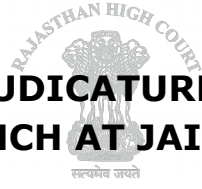




**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**



D.B. Civil Miscellaneous Appeal No. 2530/2024

1. State Of Rajasthan, Through Administrative Secretary, Public Works Department, Rajasthan, Jaipur.
2. Chief Engineer(N.h.), Public Works Department, Rajasthan, Jaipur.
3. Superintending Engineer, Public Works Department, Circle Sikar, Rajasthan.

----Appellants

Versus

1. Shri I.J. Mamtani, Chairman, Arbitration Committee, Chief Engineer Road Retired Most 111 G/58, Lajpat Nagar-3, New Delhi-110024 (Fax No. 01129832256).
2. Gammon India Limited, Gammon House, Veer Sarvarkar Marg, Prabha Devi Marg, Varli, Mumbai-400025.

----Respondents

---

For Appellant(s) : Mr. Vigyan Shah, AAG  
For Respondent(s) : Mr. A.K. Sharma, Sr. Adv. assisted by  
Mr. Rachit Sharma &  
Mr. Madhav Dadich

---

**HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA  
HON'BLE MRS. JUSTICE SHUBHA MEHTA**

**Judgment**

**REPORTABLE**

**05/03/2026**

1. The State in this appeal assails the order passed by the learned Commercial Court No.2, Jaipur Metropolitan-II dated 20.03.2024, whereby the Commercial Court has rejected the objections raised by the appellant under Section 34 of the Arbitration & Conciliation Act, 1996 (for short 'the Act of 1996') and has affirmed the award passed by the Arbitral Tribunal (for short 'Tribunal').



2. Mr. Vigyan Shah, learned Additional Advocate General has vehemently submitted that the learned Arbitrator failed to take into consideration the provisions enumerated in the contract and has passed an award without appreciating the facts and circumstances. It is his submission that the concerned Tribunal has failed to take into consideration that the entire contract was time related and if the same would not have been completed within the time frame, the State had full right to determine the contract.

3. He submits that the finding of the Tribunal of the contract not being time bound related is perverse. He also submits that the concerned Engineer had no power to extend the time period of the contract and a wrong presumption has been drawn by the Arbitrator that it can be assumed there must be some obstacles in construction of the road for 98 Kms.

4. Learned counsel has painstakingly taken us to the various provisions of the contract agreement and also to the view taken by the Tribunal.

5. Learned counsel submits that the findings of the Tribunal with regards to the duties of the Engineer being Executive and quasi judicial is wholly erroneous. The Engineer being employed by the employer, i.e., State of Rajasthan, was bound by the instructions issued by the State and its Chief Engineer.

6. The learned counsel has further taken us to the order passed by the Commercial Court No. 2, Jaipur. While deciding the objections under Section 34 of the Act of 1996 to submit that so far as Clauses 44 and 47 regarding power to extend the time





limitation and imposing of liquidated damages are concerned, the same were not applicable as the contract was by the World Bank Project and the World Bank directions were required to be followed.

7. In view of the fact that the contractor had failed to perform within the time limit prescribed, the determination of the contract cannot be said to be unjustified.

8. We have considered the submissions.

9. In this case, a Tribunal was appointed consisting of three members. The claimant nominated one Mr. M.D. Deshmukh, as the Arbitrator, while the IRC nominated one Shri I.J. Mamtani and the State named one Mr. J.M. Malhotra, as Arbitrator.

