2025:CGHC:47984-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ARBA No. 11 of 2020

1 - State Of Chhattisgarh Through Secretary, Department Of Water Resources Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur Chhattisgarh.

2 - Secretary Department Of Water Resources, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur Chhattisgarh.

3 - The Chief Engineer Minimata Hasdeo Bango Project, Bilaspur Chhattisgarh.

4 - The Executive Engineer Kelo Project, Survey Division, Raigarh, Tehsil And District Raigarh Chhattisgarh.

... Appellant (s)

versus

M/s Anjani Steels Limited Through Its Authorized Signatory Sh. R.N. Pradhan, S/o Murlidhar Pradhan, Office At Village Ujalpur, Post Girwani, Tehsil Ghaghoda, Police Station Punjipathra, District Raigarh Chhattisgarh.

... Respondent

For Appellants/ State	: Mr. Prafull N. Bharat, Advocate General alongwith Mr. Sangharsh Pandey, Govt. Adv.
For Respondent	: Mr. Abhishek Sinha, Senior Advocate alongwith Mr. Ghanshyam Patel, Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

Per Bibhu Datta Guru, J

18/09/2025

1. This arbitration appeal has been preferred against the impugned order dated 18/10/2019 passed by the Commercial Court (District Level),

Raipur in M.J.C. No. 44/2018, whereby the award dated 09/09/2018 passed by Hon'ble Shri Justice L.C. Bhadoo (Retd.), Sole Arbitrator, in the matter of M/s Anjani Steels Ltd. vs. State of Chhattisgarh & Ors., was upheld.

facts of the case :

2. (i) For establishing a Steel and Power Plant in the State of Chhattisgarh, the respondent, M/s Anjani Steel Limited, entered into a Memorandum of Understanding (MoU) with the State of Chhattisgarh in 2003, proposing to invest Rs. 185 crores in the State for setting up the aforesaid plants. Subsequently, in 2007, a second updated MoU was executed between the parties with a proposal to invest Rs. 410 crores in the State. Pursuant to the aforesaid MoUs, the respondent company set up a Sponge Iron Plant and a 12 MW Power Plant in Ujalpur, District Raigarh, Chhattisgarh. The respondent was also in the process of expanding its unit by establishing a 60 MW Power Plant. Since the respondent company required a large quantity of water for its plants, it moved an application on 10.09.2007 before the appellant's department, seeking allotment of 33.3 Cu. Mtr./Hour of water. As the Government did not take any action on the said application, the respondent company again filed a second application on 12.06.2009 before the appellant's department, referring to its earlier pending application, and further informed that its present water requirement was 0.29 Million Cu. Mtr./Year. It was also stated that the requirement would increase once the 60 MW Power Plant expansion became operational. The

appellants/State accepted the respondent's proposal and agreed to meet the requirement of 0.29 Million Cu. Mtr./Year as well as the additional requirement of 1.52 Million Cu. Mtr./Year in the future for the 60 MW Power Plant and the integrated Steel Plant, after construction of the Kelo Dam on the Kelo River.

(ii) As per direction of the appellants department vide their letter dated 16.10.2009, the respondent company deposited the commitment charges of Rs.45,250/- with the appellants Department for supply of water. Thereafter, the appellants Department vide order dated 12.11.2009 allotted 1.81 Million Cubic Meter (MCM) Water annually in favour of the respondent company to be drawn from the Kelo River. Subsequently, the respondent company had deposited an amount of Rs.13,57,500/- as security deposit with the appellants Department. On the basis of the same, on 11.12.2009, an agreement regarding supply of water to the respondent's plants was entered between the parties.

(iii) The respondent vide letter dated 23.12.2009, made a representation to the appellant No. 4 to raise the bill of water as per the present requirement i.e. 0.29 MCM water/ year of respondent. Thereafter the respondent started drawing water from Kelo River as per its requirement of 0.29 Million Cubic Meter/ year only for the Steel Plant, instead of the total allotted quantity of 1.81 Million Cubic Meter/year. The appellant department vide letter dated 05.07.2010 issued the bill for water usage in respect of the entire 1.81 Million Cubic Meter for the period 12.12.2009 to 30.06.2010. After that the respondent made

repeated request and made several representations before the appellant department seeking rectification of bills on the basis of its present requirement of 0.29 Million Cu. Meter/year but the appellant department reiterated their direction to pay water charges and warned them else the agreement of the respondent would be terminated.

