

GAHC010260052019



2026:GAU-AS:11249

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Arb.A./2/2020

UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER(CONSTRUCTION), NORTH
EAST FRONTIER RAILWAY, MALIGAON, GUWAHATI, PIN 781011, ASSAM

VERSUS

MADHUCON PROJECTS LTD.
MADHUCON HOUSE, 1129/A, ROAD NO.36, JUBILEE HILLS, HYDERABAD

Advocate for the Petitioner : MR S CHAKRABORTY,

Advocate for the Respondent : MR. K M HALOI, MR. R SARKAR, FOR CAVEATOR

Linked Case : I.A.(Civil)/102/2020

UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER(CONSTRUCTION)
NORTH EAST FRONTIER RAILWAY
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MADHUCON HOUSE
1129/A
ROAD NO.36
JUBILEE HILLS
HYDERABAD

Advocate for : MR S CHAKRABORTY
Advocate for : MR. K M HALOI appearing for MADHUCON PROJECTS LTD.

BEFORE

HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocate for the Petitioner : Mr. S. Chakraborty

Advocate for the Respondent : Mr. K.M. Haloi

Date on which judgment is reserved : 04.08.2026

Date of pronouncement of judgment : 11.08.12026

Whether the pronouncement is of : No
the Operative part of the judgment ?

Whether full judgment has been : Yes
pronounced ?

JUDGMENT & ORDER (CAV)

The present appeal under section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act of 1996) has been preferred against the impugned judgment dated 23.07.2019 passed in Misc (Arb) Case No.32/2016 by the learned District Judge, Kamrup (Metro) at Guwahati.

2. Heard the learned counsel for the appellant Mr. S. Chakraborty. Also heard Mr. K.M. Haloi, learned counsel appearing for the sole respondent.

3. A contract agreement vide No.CON/J-T/1621 dated 18.10.2012 was entered into between the appellant and the respondent pursuant to the Letter of Acceptance dated 09.01.2012 for construction of *'single line GB Tunnel No.11 (Approx total length 600 RM) at KM 43.920 to KM 44.520 between station Kambiron Road and Thingou station in connection with construction of New Railway Line Project Jiribam-Tupul (Imphal)'* of N.F. Railway (Construction).

4. This contract agreement specifically provided that the period of the contract was for 13 months and shall be executed on or before 08.02.2013. Subsequently, by letter dated 06.02.2013 an extension was sought by the respondent and accordingly time was extended up to 31.12.2013. However, due to non execution of work by the respondent, by the letter No.W/60/CON/J-T/Tunnel-11/2011/10/1309 dated 20.08.2013 the contract was terminated by the Railway authorities/appellants.

5. Against the termination of the contract an arbitral dispute was raised and by the award of the Arbitral Tribunal dated 29.06.2016, the Tribunal arrived at a conclusion that the termination of the contract by the respondent authorities was proper as the delay was entirely attributable to the negligence of the Contractor and due to non starting of the work and therefore the claim of the respondent was rejected. The appellant Railway authorities had also made a counter claim before the Arbitral Tribunal raising 3 claims:-

(i) For loss sustained due to calling of fresh tender for construction amounting to Rs.3,75,18,247.65.

(ii) For the payment due on account of performance guarantee and earnest money deposit amounting to Rs.2,08,21,424/-

(iii) For delay of 512 days from the date of Letter of Acceptance to the

date of termination, however the amount claimed was not specified.

6. In the arbitral award of 29.06.2016, the counter claim No.1 and 3 were rejected but the claim No.2 as regard encashing security deposit and performance guarantee bond was concerned, the same was allowed.

7. Being aggrieved by the award dated 29.06.2016 upholding the termination and allowing the counterclaim no.2, the respondent filed an appeal before the learned District Judge Kamrup (Metro) under Section 34 of the Act of 1996.

8. By the impugned judgment dated 23.07.2019, the learned District Judge arrived at the finding that as the appellant had extended the time for completion of the contract, it can safely be held that the time was extended as the delay was not attributable to the respondent or otherwise the appellant would not have extended the time but would have terminated the contract then and there.

9. It was held by the learned District Judge that the termination of the contract prior to 4 months before the expiry of the extended date of completion was pre-mature and not tenable in the eye of law. Having arrived at such finding, the learned District Judge allowed all the claims made by the respondent/contractor in the arbitration proceedings before the Arbitral Tribunal. Being aggrieved, the appellant has come before this Court under Section 37 of the Act of 1996.

