



C.M.A. No.1263/2014

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
02.12.2024	03.01.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.A. NO.1263 OF 2014

1. M/s. Neyveli Lignite Corporation Ltd.
Rep. By its Chief General Manager/MM
MM Complex, NLC Limited
Neyveli 607 807.

.. Appellant

- Vs -

1. M/s.Stewardss & Lloyds India Ltd.
Arul Manai, I Floor
Whites Road, Royapettah
Chennai 600 014.

2. K.Ramachandran, Arbitrator
3. K.V.Gurusamy, Arbitrator
4. Ammu Balachandran, Arbitrator

.. Respondents

Civil Miscellaneous Appeal filed u/s 37 (1)(b) of the Arbitration & Conciliation Act against the order passed in Arbitration O.P. No.86/2004 by the learned Principal District Judge, Cuddalore, dated 15.6.2009.

For Appellants : Mr. K.Harishankar



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For Respondents : No Appearance for R-1
RR-2 to 4 – Given Up

JUDGMENT

Challenging the order of dismissal of the arbitration original petition by the Principal District Judge, Cuddalore, filed by the appellant, as against the arbitral award, the present appeal has been filed before this Court.

2. For the sake of convenience, the appellant herein, who was arrayed as the petitioner and the 1st respondent, who was the 1st respondent in the original petition will be referred to as appellant and 1st respondent in this appeal.

3. It is the case of the appellant that pursuant to the tender floated by the appellant for the supply of Special Urea Grade 100 meters cold Drawn SS316L material Code No.7713206772 and 10m Cold Drawn SS316L material Code No.77132068724 of stainless steel seamless pipes, the 1st respondent submitted its terms of offer with clear stipulation that the materials will have to be imported from Italy with a delivery period of 14 to 16 weeks from the date of receipt of Letter of Intent or purchase order, whichever is earlier. Consequent



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upon the discussion and correspondences, the 1st respondent finally accepted on 21.5.1997 to supply the material at the rate of Rs.21.96 Lakhs and the Letter of Intent dated 28.2.1998 was issued by the petitioner accepting the offer made by the 1st respondent vide purchase order dated 2.3.1998 was issued by mutually agreeing that the supply would be effected within 12 to 16 weeks from the date of Letter of Intent with the supply to be effected before 31.7.1998.

4. It is the further case of the appellant that since the 1st respondent could not effect the supply as agreed to, extension was sought for, which was granted and after discussion, the supply was restricted to 40 m in each item. Finally on 18.6.2001, the 1st respondent raised a bill for 40 m in each item and received payments towards the restricted supply. It is the further case of the appellant that after receipt of the bill amount, the 1st respondent raised a dispute questioning the rejection of quantity of materials to be supply contrary to the terms agreed and sought for payment for the entire 100 m in each item and on repudiation of the said claim by the appellant, the 1st respondent invoked the arbitration clause in the contract, which resulted in the appointment of arbitrators, one by the appellant and the other by the 1st respondent and the 3rd



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Arbitrator, being the Presiding Arbitrator, being appointed by the nominated Arbitrators.

5. It is the further case of the appellant that before the Arbitral Tribunal, the 1st respondent, who was the claimant, marked Exs.C-1 to C-55 and the appellant, who was the respondent, marked Exs.R-1 to R-34. Considering the materials placed and upon hearing the parties in extenso, by majority of 2:1, the Tribunal held that a sum of Rs.12,30,626/- with future interest at 7% p.a. on Rs.10,58,594/- being the principal, is payable by the appellant to the 1st respondent. Aggrieved by the said award, the appellant herein preferred the original petition before the trial court.

6. Framing the necessary issues for consideration, the court below, after considering all the aforesaid submissions and perusing the materials available on record, held that there arises no reason to interfere with the award passed by the Arbitral Tribunal as no ground or legal position is made out to void the award validly passed by the Arbitral Tribunal and, accordingly, dismissed the original



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petition. Aggrieved by the same the present appeal has been preferred before this Court.

