

Punjab State Civil Supplies Corporation Ltd. & Anr. Vs. M/s. Sanman Rice Mills & Ors.

Civil Appeal No. _____ of 2024 arising out of SLP (C) No. 27699 of 2018 · Supreme Court of India · 2024-09-27 · Pamidighantam Sri Narasimha · Pankaj Mithal · F2J-C-1416

Full judgment text

Punjab State Civil Supplies Corporation Ltd. & Anr. Vs. M/s. Sanman Rice Mills & Ors.

[Civil Appeal No. _____ of 2024 arising out of SLP (C) No. 27699 of 2018]

Pankaj Mithal, J.

1. Leave granted.

2. The challenge in this Civil Appeal is to the judgment and order dated 10.01.2017 passed by the High Court of Punjab & Haryana at Chandigarh in exercise of powers under Section 37 of the Arbitration and Conciliation Act, 1996 1 setting aside the order dated 07.04.2015 passed under Section 34 of the Act and also the arbitral order dated 08.11.2012.

FACTS:

3. The appellant - Punjab State Civil Supplies Corporation Ltd. 2 entered into an agreement dated 06.10.2008 with M/s Sanman Rice Mills 3 whereunder the Corporation was to supply paddy to the Rice Mill for the purpose of milling that had to supply back the resultant rice to the Corporation.

4. A total of 2,02,850 bags of Grade 'A' variety of paddy weighing 70,997.50 quintals was supplied by the Corporation to the Rice Mill. However, after processing, the Rice Mill resupplied only a part of the same with a shortfall of 35110.39 quintals of rice. Thus, this shortage in quantity of rice equivalent to a total cost of Rs.7,16,15,716/- was recoverable from the Rice Mill. Against the aforesaid outstanding amount, the Rice Mill paid ten cheques of Rs.50 lakh each amounting to Rs.5 crore to the Corporation leaving a balance of Rs.2,16,15,716/-. Thus, there arose a dispute between the parties with regard to the recovery of the balance amount. The dispute was referred to the Arbitrator.

5. The Arbitrator passed an award on 08.11.2012 and awarded a sum of Rs.2,67,66,804/- in favour of the Corporation as against the Rice Mill. The amount awarded was to be paid with interest @ 12 per cent per annum. The said award was objected to by the Rice Mill by filing a petition under Section 34 of the Act before the Additional District Judge.

It was dismissed on 07.04.2015 with the finding that there is no illegality in the award within the scope of interference permissible under Section 34 of the Act. Not satisfied by the aforesaid order, the Rice Mill filed an appeal under Section 37 of the Act before the High Court. The appeal has been allowed by the impugned judgment and order 10.01.2017 and not only the judgment and order passed by the Additional District Judge under Section 34 of the Act has been set aside but also the Arbitral order dated 08.11.2012.

6. It is in the above factual scenario that the Corporation has preferred the present appeal for setting aside the impugned judgment and order dated 10.01.2017 passed by the High Court in an appeal under Section 37 of the Act.

7. Learned counsel for the parties were heard at length.

POINT OF DETERMINATION:

8. The short question on the submission of the parties, which arises for our consideration is about the scope of powers of the Appellate Court under Section 37 of the Act and whether the Appellate Court was justified in setting aside the award dated 08.11.2012 which had already been confirmed under Section 34 of the Act.

LEGAL POSITION:

9. The object of the Act is to provide for a speedy and inexpensive alternative mode of settlement of dispute with the minimum of intervention of the courts. Section 5 of the Act is implicit in this regard

and prohibits interference by the judicial authority with the arbitration proceedings except where so provided in Part-I of the Act. The judicial interference, if any, is provided inter-alia only by means of Sections 34 and 37 of the Act respectively.

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*, 4 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."

14. It is equally well settled that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner.

15. In *Dyna Technology Private Limited v. Crompton Greaves Limited* 5 , the court observed as under:

"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award.

Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

16. It is seen that the scope of interference in an appeal under Section 37 of the Act is restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act. In

other words, the powers under Section 37 vested in the court of appeal are not beyond the scope of interference provided under Section 34 of the Act.

17. In paragraph 14 of *MMTC Limited v. Vedanta Limited*, 6 it has been held as under:

"14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."

18. Recently a three-Judge Bench in *Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking* 7 referring to *MMTC Limited* (supra) held that the scope of jurisdiction under Section 34 and Section 37 of the Act is not like a normal appellate jurisdiction and the courts should not interfere with the arbitral award lightly in a casual and a cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle the courts to reverse the findings of the arbitral tribunal.

19. In *Bombay Slum Redevelopment Corporation Private Limited v. Samir Narain Bhojwani* 8 , 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* 9 . 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.""

CONCLUSION:

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.

21. It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement.

22. In the case at hand, the arbitral award dated 08.11.2012 is based upon evidence and is reasonable. It has not been found to be against public policy of India or the fundamental policy of Indian law or in conflict with the most basic notions of morality and justice. It is not held to be against any substantive provision of law or the Act.

Therefore, the award was rightly upheld by the court exercising the powers under Section 34 of the Act. The Appellate Court, as such, could not have set aside the award without recording any finding that the award suffers from any illegality as contained in Section 34 of the Act or that the court had committed error in upholding the same. Merely for the reason that the view of the Appellate Court is a better view than the one taken by the arbitral tribunal, is no ground to set aside the award.

23. Thus, in our opinion, the Appellate Court committed manifest error of law in setting aside the order passed under Section 34 of the Act and consequently the arbitral award dated 08.11.2012.

24. Accordingly, the impugned judgment and order dated 10.01.2017 passed under Section 37 is hereby set aside and the arbitral award dated 08.11.2012 is restored to be implemented in accordance with law.

25. The appeal is allowed with no order as to costs.

26. Pending application(s), if any, shall stand disposed of.

.....J. (Pamidighantam Sri Narasimha)

.....J. (Pankaj Mithal)

New Delhi;

September 27, 2024

1 hereinafter referred to as 'the Act'

2 hereinafter referred to as 'the Corporation'

3 hereinafter referred to as 'the Rice Mill'

4 (2001) 4 SCC 86

5 (2019) 20 SCC 1

6 (2019) 4 SCC 163

7 (2023) 9 SCC 85

8 2024 SCC OnLine SC 1656

9 (2022) 4 SCC 116

Back

Back to September 2024 Judgements

Browse years

Disclaimer: General information only. Verify the current legal position and obtain professional advice before acting.