
(2018) 04 MP CK 0041

In the Madhya Pradesh High Court

Case No : Arbitration Appeal No.12 OF 2007

Central Paints Company Pvt. Ltd.

APPELLANT

Vs

State Of Mp And Others

RESPONDENT

Date of Decision : 05-04-2018

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 34(2), 34(2)(b)(ii), 37

Citation : (2018) 04 MP CK 0041

Hon'ble Judges : PRAKASH SHRIVASTAVA, J

Bench : Single Bench

Advocate : Shekhar Bhargava, Ishita Agrawal, Piyush Shrivastava, A.K.Sethi, Harish Joshi,

Final Decision : Dismissed

Judgement

This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 is directed against the order dated 2/8/2005 passed by the Additional

District Judge rejecting the objection under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act of 1996').

2] The facts in nutshell are that the three lease deeds dated 22/11/1963, 23/11/1963 and 29/10/1968 were executed by the respondent-General

Manager District Industries Centre in favour of the appellant-M/s Central Paints Company Pvt. Ltd. giving a lease of the plot in industrial estate,

Pologround. Since later on it was found that the appellant had committed breach of conditions of lease, therefore, after serving a notice, the lease

deeds were cancelled by order dated 7/8/2001 and against this order the appeal was also dismissed by the Commerce and Industries Department

vide order dated 28/6/2002. Aggrieved with this, appellant had filed W.P. No.1361/2002 before this Court and this Court vide order dated 17/9/2002

had dismissed the writ petition giving liberty to raise the dispute before the Arbitrator in terms of the arbitration clause in the lease. Accordingly, the parties had approached the named arbitrator and after conducting the proceedings, arbitrator had passed the award dated 10/10/2003 holding that the appellant had committed breach of the conditions of the lease, therefore, after due service of notice, the lease was cancelled and the appellant has no right to continue in possession of the leased land. Against the award, objections preferred by the appellant under Section 34 of the Act have been rejected by the Additional District Judge by order dated 2/8/2005.

3] Learned counsel for the appellant submits that the Arbitrator was also the Appellate Authority against the order of eviction passed against the appellant under Madhya Pradesh Lok Parisar (Bedhakhali) Adhiniyam, 1974 (M.P. Public Premises Eviction Act), therefore, he could not have acted as arbitrator and the award is liable to be set aside on the ground of bias. He has also submitted that the Jilla Yojna Samiti had no right to terminate the lease and there was no change of management and rent was also duly paid, therefore, there was no violation of the lease conditions and the lease could not have been terminated.

4] Learned counsel for the State has supported the impugned orders submitting that within the limited scope of appeal under Section 37, no ground for interference is made out.

5] I have heard the learned counsel for the parties and perused the record.

6] Before examining the grounds raised by counsel for the appellant, it would be worthwhile to consider the scope of this appeal. The award of the arbitrator can be subject matter of challenge under Section 34 of the Act only on the limited ground prescribed therein, therefore, the scope of this appeal cannot be wider than the scope of considering the objection under Section 34. Unless a ground u/S.34 is made out this Court exercising the appellate power cannot go into the findings of the Arbitrator or reappraise the evidence. This court has a limited appellate role circumscribed by the grounds enumerated u/S.34.

7] The Supreme Court in the matter of Associate Builders Vs. Delhi Development Authority reported in 2015 (3) SCC 49 has held that none of the grounds contained in Section 34 (2)(a) of the Act deal with the merits of the decision rendered by an arbitral award and it is only when arbitral award

is in conflict with public policy of India as per Section 34(2)(b)(ii), that merits of an arbitral award are to be looked into. In this judgment the

Honâ??ble Supreme Court has noted theÂ circumstances when the merits of the award can be looked into by holding that :-

â??17. It will be seen that none of the grounds contained in sub- clause 2 (a) of Section 34 deal with the merits of the decision rendered by an arbitral

award. It is only when we come to the award being in conflict with the public policy of India that the merits of an arbitral award are to be looked into

under certain specified circumstances.â??

8] Supreme Court in the matter of Oil and Natural Gas Corporation Ltd. Vs. Western Geco International Ltd. reported in (2014) 9 SCC 263 has

considered the meaning and scope of â??Public Policy of Indiaâ? and â??Fundamental Policy of Indian Lawâ? and has held that the three distinct

and fundamental juristic principles that are to be followed in every determination either by court or any authority including an arbitrator, that affects

rights and obligations of parties or leads to any civil consequences are: (i) duty to adopt judicial approach, (ii) compliance with principles of natural

justice, i.e. application of mind to the attendant facts and circumstances while taking a view one way or the other, (iii) that the decision should be not

perverse or so irrational that no reasonable person would have arrived at the same i.e. the Wednesbury principles would be applicable. It has further

been clarified that having regard to the public policy of India if the award is not in compliance of the fundamental policy of India and the arbitrator fails

to draw an inference that ought to have been drawn or the inference drawn is unsustainable on the face of it, cannot be sustained.