(iv) When the aforesaid request made by the respondent with regard to rectification of bills does not yield any result, the respondent vide letter dated 29.05.2013 requested the appellant No.4 to initiate the proceedings of mutual discussion, as per Clause 23 of the agreement. Despite the said prayer no action has been taken by the authorities in this regard. Thus, the respondent approached this Court by filing a WPC No. 1663/2014. During the pendency of the above mentioned Writ Petition, the appellant Department intimated to the respondent that the Department can reduce the allotment from 1.81 Million Cubic Meter/ year to 0.29 Million Cubic Meter/ year, if the claimant agrees not to raise the demand of more water for the next 20 years. In the meanwhile, vide order dated 08.05.2014 this Court disposed of the Writ Petition granting liberty to the respondent to avail the remedy of arbitration. Thereafter the respondent invoked the Arbitration Clause as per the Agreement, but the Arbitrator was not appointed by the appellants and again a demand notice was sent to the respondent. Therefore, the respondent moved an application under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (in brevity, “the Act of 1996”) before this Court for appointment of arbitrator vide ARBA No.2 of 2015, wherein by order dated 23.04.2015 the Arbitrator was appointed.

(v) After appointment of the Arbitrator, the respondent filed following claims :-

> "**Claim No. 1**:- Liability to pay water charges @ 0.29 Million Cubic Meter water per year from December 2009 till date.
>
> **Or Alternatively**
>
> To direct reduction of water allotment to 0.29 million Cubic Meter/Year w.e.f. December 2009 till the 60 MW power plant of the claimant is established, without any arbitrary condition as imposed in letter dated 31.10.2013.
>
> **Claim No. 2**:- Refund of the excess amount deposited since Dec 2009.
>
> **Claim No. 3**: No liability to pay interest on the water charges for 0.29 Million Cubic Meter/ year since July 2012 till date.
>
> **Claim No. 4**:- Interest Past, Pendente Lite and future.
>
> **Claim No.5**:- Cost of Arbitration." (Emphasis supplied)

(vi) The appellants herein also filed its Counter Claim of Rs.8,53,06,786/- against the respondent/claimant before the Learned Sole Arbitrator.

(vii) After considering whole material available on record, evidence and submission rendered by both the parties, the Learned Sole Arbitrator adjudicated the matter and passed the final Award on 09.09.2018. The substantive portion of Award dated 09.09.2018 is as under:-

"i. The respondent is not entitle for the counter claim for the agreed additional water i.e. 1.52 Million Cu. Meter per year. Similarly the claimant is not entitle for any refund of amount.

ii. The respondent and the Claimant are not entitled for any interest on any amount due against each other.

iii. The order of the respondent, on the request of the claimant that the claimant shall not be entitle for allotment of water for next 20 years, is arbitrary, unjustified and unfair.

iv. However, while considering the request of the claimant for allotment of extra water, in future, the respondent will be entitle to allot water to the claimant subject to availability of the water in the Dam/River.

v. The claimant shall pay the charges of water drawn by him i.e. 0.29 Million Cu. Meter from July 2012 to up to date. However, against this he shall be entitled to adjust the amount already paid by him against the extra water i.e. 1.52 Million Cu. Meter not used by him from 2009 to 2012. After adjustment of said amount the claimant shall pay the whole remaining amount within a period of one month, failing which the respondent shall be entitle to charge interest on the said amount @11% p.a.

vi. Looking to the facts and circumstances the parties are left to bear their own cost.

vii. With this award, the Arbitration Proceedings shall stand terminated."

(viii) Being aggrieved by the arbitral award dated 9.9.2018, the appellants/State approached the learned Commercial Court (District Level), Raipur, by filing MJC No.44/2018 on 5.12.2018, which was dismissed by impugned order dated 18.10.2019 and maintained the award passed by the learned Sole Arbitrator. Thus, this appeal.

contentions of the parties :

3. (A) Learned Advocate General appearing for the State would submit that the impugned order as well as the Arbitral Award are contrary to the terms and conditions enumerated in the Agreement dated 11.12.2009 and hence, the same is illegal and bad in eyes of law. He further submitted that the Agreement was executed between the parties for the allotment of water i.e. 1.81 MCM/Year. The respondent had entered into the subject agreement with appellants with eyes wide open and terms & conditions mentioned in the agreement were mutually agreed by the parties and in accordance thereof the monthly bills were raised by the appellants department.