10. The learned counsel Mr. S. Chakraborty appearing for the appellant by referring to the findings arrived at by the Arbitral Tribunal in its award dated 29.06.2016 states that although the work was awarded in the month of January 2012, but the construction of the approach road started only in June 2013 when

the monsoon had already set in and even the work of road construction was not completed at the time when the contract was terminated. The Arbitral Tribunal also arrived at a finding that although ample time was allotted to the Contractor to complete the work up to 31.12.2013 but till the date of termination of the contract i.e. 20.08.2013, the respondent had not even completed the approach road to the tunnel site and no work at all had started at the tunnel portal. As such, it was concluded that the contract was rightly terminated on 20.08.2013. Another subsequent fact was also taken note that the respondent was given further chance to revive the contract on payment of additional performance guarantee @ 5% which was also not complied with by the respondent.

11. The learned counsel for the appellant categorically submits that till the termination of the contract, the actual work at the tunnel portal site itself had not even started which was not taken into consideration by the learned District Judge in the impugned judgment dated 23.07.2019, Therefore, as the contract period itself was for a period of 13 months, if the actual work at the tunnel site had not even started on the date of termination, in any view of the matter, the respondents could not have been able to complete the work within the extended time even if the contract was not terminated.

12. The learned counsel for the appellant submits that the Appellate Court may interfere with the arbitral award in terms of Section 34 of the Act of 1996 but such interference does not entail review of the merits of the dispute and it is limited to situations where the finding of the arbitral tribunal is arbitrary, capricious or perverse or when the conscience of the Court is shocked, or when illegality is not trivial but goes to the root of the matter. Relying on the case of **MMTC Ltd vs Vedanta Ltd** reported in **(2019) 4 SCC 163**, the learned counsel submits that arbitral award may not be interfered with if the view taken

by the arbitrator is a possible view based on facts. The learned counsel further submits that the Supreme Court in the cited case also held that as far as interference with an order made under section 34, as per section 37 is concerned, 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.

13. The learned counsel for the appellant has also relied on the case of ***PSA SICAL Terminals Pvt.Ltd vs Board of Trustees of V.O Chidambranar Port Trust Tuticorin and others*** reported in ***2021 SCC online SC 508***. The following paragraphs are reproduced from the judgment of ***PSA SICAL:-***

“41. It will be relevant to refer to the following observations of this Court in the case of [MMTC Limited](#) (supra):

*“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 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.******

42. In [Ssangyong Engineering and Construction Company Limited](#) (supra), this Court after considering various judgments including the judgment in [Associate Builders](#) (supra) observed thus:

“34. What is clear, therefore, is that the expression “public policy of India”, whether contained in [Section 34](#) or in [Section 48](#), would now mean the “fundamental policy of Indian law” as explained in paras 18 and 27 of [Associate Builders \[Associate Builders v. DDA, \(2015\) 3 SCC 49 : \(2015\) 2 SCC \(Civ\) 204\]](#) i.e. the fundamental policy of Indian law would be relegated to

"Renusagar" understanding of this expression. This would necessarily mean that Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] expansion has been done away with. In short, Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12], as explained in paras 28 and 29 of [Associate Builders \[Associate Builders v. DDA, \(2015\) 3 SCC 49 : \(2015\) 2 SCC \(Civ\) 204\]](#), would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in [Sections 18 and 34\(2\)\(a\)\(iii\)](#) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in para 30 of [Associate Builders \[Associate Builders v. DDA, \(2015\) 3 SCC 49 : \(2015\) 2 SCC \(Civ\) 204\]](#).

35. It is important to notice that the ground for interference insofar as it concerns "interest of India" has since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". This again would be in line with paras 36 to 39 of [Associate Builders \[Associate Builders v. DDA, \(2015\) 3 SCC 49 : \(2015\) 2 SCC \(Civ\) 204\]](#), as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.

36. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paras 18 and 27 of [Associate Builders \[Associate Builders v. DDA, \(2015\) 3 SCC 49 : \(2015\) 2 SCC \(Civ\) 204\]](#), or secondly, that such award is against basic notions of justice or morality as understood in paras 36 to 39 of [Associate Builders \[Associate Builders v. DDA, \(2015\) 3 SCC 49 : \(2015\) 2 SCC \(Civ\) 204\]](#). Explanation 2 to [Section 34\(2\)\(b\)\(ii\)](#) and Explanation 2 to [Section 48\(2\)\(b\)\(ii\)](#) was added by the Amendment Act only so that Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12], as understood in [Associate Builders \[Associate Builders v. DDA, \(2015\) 3 SCC 49 : \(2015\) 2 SCC \(Civ\) 204\]](#), and paras 28 and 29 in particular is now done away with.