9] In the matter of M/s MSK Projects (I) (JV) Ltd. Vs. State of Rajasthan & another reported in 2011 AIR SCW 4528, it has been held that the

arbitrator award if contrary to provisions of law or against the terms of the contract or the public policy would be patently illegal and could be

interfered with under Section 34 (2) of the Act.

10] In the matter ofÂ Mcdermott International Inc. Vs. Burn Standard Co. Ltd. and others 2006 (11) SCC 181 it has been held that the Act of 1996

makes provisionÂ for supervisory role of Courts and for the review of the arbitral award only to ensure fairnessÂ and this supervisory role is to be

kept at a minimum level and interferenceÂ is envisaged only in cases of fraud or

bias, violation of natural justice etc.Â it has further been held that interference on the ground of patent illegality is permissible only if the same goes to the root of the matter and a public policyÂ violation should be soÂ unfairÂ and unreasonable as to shock the conscience of the court.

11] In the matter of P.R. Shah, Shares and Stock Brokers Pvt. Ltd. Vs. B.H.H. Securities Pvt. Ltd. And others 2012 (1) SCC 594 it has been ruled that court cannot sit in appeal over award of the Arbitrator by reassessingÂ or reappreciating the evidence to find out whether different decision could be arrived at against findings of the arbitral tribunal in the absence of grounds u/S.34.

12] In the matter ofÂ Sumitomo Heavy Industries Ltd. Vs. Oil and Natural Gas Corporation Ltd. 2010 (11) SCC 296 while considering the scope of interference by the court on the ground of perversity of the arbitrator's view under the provisions of the old Act, the Supreme Court has held that if the conclusion of the Arbitrator is based on a possible view of the matter, the court is not expected to interfere with the award. Hence, if the umpire relies on a plausible interpretation out of the two possible views, then it would not render the award perverse.

13] Having examined the present appeal in the light of the aforesaid scope of interference, it is noticed that the first argument advanced by the learned counsel for the appellant is that the arbitrator was biased, because he had decided the appeal against the order of eviction passed by the authority under theÂ Madhya Pradesh Lok Parisar (Bedhakhali) Adhiniyam, 1974.

14] On the examination of the record, it is noticed that the lease deed contained the following clause as arbitration clause:-

â??24. In the event of any dispute arising between the parties in respect of this deed or on any matter whatsoever connected therewith, except in respect of the matters on which decision of the Director is declared hereunder as final and binding on the lessee, the same shall be referred, to the arbitration of the Commissioner, Indore Division whose decision thereon shall be final and binding on the parties.â??

15] Hence, the parties by mutual agreement had agreed for the arbitration through the named arbitrator i.e. the Commissioner Indore Division.

16] The record further reflects that on the petitioners writ petition being W.P. No.1361/2002 this Court had passed the order dated 13/09/2002 noting

the aforesaid arbitration clause and giving liberty to the petitioner to approach the named Arbitrator by holding that :-

â??5- When the parties have chosen a forum for adjudication of their disputes to be resolved by the named arbitrator then the remedy of petitioner no

sooner their lease was determined by an order (Annexure P-12) was to submit themselves to arbitration by invoking the arbitration clause and file its

dispute calling upon the named arbitrator to decide the impugned cancellation to be good or bad. Instead they misconceived the remedy by rushing to

State, as if it is an appellate forum. Neither the State could exercise the appellate powers, nor there was any appellate forum. Be that as it may, while

dismissing the writ, I observe that petitioner will be free to raise their dispute which admittedly relates to and arise out of a lease deed before the

named arbitrator in terms of Clause 24 and 25 of the respective lease deeds (Ex. P-2 / P3). In case, any such dispute is raised, the same shall be

decided by the named arbitrator strictly in accordance with the clauses of lease deed and uninfluenced by the order passed by State, referred supra.â??

17] The aforesaid order of this Court was not challenged by the appellant and on the contrary in pursuance to the aforesaid order, the appellant had

approached the named arbitrator and had submitted the statement of claim. In the statement of claim no objection was raised against the arbitrator and

during the course of proceedings before the arbitrator also the appellant had not raised objection making any allegation of bias against the arbitrator or

raising doubt to the bona-fides of the arbitrator. The appellant had participated in the proceedings before the arbitrator and when the award is passed

against it, the appellant came up with the plea of bias while raisingÂ objection under Section 34. Such a course was not open to the appellant. Even

otherwise, it is noticed that the appellant is raising objection of bias on the ground that the Commissioner had heard the appeal against the eviction

order passed against the appellant under the provisions of Madhya Pradesh Lok Parisar (Bedhakhali) Adhiniyam, 1981. The appeal was heard by the

Commissioner in his capacity as an appellate authority under the Act of 1981 whereas the arbitration has been conducted by the Commissioner in a

different capacity as named arbitrator in the arbitration clause. Therefore, unless any material is pointed out that the arbitrator was biased infact in

conducting the arbitral proceedings, the objection in this regard cannot be accepted. Learned counsel appearing for the appellant has failed to point out

any such material in this appeal.