(B) Learned counsel would submit that the learned Sole Arbitrator while considering the dispute raised by both the parties has misunderstood the terms and conditions enumerated in the water allotment letter dated 12/13.11.2009. He would further submit that the learned Sole Arbitrator passed the award by going beyond the condition & scope of agreement. He would submit that the Sole Arbitrator by

relying upon the circular/ notification dated 21.03.2006 decided the claim in favour of the respondent herein. The said notification provides that the rate per water drawn from a natural resource was fixed @ Rs. 0.90 per Cum meter and by accepting the fact that before construction of Kelo Dam, the respondent has drawn water from Gerwani Nala which is a natural resource. Learned counsel would submit that the agreement executed between the State and the respondent is for drawl of water on a particular rate and there was no such condition to reduce the rate, therefore, the arbitral award passed by the learned Sole Arbitrator is contrary to the condition of the agreement. He would submit that the agreement was executed by and between the parties with their free consent and without any coercion. From the very first day, the respondent was well aware about the condition of the agreement. He would submit that since the water was taken by the respondent under the permission of Government from a river and as such, the respondent is liable to pay the rate @ Rs. 3.00 per Cum meter.

(C) Learned counsel further submitted that the respondent deposited the commitment charges of Rs.45,250/- for supply of 1.81 million cu. Mtr. Water per year and also deposited Rs.13,57,500/- with the department as security deposit. Learned counsel also argued that the respondent has duly paid the bill towards 1.81 million cu. Mtr./year of water till June 2012 without any protest. He further submitted that the rates of the water supply was revised from July 2012 from Rs.3.00/- to Rs. 7.94/- cu. Mtr., accordingly the bills were raised by the appellants on increased rate.

(D) Learned counsel also submitted that the respondent has never submitted any request with the appellants to reduce the quantity of water to 0.29 million cu. Mtr. per year. Learned counsel further argued that despite several demands made by the appellants, the respondent did not fulfill the same within the prescribed time as mentioned in the agreement. He further submitted that, having regard to the circumstances, the appellants, vide letter dated 31.10.2013, made an offer to the respondent that the allotment of water could be reduced from 1.81 million cu. Mtr. per year to 0.29 million cu. Mtr. per year, provided the respondent agreed not to raise any further demand for an increase in quantity beyond 0.29 million cu. Mtr. per year for the next 20 years.

(E) According to the learned counsel as per letter dated 13.11.2009, it was clearly instructed to the respondent that the respondent company has to construct intake Well/Pump House in Up Stream of Kelo Dam for supply of water, thus it was clear that as per the agreement and terms and conditions thereof, water will be supplied to the respondent only from the Government sources thus the appellant is entitled to receive payments @ Rs. 3.00/- per cum. of water and accordingly revise the rates from time to time as mentioned in the agreement. He also argued that the Learned Sole Arbitrator as well as the learned Presiding Officer of the Commercial Court, while considering the dispute, have misunderstood the terms and conditions agreed by the parties, hence the impugned Arbitral Award as well as order passed by the Commercial Court are perverse and against the public policy.

(F) Learned State counsel would submit that from the very first day the respondent was well aware about the terms and conditions of the agreement. Learned counsel stated that as per clause 1 of the agreement, the Government gave permission to the respondent company to draw 1,50,833 cum. of water per month from the natural or Government water source to the company's plant. According to clause 2 of the agreement, it is very clearly stipulated that the respondent company is required to pay the charges in any event for at least 90% of the total quantum of water allowed to be drawn by it. Learned counsel for the appellants urged that by the said clause it is very clear that even if the respondent's company has drawn less than 90% of the allotted quantity of water it is bound to pay the charges mentioned as above. He further argued that the Learned Sole Arbitrator and the Commercial Court have misunderstood the terms and conditions enumerated in the water allotment letter dated 12/13-11-2009 and the terms and condition stipulated in the agreement dated 11.12.2009. He further submitted that the water was taken by the respondent from the Government source and thus the respondent is liable to pay the rate @ Rs. 3.00/- per cum. of water and accordingly revised the rates from time to time by the Government as per agreement.