37. Insofar as domestic awards made in India are concerned, an additional ground is now available under subsection (2A), added by the Amendment Act, 2015, to [Section 34](#). Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

14. In the light of the above authorities and the provisions of section 34, the learned counsel for the appellant submits that the learned District Judge could not have re-appreciated the facts and could have interfered only if perversity is seen in the order of the Arbitral Tribunal. The learned District Judge failed to

appreciate that the work at the tunnel site had not started at all even on the date of termination i.e. 20.08.2013. There was also no patent illegality or no conflict with public policy in the arbitral award.

15. The learned counsel for the appellant further submits that the District Judge had also interfered with the arbitral award on the ground that a counter claim was filed by the Railway authorities but the respondent/contractor was not furnished a copy of the counter claim and opportunity was not given to the respondent to file written statement against the same. That the counter claim was submitted only on 10.06.2016 and the hearing was concluded on 15.06.2016 and 16.06.2016, after 5 days of filing the counter claim. Therefore, it was held that the Arbitral tribunal had allowed the counter claim of the Railway authorities in violation of the principles of natural justice and the law of the land and the same was patently illegal.

16. In this regard, the appellant submits that no prejudice was caused to the respondent by the filing of counter claim as the counter claim was not allowed by the Arbitral tribunal. The learned counsel for the appellant submits that claim No.2 of the respondent contractor in the claim before the Arbitrator was to refund the performance bank guarantee bonds along with bank charges incurred from 20.08.2013 till date. However, the Tribunal upon finding that the termination of the contract was proper, the claim No.2 of the contractor/respondent was found to be not admissible. In other words, the Railway authorities were allowed the forfeiture of the security deposit and the performance bank guarantee. Learned counsel submits that the claim No.1 and 3 of the Railway authorities was rejected, and the claim No.2 which was the forfeiture of security deposit and performance guarantee was allowed but even without the counter claim no.2, it was a condition in the contract at NOTE (f) to

forfeit the same upon rescinding the contract. Hence, the respondent had not suffered any prejudice by not filing written statement to the counter claim.

17. The learned counsel for the appellant submits that the learned District Judge failed to appreciate that the respondent failed to commence the tunneling work even within the extended period i.e. after 19 months from the date of issue of the Letter of Acceptance specially when the period of completion was originally 13 months and as such, there was no possibility of completion of the work even within the extended period. Hence, the finding of the learned Court below that the termination of the contract within the extended period is patently illegal is bad in law.

18. For the reasons and submissions herein above, the learned counsel for the appellant prays that the instant appeal may be allowed and the impugned judgment dated 23.07.2026 passed in Misc (Arb) Case No.32/2016 by the learned District Judge, Kamrup (Metro) at Guwahati may be quashed and set aside.

19. Per contra, the learned counsel for the respondents, Mr. K. M. Haloi has drawn the attention of this court to clause 17 of the contract agreement which provides for an extension of the completion date. By referring to the said clause, the learned counsel submits that as the appellant railway authorities had agreed to the extension of time, therefore, it has to be construed that all required pre-conditions for such extension was fulfilled by the respondent and therefore the time was extended. The requirement under clause 17 of the contract agreement for extension of time was that the contractor is required to submit a bar chart of the progress of the work made by the contractor. Accordingly, a presumption can be drawn that the respondent contractor had submitted the bar chart showing the progress of the work. Only upon such submission of the work

progress, the respondent Railways could have extended the time. Therefore, the arbitral tribunal could not have arrived at a finding that there was no work at all at the tunnel site.

20. The learned counsel for the respondent submits that there is no provision for filing of counter claim under the Act of 1996 and therefore the counter claim filed by the appellant Railway has to be taken as one filed under Order VIII Rule 6A of the CPC. It is apparent from the record that the counter claim was filed only five days before the final hearing before the Arbitral Tribunal. The respondent contractor was not given an opportunity to file a written statement in response to the counter claim. Therefore, the law of the land which is Order VIII Rule 6A CPC has been violated by the Arbitral Tribunal by not giving an opportunity to the respondent to file his written statement. The respondent contractor was also not given a copy of the counter claim. Such action by the Arbitral Tribunal clearly shows that there was patent illegality in the order of the Arbitral Tribunal which had to be interfered with by the learned District Judge.