10. The Tribunal commenced its hearing from 07.07.1997 and passed an award on 14.01.2008, further the award was corrected by issuing a corrigendum award on 01.03.2008. The summary of the award is noted as below:

### 6. Further Direction by the AT

*The Respondent Employer are permitted the time of 90 days from the date of publishing and signing the award for payment by the Respondents Employer to the Claimants Contractor. In case the Respondents do not pay the amount to the Claimants, the Claimants shall be paid the interest @14% on the gross amount which includes the awarded amount for the claims and the interest upto the date of the award, thereafter,*

### SUMMARY OF AWARD

| Claim No.                                 | Brief Description of the Claim   | Amount of claim in rupees | Amount of Award |
|---|--|---------------------------|-----------------|
| Contractors Claimant's Claims (Rs. Lakhs) |  |                           |                 |
| 1   | Reimbursement of Additional and/or extra expenses incurred during execution of the work due to breach of contract on the part of the | 8,09,46,000/0             | Nil             |





|                             |   |               |               |
|-----------------------------|---|---------------|---------------|
|                             | Respondents.  |               |               |
| 2                           | Refund of the recovered amount towards the alleged liquidated damages   | 1,34,13,100/- | 1,34,13,100/- |
| 3                           | Refund of the withheld amount towards escalation on the work done from time to time and wrongfully disallowed in the final bill of the Claimants.   | 63,79,675/-   | 63,79,675/-   |
| 4                           | Reimbursement of extra cost of carrying out Profile Corrective courses  | 18,34,565/-   | Nil           |
| 5                           | Reimbursement of cost of work done on surveying and preparation of Grade Sheets   | 22,34,565/-   | 9,44,880/-    |
| 6                           | Reimbursement of extra cost of construction of berms using quarry rubbish shoulders   | 28,27,298/-   | 28,27,298/-   |
| 7                           | Claim for compensation for wrongful cancellation of the contract by the Respondents when extension of time was legitimately due to the Claimants  | 3,39,86,000/- | 2,32,05,000/- |
| 8                           | Reimbursement of additional unanticipated interest charges required to be paid by the Claimants on the various advances given to them by the Respondents due to the actual progress of work not being commensurate with the planned progress of work due to breaches of contracts on the part of the Respondents. | 44,51,000/-   | 37,27,237/-   |
| Respondent Employer's Claim |   |               |               |
| 1                           | Respondent Employer's Claims<br>Loss due to deprivation of financial assistance from World Bank at lower interest rates for the work not done by the contractor   | 367.40 lakhs  | Nil           |
| 2                           | Expenditure incurred by Respondent on bringing the road to traffic worthy condition   | 595.86 lakhs  | Nil           |
| 3                           | Cost of balance work after the rescinding the contract (Excess to be  | 1360.74 lakhs | Nil           |





|                             |   |                 |   |
|-----------------------------|---|-----------------|---|
|                             | spent on balance work)  |                 |   |
| 4                           | Loss to public  | 50 lakhs L.S    | Nil   |
| 5                           | Cost of Arbitration   | 2.384 lakhs L.S | Nil   |
| Contractor Claimants Claims |   |                 |   |
| 9                           | Interest  | Not qualified   | Rate of interest @ 12% p.a. w.e.f. 18.2.1997.                               |
| 10                          | Cost of Arbitration Share of arbitrator's fees and expenses paid by Claimants on behalf of Respondents. | 14,07,719 = 00  | Refund of 50% amount paid to the Arbitrators on behalf of the Respondent s. |

11. The objections to the said award were filed under Section 34 of the Act of 1996 before the District Court & Sessions Judge on 28.05.2008, which was later on transferred to the Commercial Court (*supra*) on 03.02.2018 and, thereafter, the objections were decided on 20.03.2024.

12. We noticed that more than 25 years have elapsed since the initial arbitration proceedings commenced. The Act of 1996 essentially was passed with the purpose of deciding disputes in an effective and quick manner. However, we see and note that in almost all the cases where arbitration awards are passed, the same are taken up by way of raising objections under Section 34 of the Act of 1996, as if an appeal has been filed. Section 34 of the Act of 1996, provides certain conditions wherein the arbitral award can be set aside and it would be useful to note them for the purpose of present case. The same has been reproduced below:

**"34. Application for setting aside arbitral award.—**

*(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 [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, 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.

[(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 reappreciation 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 subsection (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.

