specifically pleaded and denied the claim of the claimant-respondent, nor substantiated its case in a correct perspective, then obviously the award cannot be said to be vitiated, particularly, when the arbitrator is not supposed to assume things, which even in fact are not before it. Moreover the Court finds that the award is a reasoned one taking into account each and every aspect of the matter.

22. Nonetheless, the Hon'ble Apex Court in the case of *Delhi Airport Metro Express Private Limited Vs. Delhi Metro Rail*

Corporation Limited reported in **2022 (1) SCC 131** has observed as under: -

"The members of the Arbitral Tribunal, nominated in accordance with the agreed procedure between the parties are Engineers and their award is not meant to be scrutinized in the same manner, as one prepared by legally trained minds."

23. Following the judgment in the case of **Delhi Airport Metro Express Private Limited (supra)** recently, the Hon'ble Apex Court in Civil Appeal No.8067 of 2019, **S.V. Samudram Vs. State of Karnataka** decided on 04.01.2024 in paragraph-19 held as under:

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"19. It is also a settled principle of law that an award passed by a technical expert is not meant to be scrutinised in the same manner as is the one prepared by a legally trained mind (Delhi Airport Metro Express Private Limited Vs. Delhi Metro Rail Corporation Limited) (2022 (1) SCC 131)."

24. The aforesaid legal proposition stands squarely applied in the present facts of the case, particularly, when the award has been passed by a technical expert, who happens to be the Superintending Engineer of the U.P. Irrigation Department.

25. Viewing the case from all angles, this Court is of the firm opinion that the appellant-objector has miserably failed to show any patent illegality warranting interference in appellate jurisdiction. Mere allegation would not suffice until and unless it stands substantiated from the pleading and the records. Since the same is lacking, thus no interference is warranted in the present appeal.

26. Accordingly, the appeal being devoid of merit is **dismissed**.

Order Date :- 06.05.2024

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(Vikas Budhwar, J.) (Arun Bhansali, C.J.)