21. The learned counsel for the respondents has relied on the following judgments in support of his submissions:-

1. Associate Builders vs Delhi Development Authority reported in (2015) 3 SCC 49

2. Oil and Natural Gas Corporation Limited vs Western Geco International Limited reported in (2014) 9 SCC 263

3. J.G. Engineers Private Limited vs Union of India and Another reported in (2011) 5 SCC 758

4. Oil & Natural Gas Corporation Ltd vs Saw Pipes Lts reported in (2003) 5 SCC 705

5. SSangyong Engineering and Construction Company Limited vs National Highways Authority of India (NHAI) reported in (2019) 15

SCC 131

22. Relying on the above cited cases, the learned counsel for the respondent submits that there was patent illegality in the order of the Arbitral Tribunal. He has further submitted that it is settled law that the appellate authority under section 34 of the Act of 1996 can also interfere with the Arbitral Tribunal when it is against the law of the land inasmuch as there was violation of Order VIII Rule 6 A of the CPC. He further submits that the finding of the Arbitral Tribunal ignored vital evidence in arriving at its decision and was therefore liable to be set aside. Additionally, a finding based on a document taken behind the back of the parties by the Arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties and would therefore be presumed as perverse.

23. In the instant case, the Tribunal arrived at a finding basing on the counter claim which was not supplied to the respondents nor was he allowed to file written statements on the counter claim and as such, the learned district judge rightly held that the order of the Arbitral Tribunal was perverse. The learned counsel further submits that the appellant has not made out any case for the interference of this Court under Section 37 of the Act of 1996.

24. I have given due consideration to the submissions made by the learned counsel for the parties. This Court has also perused the judgments relied upon and the TCR.

25. It is settled law that a District Judge exercising jurisdiction under Section 34 of the Act of 1996 does not sit as a Court of appeal over the arbitral award. The jurisdiction is supervisory and confined to the specific statutory grounds under section 34. The Court cannot re-assess the merits merely because it could

have reached a different conclusion. Under section 34 (2) an award may be set aside when the party establishes, inter alia that a party was under some incapacity; the arbitration agreement was invalid; the party was not given proper notice or was otherwise unable to present its case; the award decided a dispute outside the scope of the arbitration agreement; or the composition of the Tribunal was contrary to the parties agreement or the Act. Under section 34(2)(b), the Court can interfere when the subject matter of the dispute is not arbitrable under the Indian law or where the award conflicts with public policy of India. For a domestic award, Section 34(2A) additionally permits setting aside award for patent illegality appearing on the face of the award. But the proviso is important as it provides that an award cannot be set aside merely because the arbitrator erroneously apply the law nor can the Court re-appreciate the evidence. The illegality must go to the root of the matter. Conversely, if the arbitrator's interpretation is a possible and plausible interpretation, the learned District Judge cannot substitute his own interpretation.

26. In the case of ***Delhi Airport Metro Express Private Limited vs Delhi Metro Rail Corporation Limited reported in (2022) 1 SCC 131***, the Supreme Court held that "*the limited grounds available to Courts for annulment of arbitral award are well known to legally trained minds. However, the difficulty arises in applying the well established principles for interference to the facts of each case that comes up before the Court. There is a disturbing tendency of the Courts setting aside arbitral awards, after dissecting and re-assessing factual aspects of the case to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality apart from other grounds available for annulment of the award. This approach would lead to corrosion of the object of the A & C Act, 1996 and the*

endeavor made to preserve this object, which is minimal judicial interference with arbitral award. That apart, several judicial pronouncements of the Supreme Court would become a dead letter if arbitral awards are set aside by categorizing them as perverse or patently illegal without appreciating the contours of the said expressions.”

27. The two arguments put forward by the learned counsel for the respondent is that:- (i) Rule 17 of the Contract Agreement provided that extension can be given only after the Contractor has applied for extension along with the bar chart showing the work already done. And without doing any work, the Railways will not extend the time. He has stated that it is to be presumed that the Contractor had started the work and therefore, the time had been extended. Therefore, the tribunal could not have held that the work had not started at all (ii) Another argument is that the provision of Order VIII Rule 6A of the CPC had been violated by the Arbitral Tribunal inasmuch as a copy of the counter claim was not served on the respondents and he was not given an opportunity to submit his written statements, thereby going against the law of the land and violating the principles of natural justice.