[(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.]”*

13. Although, the award may not fall in any of the categories under Section 34 of the Act of 1996, however, an interpretation has been taken by the Hon’ble Apex Court in certain cases where the Court can interfere with an award, if the same has been passed arbitrarily or where there is a perversity to the extent that the award could not have been passed by any reasonable person.

14. Reference may be made to the following judgments:

(a) In the context of arbitrariness, reference can be made to the decision of the Hon’ble Supreme Court in **MMTC Limited vs Vedanta Limited (2019) 4 SCC 163:**

*“12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See Associates Builders v. DDA. Also see ONGC Ltd. v. Saw Pipes Ltd. ; Hindustan Zinc Ltd. v. Friends Coal Carbonisation ; and McDermott International Inc. v. Burn Standard Co. Ltd.)”*

(b) In the context of principles surrounding application of the concept of perversity, reference can be made to the decision of





the Hon'ble Supreme Court in **Associate Builders vs Delhi**

**Development Authority (2015) 3 SCC 49:**

*"31. 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:*

- (i) a finding is based on no evidence, or*
- (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or*
- (iii) ignores vital evidence in arriving at its decision,*

*such decision would necessarily be perverse."*

(c) The principles enumerated in **Associate Builders (supra)**

have also been followed in subsequent cases, as also noticed by

the Hon'ble Supreme Court in **Anglo American Metallurgical**

**Coal Pty. Limited vs MMTC Limited (2021) 3 SCC 308:**

*"47. This judgment has been consistently followed in a plethora of subsequent judgments, including:*

*(a) NHAI v. ITD Cementation (India) Ltd. at para 24 (p.38);*

*(b) Centrotrade Minerals & Metal Inc. v. Hindustan Copper Ltd. at para 45 (p. 252);*

*(c) Venture Global Engg. LLC v. Tech Mahindra Ltd. at para 85 (p. 687);*

*(d) Sulej Construction Ltd. v. State (UT of Chandigarh) at para 11 (p. 722);*

*(e) Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd. at para 51 (p. 169);*

*(f) HRD Corpn. v. GAIL (India) Ltd. at paras 18-19 (p. 493);*

*(g) M.P. Power Generation Co. Ltd. v. ANSALDO Energia SpA at para 25 (p.679);*

*(h) Shriram EPC Ltd. v. Rioglass Solar SA at para 34 (p.328);*

*(i) State of Jharkhand v. HSS Integrated Sdn at para 7 (p.804); and*

*(j) SsangYong Engg. & Construction Co. Ltd. v. NHAI at paras 20, 34-36 (pp. 154, 169-170)."*





(d) Furthermore, the Hon'ble Supreme in **Ssangyong Engineering and Construction Company Limited vs National Highways Authority of India (NHA) (2019) 15 SCC 131**, while referring to **Associate Builders (supra)** opined:

*"41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders, while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents 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 therefore, would also have to be characterised as perverse."*

(e) A word of caution was given by the Hon'ble Supreme Court in **Dyna Technologies Private Limited vs Crompton Greaves Limited (2019) 20 SCC 1**:

*"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."*

(f) More recently, the scope of Section 34 of the Act of 1996 were discussed by the Hon'ble Supreme Court in **Gayatri Balasamy vs ISG Novasoft Technologies Limited (2025) 7 SCC 1:**

**"255.** *The courts exercising power under Section 34 and courts hearing appeals thereunder have no power to "modify" an award.*

**256.** *The power to modify is not a lesser power to that of the power to set aside, as the two operate in separate spheres and are not of the same genus.*

**257.** *The inherent power under Section 151 CPC cannot be used to modify awards as it will be contrary to the express power mentioned in Section 34. Similarly, there is no scope for applying the doctrine of implied power to modify awards.*

**259.** *Interest awarded also cannot be modified in exercise of powers of setting aside and the course of action under Section 34(4) will have to be adopted as discussed in the judgment.*

**260.** *Hakeem is not per incuriam insofar as it held that a Section 34 Court cannot modify the award and will be read with the only exception made in this judgment now. On the principle of actus curiae neminem gravabit (act of court shall prejudice no one) computation, clerical and typographical errors or other errors of similar nature is permissible to be corrected by the Section 34 Court, in terms of the holding above.*

**262.** *The power under Section 34(4) can be exercised by the Court suo motu also under the circumstances set out hereinabove.*





**263.** A Court under Section 34 and the courts hearing appeals thereafter have the power to "sever" parts of the award in exercise of the powers of setting aside awards under Section 34. However, while severing, the parameters set out hereinabove and flowing from the judicial precedents discussed therein have to be followed."