18] That apart, the order passed by the Additional District Judge also reveals that the objection of bias has been examined by him in detail and it has been found that the arbitrator had given proper opportunity to both the sides and has conducted the arbitration by following the due process and the appellant could not prove that the arbitrator was biased or he has misconducted.

19] The appellant cannot be granted the benefit of the judgment of the Supreme Court in the matter of Union of India and others Vs. Sanjay Jethi and another reported in (2013) 16 SCC 116 because even the objection of likelihood of apprehension of bias was not raised by the appellant before the arbitrator. Similarly, the appellant is not entitled to the benefit of the judgment of the Supreme Court in the matter of Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Coeducation) Higher Secondary School and others reported in AIR 1993 SC 2155 wherein it has been held that no one can be judge of his own cause because in the present case, the Additional Commissioner has no personal interest in the dispute. Similarly, in the matter of Koshy Vs. K.S.E. Board reported in AIR 1984 Kerala 23 it has been held that actual bias of the arbitrator need not be established and the existence of the circumstance which is likely to bias the arbitrator is enough but in the present case, even the said circumstances do not exist.

Similarly, in the matter of Ranjit Thakur Vs. Union of India and others AIR 1987 SC 2386 the decision was found to be tainted with bias because

Martial Officer in the proceedings of summary court punishing the delinquent on the previous occasion was found to be sitting at Court Martial but in

the present case the proceedings under the Baidakhali Adhinyam were altogether different proceedings and the petitioner himself had accepted the jurisdiction of named arbitrator.

20] The next objection raised by the learned counsel for the appellant is that the lease has been terminated by Jilla Yojna Samiti whereas in terms of the lease deed, the Director alone was competent to terminate the lease.

21] Having examined the record it is noticed that though under the lease, the Director was competent to terminate the lease but at the same time the

lease deed also provides that all Acts, Rules, Regulations in force from time to time will be applicable. The lease was governed by the Madhya

Pradesh Industries (Allotment of Shades Plots and Rules, 1974). The said rules

were subsequently amended on 1/4/1999 and the Jilla Yojna Samiti was given power to renew or cancel the lease which were executed prior to 1974.

22] In the present case, the lease deeds in question were executed in the year 1963 and 1968, therefore, the Jilla Yojna Samiti was duly authorized to cancel the lease and the communication dated 29/12/2001 sent by the General Manager, District Industries Centre to the appellant reveals that the decision to terminate the lease was taken by the Â Samiti.

Hence, no error can be found in this regard.

23] A further issue has been raised by the appellant that he had paid the entire rent and the management was also not changed, therefore, no violation of terms of lease. Such an issue is a factual issue and the findings of the arbitrator in this regard are not open to challenge unless the appellant demonstrates that such findings are palpably erroneous or perverse which the appellant has failed to demonstrate.Â The award of the arbitrator reveals that the appellant had deposited the rent on 30/08/2002 whereas the lease of the appellant was already terminated prior to that and intimation of termination of lease was given to the appellant vide communication dated 29/12/2001. On examining the issue of change of management also it has been found that the appellant lease holder without any permission had started the activities under the banner of central insecticides and fertilizer and for this purpose a separate company was got registered.

24] The arbitral award as also the order of the Additional District Judge under Section 34 of the Act reveals that the appellant had committed breach of various clauses of the lease deed specially clauses 2, 3, 4, 6, 7, 9, 23 etc. and the appellant had not conducted any industrial activity and no production was done in the premises forÂ 17 years and after giving show cause notice and due opportunity of hearing the lease was terminated.

Hence, in such circumstances, I am of the opinion that no ground is made out to interfere in the arbitral award or the order of the Court below. The arbitrator was neither biased nor he had misconducted while passing the award. On the contrary, the award has been passed by him after fully complying with the principles of natural justice and by following the due Arbitration Appeal No.12/2007 process of law.

25] That apart, it has also been pointed out thatÂ after cancelling the lease deed of the appellant, the plot in question has been allotted to third party

and registered lease deed for 30 years with effect from 2006 to 2036 has been executed in its favour.

26] Since no merit is found in the appeal, therefore, the appeal is dismissed.