
(2022) 06 UK CK 0100

In the Uttarakhand High Court

Case No : Appeal From Order No. 34 Of 2013

Baisakhi And Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 29-06-2022

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 18, 34, 34(2)(a)(iii), 34(2)(b)

Citation : (2022) 06 UK CK 0100

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Bhagwat Mehra, J.C. Pandey

Final Decision : Allowed

Judgement

Sanjaya Kumar Mishra, J

1. The matter is listed today in the category "to be mentioned". It is borne out from the record that on 22.11.2021, the judgment was reserved in the matter but due to some reasons, the same has not been mentioned in the order sheet. Be that as it may, I have heard learned counsel for the parties afresh and dispose of the appeal by passing the following order:

2. The appellants take exception to the judgment passed by the learned District Judge, Pauri Garhwal in Misc. Civil Case No.98 of 2006 thereby modifying the award passed by the Arbitral Tribunal.

3. The facts of the case are not disputed at this stage. The appellant was issued a work contract by the Public Works Department, Pauri Garhwal and there was an arbitration clause in the agreement. Because of certain difference of opinion regarding the execution of the work, arbitration proceedings were initiated and finally an award was passed on 09.03.2006 awarding a sum of Rs. 15,67,000/- with cost of litigation Rs. 14,000/- in favour of the claimant / appellant and to pay interest @ 18% per annum, if the award is not satisfied within the time. The State preferred an application before the learned District Judge, Pauri Garhwal

under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act"). The appellants, being the respondents therein, were noticed and they were also heard. However, while deciding the application under Section 34 of the Act, the learned District Judge modified the award passed by the Arbitral Tribunal and reduced the awarded amount to Rs. 1,38,765/- only.

4. In assailing the final judgment passed by the learned District Judge, Mr. Bhagwat Mahra, learned counsel for the appellants would argue that this legal question is in more res integra and in fact, this Court as well as the Hon'ble Supreme Court in several judgments has held that Section 34 of the Act does not confer absolute appellate jurisdiction on the learned District Judge. He would further submit that under Section 34 of the Act, the learned District Judge has to see - whether the award passed by the Arbitral Tribunal is within the parameters fixed therein. In a recently decided case, this Court after taking into consideration the judgments delivered by Hon'ble Supreme Court has come to the similar conclusion that District Judge has no absolute appellate jurisdiction. In that view of the matter, it would be appropriate to quote relevant paragraphs of judgment delivered by us in Appeal from Order No. 301 of 2011 on 24.06.2022:

"10. This Court, in the case of "Jai Prakash & Sons vs. Central Public Works Department, 2022 (1) UC 161", (Appeal From Order No.499 of 2011, dated 30.11.2021), had decided the similar issue, and after taking into consideration the provisions of Section 34 of the Act, and the ratio decided by the Hon'ble Supreme Court, in the case of "PSA SICAL Terminals Pvt. Ltd. vs. Board of Trustees of V.O. Chidambranar Post Trust Tuticorin, (2021) SCC Online 508", has held that in an application under Section 34 of the Act, the Court is expected to act as an appellate court and re-appreciate the evidence. This Court has further held that the scope of interference would be limited to grounds provided under Section 34 of the Act. The interference would be so warranted when the award is in violation of "public policy of India", which has been held to mean "the fundamental policy of Indian Law". A judicial intervention on account of interfering on the merits of the award would not be permissible. It is further held that principles of natural justice as contained in Sections 18 and 34(2)(a)(iii) of the Act would continue to be the grounds of challenge of an award.

11. Similarly, in the case of "Welspun Specialty Solutions Ltd. (formerly known as Remi Metals Gujarat Ltd.), 9 (2022) 2 SCC 382", the Hon'ble Supreme Court has held that Section 34 of the Act provided for certain specific grounds for challenge. The limited grounds provided under Section 34 of the Act have been interpreted by the Hon'ble Supreme Court on numerous occasions. In the aforesaid reported case, the challenge of award was based on the fact that the same is against the public policy and patent illegality. Public policy as a ground of challenge has always been met with certain skepticism. The phrase 'public policy' does not indicate 'a catch-all provision' to challenge awards before an appellate forum on infinite grounds. However, the Hon'ble Supreme Court has held that the

ambit of the same is so diversely interpreted that in some cases, the purpose of limiting Section 34 jurisdiction is lost. The Hon'ble Supreme Court has further held that Court's jurisprudence also shows that Section 34(2)(b) has undergone a lot of churning and continue to evolve. The purpose of Section 34 is to strike a balance between Court's appellate powers and integrity of the arbitral process.

12. It is apparent in this case that the learned District Judge, while deciding the application under Section 34 of the Act, has not come to the conclusion that there is any doubt or shadow over the integrity of the arbitral award. The learned District Judge, after considering each item of claim and the 10 evidence led, has come to the conclusion that such an amount should not be awarded.

13. This Court also takes into consideration the judgment rendered by a Co-ordinate Bench of this Court in the case of "M/s Arvind Associates vs. Union of India (Appeal From Order No.355 of 2008, dated 23.08.2021)", wherein the Co-ordinate Bench took into consideration the reported judgment in the case of "Project Director, National Highways Authority of India vs. M. Hakeem & another, 2021 SCC Online SC 473", and came to the conclusion that in a proceeding under Section 34 of the Act, the learned District Judge shall not act as a regular appellate court, but should confine his findings only to the grounds enumerated in Section 34 of the Act for setting-aside the arbitral award, passed by the Arbitral Tribunal."

5. It is apparent that the learned District Judge has adjudicated the matter as court of appeal and re-assessed the evidence / documents on the basis of which arbitral award was passed and modified the total sum of award, which is not permissible. He has to only see whether in the award any of the conditions enunciated in Section 34 of the Act is violated. In that view of the matter, the judgment passed by the District Judge, Pauri Garhwal cannot be sustained in the eyes of law. Hence, the same should be remanded back to the learned District Judge, Pauri Garhwal.

6. Accordingly, the appeal is allowed. The impugned judgment is set aside. The matter is remanded back to the District Judge, Pauri Garhwal, who shall reconsider the case and pass appropriate order in the light of observations made by us in the preceding paragraphs. There shall be no orders as to costs. Parties are directed to appear before the District Judge, Pauri Garhwal on 27.07.2022 and produce a certified copy of this order. On such an event, the learned District Judge shall rehear and dispose of the case, in accordance with observations made by us, within three months from the date of appearance of the parties. Trial court records be sent back forthwith.