(g) As this case is at the appellate stage, it would also be apposite to refer to a recent decision of the Hon'ble Supreme Court in **Saisudhir Energy Ltd. vs NTPC Vidyut Vyapar Nigam Ltd. 2026 SCC Online SC 125** wherein it was held as under:

"**18.** In our view, the Division Bench exceeded its jurisdiction under Section 37 of the Act of 1996 when it proceeded to re-work and re-calculate the amount of reasonable compensation to which NVVNL was entitled. The learned Single Judge having determined the amount of reasonable compensation by relying upon Clause 4.6 of the PPA and thereafter awarding 50% of the amount so determined, in the absence of this determination being shown to be beyond the terms of Clause 4.6 of the PPA or arbitrary or perverse, no interference with such determination was called for in exercise of jurisdiction under Section 37 of the Act of 1996. In fact, the Division Bench has not recorded any finding that such determination of reasonable compensation by the learned Single Judge suffered from arbitrariness or that it travelled beyond what was provided by Clause 4.6 of the PPA. Having held in paragraph 28 of the impugned judgment that it was in agreement with the view of the learned Single Judge of the need to balance equities and compute a fair and reasonable amount of compensation coupled with the fact that the majority award granting a paltry amount of Rs. 1.2 crores was held to be contrary to the fundamental policy of Indian law thus requiring interference, the further exercise undertaken by it in modifying the amount of reasonable compensation





*was not justified in the facts of the case. The modification in the amount of reasonable compensation by the Division Bench is merely a substitution of its view in place of the plausible view taken by the learned Single Judge. Such course of taking a different view of the same matter from the one taken under Section 34 of the Act of 1996 would be beyond the scope of Section 37 of the Act of 1996. As held in AC Chokshi Share Broker Private Limited v. Jatin Pratap Desai to which one of us (P.S. Narasimha J) was a party, the Court under Section 37 must only determine whether the Section 34 Court had exercised its jurisdiction properly and rightly, without exceeding its scope. To that extent, we find that the Division Bench of the High Court erred in interfering with the judgment of the learned Single Judge."*

15. Before proceeding further, we deem it fit to enumerate the following non-exhaustive principles to aid in determination of whether to set aside an award on grounds of arbitrariness or perversity:

- a.** The finding lacks any or sufficient evidence
- b.** Conclusion drawn from material available on record is perverse to the extent that no reasonable person examining such material would have arrived at such conclusion
- c.** Key facts or evidence were not given due consideration
- d.** Violation of due legal process or principles of natural justice, particularly where it has a material effect on the outcome of the dispute
- e.** Disregarding the opinion of experts without assigning sufficient reasons, particularly in technical matters





- f. Decision amounted to rewriting of contract
- g. Tribunal exceeded its mandate in any manner
- h. Arbitrariness or perversity goes to the root of the matter

While the above-mentioned principles provide useful guidance, they have to be examined in the context of the unique facts and circumstances of each case.

16. In light of the aforesaid law, we examine the present case. We find that the grounds which were taken by the appellant before the Court below as enumerated in Para 48 were found to be without any basis. The grounds as raised and examined by the concerned Commercial Court are not such which may come within the four corners of Section 34 (2) of the Act of 1996.