28. This Court is of the view that in the instant case, the issue to be considered by the District Judge was whether the challenge to the arbitral award demonstrated one of the statutory defects under Section 34 of the Act of 1996 or was the appeal merely asking the Court to re-consider the merits, evidence, contractual interpretation or factual findings. If the question is answered in the latter, interference is impermissible. A finding may be wrong without being patently illegal. The Supreme Court has emphasized in a catena of judgments that illegality must be non-trivial and must go to the root of the matter, while a plausible view taken on the evidence remains immune from the review under

Section 34. In the instant case, it is evident that the challenge to the arbitral award did not demonstrate any of the statutory defects under Section 34 in order to invoke the interference of the District Judge.

29. This Court has examined the arbitral award dated 29.06.2016 and find that the same is a well reasoned order based on the evidence available. There was nothing to show before the Tribunal that the respondent/contractor had started the work. The tribunal came to a finding that even on the date of termination of the contract i.e. 20.08.2013, no work had started as far as tunnel excavation was concerned. It was therefore rightly held that even if the allotted time till 31.12.2013 was allowed to the Contractor, the respondent/contractor would not have been able to complete the work. As far as the contention no.(i) of the respondent is concerned, this Court on 24.01.2020 when the respondent appeared, had allowed the respondent to produce relevant materials which would indicate that the work was started as on 20.08.2013 and if yes, to what extent the work was completed as on the said date. The matter was again listed on 31.01.2020. On 31.01.2020, the learned counsel for the respondent was unable to produce any materials and accordingly the instant appeal was admitted on 31.01.2020 and interim order staying the judgment of the district judge was passed. This Court by order dated 31.01.2020 again gave liberty to the respondent to file appropriate application for modification of the interim order by producing the relevant materials if available to indicate that the conclusion of the Arbitral Tribunal that no work had started at the tunnel portal site was an incorrect conclusion. Even today, when the matter is finally heard, the respondent has not been able to produce any such material to show that the work at the tunnel site had started on 20.08.2013. In such circumstances the learned District Judge could not have held that the termination was illegal or

premature as the work had not started at all on the tunnel on the day of the termination order i.e. 20.08.2013. This Court does not find any error in the finding of the Arbitral Tribunal upholding the termination.

With regard to the second argument that the district judge rightly held the arbitral award perverse and patently illegal as provisions of the CPC were violated, this court is of the view that Section 23 of the Act of 1996 provides for filing of a counter claim by the respondent and the counter claim was filed under the provisions of Section 23 not under the CPC. Section 19 of the Act of 1996 provides that the Arbitral Tribunal shall not be bound by the Civil Procedure Code or the Indian Evidence Act. Moreover, as far as the counter claim is concerned, the same has not been allowed by the Arbitral Tribunal except for the refund of the security deposit and performance guarantee. In fact even without there being a counter claim, once the termination is held to be valid and proper, the Contractor is not entitled to get the earnest money and security deposit refunded as the same can be refunded only in the event of successful completion of the work to the satisfaction of the concerned Department. The condition in the contract agreement at NOTE (f) to forfeit the earnest money and performance guarantee upon rescinding the contract has also been noted by this Court. No refund is possible if the work is not complete according to the contract. It is amply clear that no prejudice has been caused to the respondent by not allowing him to file the written statement. If no prejudice is caused the Arbitral award cannot be termed as perverse or patently illegal.

30. In the result, this Court is of the view that the learned District Court could not have set aside the order of the Arbitral Tribunal in an application under section 34 of the Act of 1996. This Court has found none of the conditions set out under section 34 (2)(a); 34 (2)(b) or 34 (2A) of the Act of 1996 are found in

the instant case so as to enable the District Court to interfere in the order of the Arbitral Tribunal dated 29.06.2016. As held in the case of ***Delhi Airport Metro Express (supra)***, arbitral awards cannot be simply set aside by categorizing them as perverse or patently illegal without appreciating the contours of the said expressions.

31. The appeal is accordingly allowed and the impugned judgment dated 23.07.2019 passed by the learned District Judge, Kamrup (Metro) Guwahati in Misc (Arb) Case No.32/2026 is set aside and quashed and the Arbitral award is restored.

32. Registry shall send back the TCR expeditiously.

33. No order as to cost.

JUDGE

Comparing Assistant