4. (a) Learned counsel appearing for the respondent, *per contra*, would support the Arbitral Award and the impugned order and argued that the scope of interference of the Arbitral Award is very limited. The Arbitral Award may be interfered by the Court when the Award is against the public policy of India and patently illegal from the face of the Award. Learned counsel also argued that the Arbitral Award can be challenged to

the specific limited grounds mentioned under Section 34 of the Act of 1996. He further argued that the appellants have failed to make out any ground as envisaged under Section 34 (2) (a) and (b) of the Act of 1996 and also failed to set out and demonstrate as to how the Award is in conflict with the public policy. He further argued that the Court does not sit in appeal by re-assessing or re-appreciating the evidence, while deciding an application under Section 34 of the Act of 1996. He further argued that the Award and the order impugned are well reasoned warranting no interference of this Court.

(b) By controverting the submission made by the learned State counsel, learned counsel referred the water allotment order on the basis of which, the agreement has been executed on 11.12.2009 & submits that the subject clause of water allotment order itself shows that the water allotment has been made and the rate has been prescribed. From perusal of the water allotment letter, it envisage that 1.81 Cum. Meter yearly asked water is allotted/sanction after construction of Kelo Dam from Kelo River/Dam. The allotment order itself is very clear that 1.81mcm yearly water was allotted from the date of construction of the Dam. As per record, the Kelo Dam was constructed in the year 2012. As per clause 22 of the agreement executed between the parties, the water allotment order dated 13.11.2009 is a part of the agreement.

(c) Learned counsel for the respondent company submitted that the respondent has taken the water from natural resource i.e. Gerwani Nala before the construction of Kelo Dam on the Kelo river, thus as per clause

2 of the agreement the respondent is liable to pay the rate fixed by the Water Resource Department as mentioned in memorandum dated 21.03.2006, which is Rs. 0.90 per cu. meter when the water drawn from natural resource. He also argued that at the time of billing, the present water requirement of the respondent was only 0.29 MCM per year. He further argued that the water 1.52 MCM per year was not required to the respondent at that point of time because the proposed Power Plant of 60 MW was not established and Kelo Dam was also not constructed till June 2012 but the appellant department raised its demand of water bill for 1.81 MCM per year which was not used by the respondent. To buttress his contention, learned counsel would place reliance upon the decisions rendered by the Supreme Court in the matter of ***National Highway Authority of India v M/s Hindustan Construction Company Ltd. (Civil Appeal No.4702 of 2023 decided on 7.5.2024)*** and ***Punjab State Civil Supplies Corporation Limited and Another v Sanman Rice Mills and Others (2024) SCC OnLine SC 2632***.

5. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection and carefully as well.

Analysis :

6. From the aforesaid submissions of the parties, it is clear that main dispute between the parties is regarding the quantity and rate of the water taken by respondent for its industry. The germane clauses of the agreement executed between the parties are imperative to quote here,

which are as under:-

Clause 1 & 2 of Agreement:-

"1) In Consideration of the company duly making payment to the Government as here in after specified and duly observing and performing the covenants and conditions both herein contained Government hereby give permission to the company_to draw 1,50,833 cum. of water per month from the said natural or government water source to the company's said plant for term of 30 (Thirty) years commencing from the 11th day of December 2009 on the terms and conditions herein contained. The permission hereby granted shall be subject to the provisions of Chhattisgarh Irrigation Act. 1931 (3 of 1931) and executive orders issued in this behalf by the Government from time to time and for the time being in force.

2) The Company shall pay to the Government water rates for water drawn by it from said natural or Government water source at the rates fixed by water Resources Department No. 1819/7-ए/जसं/तशा/औजप्र/02/ डी-4, रायपुर दिनांक 21/03/2006 which is Rs.3.00 (Rupees Three only) per cum.

Note: The rates which are going to apply to the company must be shown and not other rates. For the quantities of water drawn in excess of the agreed quantities and for any other unauthorized drawls of water then 50% (fifty Percent)

additional rates shall be charged in addition to the normal rates as specified above.

In addition to the payment of water rates as specified above, the company shall also pay the Water Resources Department local fund cess or any other tax at the rates as fixed by the Government from time to time Government hereby reserve the right to revise the rates from time to time the said water rates and local cess or other taxes to be paid by the company and the company shall pay such revised water rates and local cess or other taxes as may be fixed by the Government from time to time. Expecting the circumstances or short water supply specified in clause (15) the company shall in any event pay water charges for at least 90% of the total quantum of water allowed to be drawn by it though the actual quantity of water drawn by the company is less than 90% of the quantum of water allowed to be drawn by under clause (i). "(Emphasis supplied)

Clause 22 of Agreement dated 11.12.2009:-

"22) Govt. of Chhattisgarh Resources Water Department order No. 6772/293/ / जसं/तशा/03/औजप्र/डी-4, रायपुर दिनांक 13/11/09 (for water allocation and executive instructions. etc.) will also form the part of this agreement."