17. The main objections which we have enumerated in the foregoing paras raised by the State have been found on factual grounds to be incorrect. We also went through the entire award passed by the learned Arbitrator and find that the objections raised and the arguments advanced by the State were all dealt with reference to the provisions of the agreement entered between the parties. The duties of the Engineer are enumerated in Clause 2 of the Contract agreement T-1 P:71 where he has been designated as the first person to examine any dispute which may arise between the Executive Engineers and the contracting party.

The said clause is reproduced below:

**"ENGINEER AND ENGINEER'S REPRESENTATIVE**

*2. (1) The Engineer shall carry out such duties in issuing decisions, certificates and orders as are specified in the contract. In the event of the Engineer being required in terms of his appointment by the Employer to obtain the specific approval of the Employer for the*





*execution of any part of these duties, this shall be set out in Part second of these Conditions.*

*(2) The Engineer's Representative shall be responsible to the Engineer and his duties are to watch and supervise the works and to test and examine any materials to be used or workmanship employed in connection with the works. He shall have no authority to relieve the Contractor of any of his duties or obligations under the Contract nor, except as expressly provided hereunder or elsewhere in the Contract, to order any work involving delay or any extra payment by the Employer, not to make any variation of or in the works.*

*The Engineer may from time to time in writing delegate to the Engineer's Representative any of the powers and authorities vested in the Engineer and shall furnish to the Contractor and to the Employer a copy of all such written delegations of powers and authorities. Any written instruction or approval given by the Engineer's Representatives to the contractor within the terms of such delegation, but not otherwise, shall bind the Contractor and the Employer as though it had been given by the Engineer. Provided always as follows:-*

*(a) Failure of the Engineer's Representative to disapprove any work or materials shall not prejudice the power of the Engineer thereafter to disapprove such work or materials and to order the pulling down, removal or breaking up thereof.*

*(b) If the Contractor shall be dissatisfied by reason of any decision of the Engineer's Representative he shall be entitled to refer the matter to the Engineer, who shall thereupon confirm, reverse or vary such decision."*

However, the Engineer did not apply his mind independently. Applications were moved to him for extension of time. On the basis of the opinion received from the World Bank, the learned Arbitrator has reached to the conclusion that the Engineer was totally dominated by the employer and in partial working of the Engineer has been vitiated. We also notice that while time could





be extended and even there was even a provision for imposing liquidated damages the termination of the contract was done mid way. The Tribunal has given the following findings:

### **"5.0 Decision of the AT**

1. The AT is of the view that unilateral termination of the contract without considering the Extension of Time at an appropriate time on expiry of completion of the milestones and overall completion made the contract at large on 4.1.1994 virtually it become non-existent. Any action, thereafter is out of the contract provision hence is considered as void. The decision of granting few days Extension of Time, when the ground based Engineer (Executive Engineer) and the Superintending Engineer recommended larger time period, this action was not as per the contract since no reasons were conveyed on these rejections. The decision to terminate the contract was based on the instructions of the Deptt Of Economic Affairs, Govt. of India, Ministry of Finance and recommendations of the World Bank. A fair and reasonable chance was denied to the contractor when other contracts in the same package were granted larger Extension of Time.
2. The AT based on the submissions, oral presentation, arguments as well as legal citations by both parties and after application of mind decides that the action of the Employer Respondents was not as per the contract, hence the termination was improper. The Claimant/contractor is therefore entitled to the payment for consequential costs:

The Claimants have worked out the claim for Rs.809.46 lakhs. Annexu. 140A p 251 (a) and (b) of C2.

The Claim has been repeated under claim No.7. Hence this is not considered by the AT."

18. We do not find the award to be in any manner to be perverse or against public policy. In view thereto, the award passed by the





learned Arbitrator and as affirmed by the Commercial Court does not warrant any interference in this appeal by us.

19. The scope of appeal being wholly limited as noted above, we affirm the award as well as the order passed by the Commercial Court on 20.03.2024. The appeal is dismissed accordingly.

20. All pending applications also stand disposed of.

(SHUBHA MEHTA),J

(SANJEEV PRAKASH SHARMA),ACTING CJ

Riya/70