7. Learned counsel appearing for the appellants submit that the award is highly perverse, as the confirmation of the award of the arbitrator has not been properly appreciated by the court below, as there was no findings rendered by the arbitrator while arriving at the damages.

8. It is the further submission of the learned counsel that there is no basis in the award, as the same is tainted with illegalities and that the arbitrators have ignored the conditions of the contract between the parties. It is the further submission of the learned counsel that the arbitral award is contrary to the terms of the contract and that the arbitrators have failed to note that the 1st respondent, who had agreed to supply the contracted items within the specified time has miserably failed to supply the same.

9. It is the further submission of the learned counsel that the non-supply of the contracted items within the specified time, as mandated under Ex.R-16



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clothes the appellant with the power to reduce the quantity of supply and the restriction of the supply to a limited extent clearly implies the invocation of power by the appellant to reduce the quantity, which is in terms of clause 11 of the terms of the contract.

10. It is the further submission of the learned counsel that time is the essence of the contract and the performance of the contract within the specified time not being honoured by the 1st respondent, the invocation of clause 11 by the appellant cannot be held to be erroneous. However, without advertng to the aforesaid material aspects, the Arbitrators have awarded the amount, which has been erroneously confirmed by the court below, which is *per se* erroneous.

11. It is the further submission of the learned counsel that the court below has not properly applied the provisions u/s 34 of the Act while deciding the issue, when the award passed by the Arbitrators is patently illegal and is fundamentally flawed.



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12. It is the further submission of the learned counsel that there is no extension of time granted by the appellant to the 1st respondent to supply the items and the mere reduction of quantity by the 1st respondent, which has been accepted by the appellant would not give any benefit to the 1st respondent to seek for damages at the hands of the appellant by resorting to arbitration.

13. In fine, it is the submission of the learned counsel that without properly appreciating the materials placed before it and without properly appreciating the clauses in the terms of the contract, the Arbitrators have erroneously passed the award and the court below has not considered the aforesaid facts and has merely approved the award passed by the arbitrators, which require interference at the hands of this Court.

14. On behalf of the 1st respondent, there is no appearance, inspite of service of notice and with regard to respondents 2 to 4, who were the Arbitrators, learned counsel appearing for the appellant has given up the said respondents.



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15. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing for the appellant and also perused the materials available on record.

16. It is brought to the notice of this Court by the learned counsel appearing for the appellant that pending the above appeal, proceedings were initiated against the 1st respondent herein u/s 54 of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 45 (3) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, and the 1st respondent company underwent liquidation process and stood liquidated by the National Company Law Tribunal in I.A. (IB) No.323/KB/2022 in C.P. (IB) No.213/KB/2017. In terms of the said order, the company was liquidated by following the Corporate Insolvency Resolution Process by appointment of Resolution Professional.

17. In the aforesaid backdrop of the situation, this Court needs to consider the case of the appellant *sans* the non-appearance on behalf of the 1st respondent before this Court in the present appeal.



18. There could be no dispute about the fact that for setting aside the arbitral award, recourse ought to be taken by the aggrieved party to Section 34 of the Act and the circumstances under which an arbitral award could be interfered with by the Court are spelt out therein. For better appreciation Section 34 of the Arbitration and Conciliation Act is quoted hereunder :-

“Application for setting aside arbitral awards.

(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 ¹[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,



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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.



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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 reappraisal 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.



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[(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.]

19. A careful perusal of the above reveals the circumstances, which, if infringed, could clothe the aggrieved party with the ammunition to knock on the doors of the courts of justice to have the arbitral award set aside. More particular, the circumstances, that would prevail upon the courts to set aside the arbitral award are that the arbitration agreement is not valid; that no proper notice was given to the party prior to the appointment of an arbitrator or commencement of the arbitral proceedings; that the dispute, which is dealt with is not contemplated under the arbitration and is beyond the scope of arbitration; that the composition of the arbitral tribunal or the procedure adopted are violative; that the subject matter of dispute is not capable of settlement under arbitration.