7. From perusal of Clause 22 of the agreement, it appears that the water allotment order dated 13.11.2009 is a part of the said agreement. Even,

clause 1 of the agreement provides that the permission of water allotment has been granted subject to the provisions of Chhattisgarh Irrigation Act. 1931 (3 of 1931) and executive orders issued in this behalf by the Government from time to time and for the time being in force. Even, Clause 2 of the agreement refers the notification dated 21.03.2006. It means that all the circulars and the notifications issued by the State from time to time and their condition and prescription will be applicable to the agreement executed between the both parties.

8. Bare perusal of the material available on record it is apparent that water allotment order 13-11-2009 envisage that 1.81 M. Cu. Meter yearly asked water is allotted/sanctioned after construction of Kelo Dam from Kelo River/Dam. By the language of the above order, it is very clear that the 1.81 MCM yearly water was allotted form the date of construction of Dam. As per record, it is quite vivid that the Kelo Dam was constructed in the year 2012.

9. As per clause 22 of the agreement executed between the parties, the above water allotment order dated 13.11.2009 is a part of the agreement. The relevant abstract of the order dated 13.11.2009 is reproduced as under:-

> उपरोक्त विषयांतर्गत प्रकरण में राज्य जल संसाधन उपयोग समिति, छत्तीसगढ़ की 27 वीं बैठक दिनांक 16.09.2009 में लिये गये निर्णयानुसार एवम् संस्थान द्वारा कमिटमेंट चार्जेस रू. 0.4525 लाख का भुगतान जल संसाधन विभाग को किये जाने के तारतम्य में मेसर्स अंजनी स्टील लि. रायगढ़ (संस्थान) द्वारा जिला रायगढ़, तहसील-घरघोड़ा,

ग्राम-उजलपुर के समीप स्थापित एवं विस्तार हेतु प्रस्तावित इंटीग्रेटेड स्टील प्लांट एवं 12+60 मेगावाट केप्टिव पॉवर प्लांट हेतु केलो नदी/केलो बांध से वांछित कुल 1.81 मिलियन घन मीटर वार्षिक जल, केलो नदी में प्रस्तावित केलो बांध के निर्माण उपरांत प्रदाय करने की स्वीकृति निम्नलिखित शर्तों के साथ प्रदान की जाती है:-

xxx xxx xxx

10. Perusal of the above order reveals that the quantity of water 1.81 MCM yearly was to be allotted only after construction of the Kelo Dam on Kelo River.

11. So far as the rate of water is concerned, clause 2 of the agreement provides that the company shall pay to the Government water rates for water drawn by it from said natural or Government water source at the rates fixed by water Resources Department No. 1819/7-ए/ जसं/तशा/औजप्र/02/डी-4. रायपुर दिनांक 21/03/06 which is Rs. 3.00 per cum.

12. From the notification dated 21/03/2006, it is clear that the rate for water drawn from a natural resource was fixed @ Rs. 0.90 per Cu. Meter. It is undisputed fact that before the construction of Kelo Dam, the respondent has drawn water from Gerwani Nala which is a natural resource.

13. From perusal of the record it would appear that prior to agreement two applications were moved by the respondent to the appellants department for allotment of water for its plant. In the first letter the respondent requested for allotment of 0.29 MCM per year water for its existing plant i.e. Steel and 12 MW Power Plant. In the second letter, he again

requested for allotment of additional water for its proposed Power and Integrated Steel Plant and 60 MW Captive Power Plant along-with his prior request which is for 0.29 MCM per year water. By letter dated 13.11.2009, the Government issued the water allotment order which envisages that 1.81 MCM yearly water is allotted after construction of Kelo Dam from Kelo River/Dam. It is also pertinent to mention here that the Kelo Dam was constructed in year 2012. The appellants raised the demand for total water 1.81 MCM/ year prior to construction of the Kelo Dam. At that point of time the proposed 60 MW Captive Power Plant was also not established by the respondent. The water was drawn from the natural resource Gerwani Nala by the respondent till June 2012.