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20. There is no quarrel with the fact that the parties to the dispute, viz., the appellant and the 1st respondent are signatories to a contract, which provides for arbitration. Dispute with regard to the supply made by the 1st respondent and non-payment of the contractual amount by the appellant has resulted in the invocation of the arbitration clause by appointment of arbitrators. There is no quarrel with the aforesaid facts. In fact, as per the terms of the contract, the appellant and the 1st respondent appointed one arbitrator each and the third arbitrator was chosen by the arbitrators appointed by the parties, which clearly show that there was no grievance with regard to the appointment of the Arbitrators and, therefore, the appointment of Arbitrators cannot be said to be without jurisdiction or that the persons, so appointed cannot be said to be without qualifications.

21. In the light of the aforesaid position, this Court now needs to look at Section 34 of the Act. The circumstances, which have been mandated under sub-section (2) of Section 34, where the courts can set aside the arbitral award is extracted above. None of the circumstances envisaged under sub-section (2) to



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Section 34 have been put in issue for setting aside the arbitral award. In fact, the appellant has not even whispered that there was violation in the conduct of the arbitration proceedings or that the dispute, which has been arbitrated does not fall within the scope of arbitration. Neither it is the case of the appellant that there is no clause for arbitration or that no notice was issued prior to arbitration or that he was not issued notice with regard to conduct of arbitral proceedings. Therefore, it is manifestly clear that none of the circumstances spelt out under Section 34 (2) of the Act is put in issue before the court below.

22. What is put in issue before this Court to assail the order passed by the court below is that the appreciation of the materials by the Arbitrators is not proper and that the same has not been properly considered by the Tribunal. It is the further case of the appellant that a perfunctory order has been passed, wherein the court below has held that it does not find any justifiable reason to interfere with the arbitral award.

23. The mandate of Section 34 (2) is implicitly clear and the circumstances enunciated under the said provision alone would come into play when the court



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considers the arbitral award. The appellant may have umpteen grievances, but so far as what is mandated under the Act has been followed, the legality of the arbitral award cannot be interfered with. The court is bound to decide the case within the four corners of law and it cannot traverse beyond the boundaries which have been prescribed under the Act to the likings of either party. When there is no infraction of the provisions of Section 34 (2), as is evident from the order of the court below and in fact it is also not even the case of the appellant that there is infraction of the provisions mandated under Section 34 (2), the order passed by the court below, could, by no stretch of imagination, be branded to be illegal or unsustainable.

24. The party to the *lis* may want the Court to deliberate a case in a different tangent, which does not have the approval of law and if it has not been considered in that manner, the said order cannot be said to be vitiated, as it is the duty of the court to travel only within the boundaries prescribed under the Act and not otherwise. In fact, if the court below had traversed beyond the boundaries, only then could the order be held to be illegal and impermissible. However, merely interpretation of the materials by the Arbitrators and by the

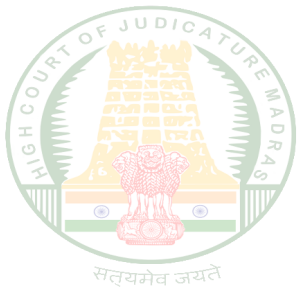


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court below cannot be the basis for this court to interfere with the arbitral award. A careful perusal of the order passed by the court below reveals that the court below had travelled within the boundaries and had held that the majority view has taken into consideration all the issues and the court had found no justifiable reason to interfere with the award. The said finding cannot be said to be perverse or arbitrary, warranting interference at the hands of this Court.

25. The whole case of the appellants is premised on the manner in which the evidence has been appreciated. The main plank of argument relates to the manner in which the Arbitrators ought to have weighed the evidence with a clear view on the terms and conditions of the contract entered into between the parties. However, the said grievance of the appellant cannot be brought within the ambit of Section 34 of the Act for this Court to interfere with the award. When the conditions mandated u/s 34 of the Act have not been infringed, this Court cannot interfere with the said award on account of the manner in which the evidence has been interpreted or appreciated.



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26. In this regard, the manner in which the evidence has to be appreciated by the Arbitral Tribunal and the extent of powers of the Court while adjudicating on the same has been succinctly explained and set at rest by the Apex Court in *Associated Builders case (supra)* and for better appreciation, the relevant portion of the said decision is as under :-

“The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where-

- 1. a finding is based on no evidence, or*
- 2. an arbitral tribunal takes into account something irrelevant to the decision which it arrives at; or*
- 3. ignores vital evidence in arriving at its decision, such decision would necessarily be perverse. A good working test of perversity is contained in two judgments. In H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath and Sons 1992 Supp (2) SCC 312 at p. 317, it was held:*

“7. ...It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.”

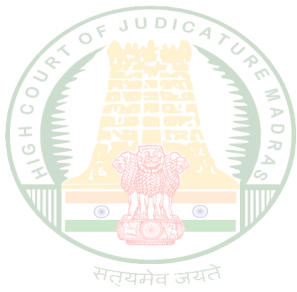


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In Kuldeep Singh v. Commr. of Police (1999) 2 SCC 10 at para 10, it was held:

“10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.”

33. It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In P.R. Shah, Shares and Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd. (2012) 1 SCC 594, this Court held:



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“21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second Respondent and the Appellant are liable. The case as put forward by the first Respondent has been accepted. Even the minority view was that the second Respondent was liable as claimed by the first Respondent, but the Appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the Appellant did the transaction in the name of the second Respondent and is therefore, liable along with the second Respondent. Therefore, in the absence of any ground Under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at.”

(Emphasis Supplied)

27. From the above, it is clear that the view of the arbitrator, who is the ultimate master of quantity and quality of evidence to be relied upon and the

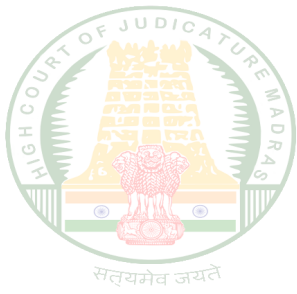


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award based on the said evidence cannot be put in issue before a trained legal mind to invalidate the same, would be wholly arbitrary and capricious, as appreciation of evidence is solely within the domain of the arbitrator.

28. Applying the aforesaid ratio to the facts of the present case, the arbitrators having analysed and appreciated the evidence and have come to the conclusion that the act of the appellant has caused damage to the 1st respondent and had quantified the damages payable, merely because the evidence have not been appreciated in the manner thought for by the appellant cannot be the basis for this Court to interfere with the said award. When the arbitrators have been appointed on mutual consent and no grievance have been expressed against their qualifications or with the arbitral proceedings, the manner of conduct of the proceedings and appreciation of the evidence is fully within the purview of the arbitrators with which this Court as also the court below cannot interfere.

29. This Court cannot go beyond the four corners of the Act to deal with the evidence placed before the Arbitral Tribunal. It is for the arbitral tribunal to dwell into the materials, which has been rightly done by the arbitral tribunal



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while passing the arbitral award. In view of the ratio laid down in *Associated Builders case (supra)* by the Apex Court, and also adverting to the provisions of Section 34 of the Act, this Court is of the considered view that no case is made out for interference with the order passed by the court below.

30. For the reasons aforesaid, this Court finds no infirmity in the impugned order dismissing the original petition filed by the appellant against the arbitral award and, accordingly, this appeal fails and the same is dismissed. There shall be no order as to costs.

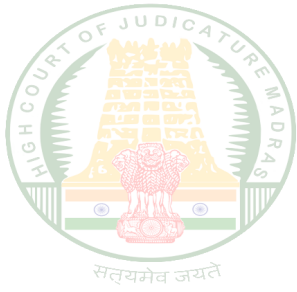
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To

The Principal District Judge
Cuddalore.



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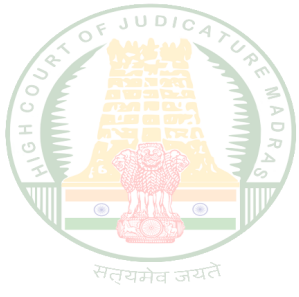
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M.DHANDAPANI, J.

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**PRE-DELIVERY JUDGMENT IN
C.M.A. NO.1263 OF 2014**

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