14. After considering the material available on record, evidence and submission rendered by both the parties, the Learned Sole Arbitrator as well as the Commercial Court observed that water allotment order dated 13.11.2009 is a part of agreement and as per the said water allotment order 1.81 MCM yearly water was to be allotted/sanctioned from the date of construction of Dam on Kelo River but the said Dam was not constructed till June 2012 and the Captive Power Plant for which the additional water was sought was also not erected. It has also been observed that the appellants' Letter dated 20.04.2007 provides reduction of quantity of allotted water subject to less usage of water. For the said observations/findings it has been held that the appellants department was not entitled to charge the respondent for 1.52 MCM water/ year.

15. It has also been held that levying the charges of minimum 90% as per

clause 2 of the agreement is unjustified because after 12 days of executing the agreement the respondent informed the appellants that their proposed Plant was not erected thus at that time they were not in a position to utilize the whole water i.e. 1.81 MCM per year.

16. The record further shows that appellants department after considering the request of respondent regarding reduction of quantity of water, agreed to reduce the quantity of water, with a condition that the respondent shall not be entitled for additional water for next 20 years. Accordingly it was hold that the above condition is arbitrary, unjustified and unfair because the Government has imposed the above condition without any rhyme or reason.

17. So far as the rate of charges is concerned, the Learned Sole Arbitrator observed in para 20 of the Arbitral Award as under:-

> ".....As far as the rates of water charges Rs. 3.00 per Cu. Meter fixed in clause- 2 of Annexure E-15 is concerned, same is contrary to notification dated 21-03-06, because on the one hand it is mentioned in clause-2 of Annexure E-15 that water charges will be levied at the rates fixed in Notification dated 21-03-06, which envisaged that if water is drawn from Natural Resource the charges will be Rs. 0.90 per Cu. Meter, whereas in the agreement water charges are fixed as Rs. 3.00 per Cu. M. Therefore, the respondent was not entitled to charge Rs. 3.00 per Cu. M. The respondent was entitled to charge Rs. 0.90 Per Cu. Meter or other rates fixed by the Government from time to time for Natural Recourses Water till June 2012 i.e. when the Dam was constructed.

18. As per record, the respondent has drawn water from Gerwani Nala, which is a Natural resource of water and as per Government notification dated 21.03.2006 if the water is drawn from a natural resource the charges will be Rs. 0.90 Cu. M. Hence the above finding recorded by the learned Sole Arbitrator and the Commercial Court is absolutely just and proper and in the letter and spirit of the agreement. The appellant Department illegally charged for extra water i.e. 1.52 MCM from the respondent despite the fact that the appellants were entitled for the water charges of actual water drawn by the claimant i.e. 0.29 MCM, that too @ Rs. 0.90 per Cu. Meter or revised rates by the State Government for natural resources water.

19. It is pertinent to mention here that the respondent has already paid the water charges for 0.29 MCM water drawn by him till June 2012 and as such the appellants are not entitled for the amount claimed for additional water i.e.1.52 MCM.

20. It would be apt to relevant to quote Section 34 of the Act, 1996 for ready reference :

> **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 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.
>
> (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.

21. Scope of Section 34 of the Act, 1996 has been considered by the Supreme Court in the matter of ***Punjab State Civil Supplies Corporation Limited (Supra)*** and held that scope of appeal is naturally akin to and limited to the grounds enumerated under Section 34 of the Act. It further held that an arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Paras 10, 11, 12, 13, 19 & 20 of the said decision are quoted below

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10. Section 34 of the Act provides for getting an arbitral award set aside by moving an application in accordance with sub-Section (2) and sub-Section (3) of Section 34 of the Act which inter-alia provide for the grounds on which an arbitral award is liable to be set aside. One of the main grounds for interference or setting aside an award is where the arbitral award is in conflict with the public policy of India i.e. if the award is induced or affected by fraud or corruption or is in contravention with the fundamental policy of Indian law or it is in conflict with most basic notions of morality and justice. A plain reading of Section 34 reveals that the scope of interference by the court with the arbitral award under Section 34 is very limited and the court is not supposed to travel beyond the aforesaid scope to find out if the award is good or bad.

11. Section 37 of the Act provides for a forum of appeal inter-alia against the order setting aside or refusing to set aside an arbitral award under Section 34 of the Act. The scope of appeal is naturally akin to and limited to the grounds enumerated under Section 34 of the Act.

12. It is pertinent to note that an arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the courts. It is also well settled that even if two views are possible there is no scope for the court to reappraise the evidence and to take the different view other than that has been taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail.

13. In paragraph 11 of Bharat Coking Coal Ltd. v. L.K. Ahuja,it has been observed as under:

> “11. There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where

an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside."

xxx xxx xxx

19. In Bombay Slum Redevelopment Corporation Private Limited v. Samir Narain Bhojwani8, a Division Bench of this Court followed and reiterated the principle laid down in the case of MMTC Limited (supra) and UHL Power Company Limited v. State of Himachal Pradesh. It quoted and highlighted paragraph 16 of the latter judgment which extensively relies upon MMTC Limited (supra). It reads as under:

"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. In MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293], the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words : (SCC pp. 166-67, para 11)

"11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., [1948] 1 K.B. 223 (CA)] reasonableness. Furthermore, "patent illegality" itself has been

> held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract."
>
> 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.

22. From the provisions of Section 34 of the Act, 1996 and in view of the law laid down by the Supreme Court in the matter of ***Punjab State Civil Supplies Corporation Limited*** (supra), it is well settled that 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.

23. Examination of the order of Commercial Court, which is under challenge

in the present appeal, passed by exercising the power under Section 34 of the Act, 1996, has to be made under the touchstone of the provisions of Section 34; in view of the law laid down by the Supreme Court in the matter of ***Punjab State Civil Supplies Corporation Limited*** (supra).

24. The Supreme Court in the matter of ***Maharashtra State Electricity Distribution Company Limited v Datar Swithgear Limited and Others, (2018) 3 SCC 133,*** held that the Arbitral Tribunal is the master of evidence and the findings of fact which are arrived at by the arbitrators on the basis of evidence on record are not to be scrutinized, as if the Court was sitting in appeal.

25. It is, therefore, manifest that the jurisdiction of this Court while exercising powers under Section 37 of the Arbitration and Conciliation Act, 1996, is strictly circumscribed by the grounds available under Section 34 of the Act. The Court does not sit in appeal over the arbitral award, nor can it re-appraise the evidence or substitute its own interpretation of contractual clauses for that of the Arbitral Tribunal. Interference is justified only if the award suffers from patent illegality, is in contravention of the fundamental policy of Indian law, or is opposed to the most basic notions of morality or justice. Mere errors of fact or law, or the possibility of a different interpretation, do not furnish a ground to set aside the award.

26. In the present case, the findings recorded by the learned Sole Arbitrator are based upon appreciation of evidence and a reasonable interpretation of the contractual terms between the parties. Neither has any perversity

been demonstrated, nor does the award disclose any patent illegality or conflict with public policy of India. The learned Commercial Court, while dismissing the application under Section 34, has rightly refrained from re-appraising the evidence or substituting its own view in place of the Arbitral Tribunal.

27. Accordingly, in view of the settled position of law and the facts of the case at hand, no ground is made out for interference with the arbitral award under Section 34 of the Act, and consequently, the appeal under Section 37 also does not merit acceptance.

28. From a close scrutiny of the impugned order, it appears that the learned Commercial Court and the learned Sole Arbitrator took the above view on the basis of evidence and documents available on record. Thus, we do not find any infirmity or illegality in the impugned Award or the order passed by the Commercial Court.

29. It is well settled that the interpretation of clauses of a contract and appreciation of facts and evaluation of evidence is exclusive domain of Arbitrator. The factual findings are also not liable to be disturbed while deciding a petition under Section 34 of the 1996 Act.

30. It is also the trite law that the Arbitrator is a Judge of the facts and law and has right to interpret the contract between the parties. This Court cannot substitute its own opinion against the observation made by the Arbitrator regarding quality, quantity and appreciation of the evidence, import of the documents and interpretation of the contract between the parties. The Court can interfere only under the grounds as enumerated

under Section 34 of the 1996 Act.

31. For the reasons discussed hereinabove, we do not find any good ground to interfere with the order impugned as well as arbitral award. The same are just and proper and there is no illegality or infirmity.

32. As a sequel, the present appeal, *sans substratum*, is liable to be and is hereby dismissed, leaving the parties to bear their own cost(s).

Sd/- Sd/-

(Bibhu Datta Guru)
Judge

(Ramesh Sinha)
Chief Justice

Rahul/
Gowri

HEAD NOTE

Scope of 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 Arbitration and Conciliation Act, 1996.