

ELP Arbitration Weekly Alert



ARBITRAL AWARD CAN ONLY BE INTERFERED WITH IF FINDINGS MADE THEREIN ARE PERVERSE OR CONTRARY TO EVIDENCE.

The State of Jharkhand & Ors. v. M/s HSS Integrated SDN & Anr.¹ (October 18, 2019)

Background

The present special leave petition (**Petition**) is in relation to a dispute between – The State of Jharkhand (**Petitioner/Original Respondent**) and a consortium of M/S HSS Integrated SDN and M/S VKS Infratech Management Pvt. Ltd. (**Respondent/Original Claimant**) arising out of a consultancy agreement dated 28 August 2007 (**Contract**).

On 25 November 2011, the executive engineer issued a letter to the Respondent, *inter alia*, instructing it to remove certain deficiencies in its work failing which the payments due to the Respondent would be suspended as per the Contract (**November Letter**). Despite the Respondent's reply to the November Letter, on 12 December 2011, the Petitioner invoked the contractual provision for suspension of payments on the grounds of impending deficiencies. Whilst the Respondent in its further correspondences informed the Petitioner about the successful compliance of pending issues, by its letter of 9 February 2012 the Petitioner terminated the Contract with effect from 12 March 2012. Having failed to convince the Petitioner to revoke its termination, the Respondent ultimately invoked the arbitration clause in the Contract. Thereafter, pursuant to an order of the high court the arbitral tribunal was constituted.

In its award (**Award**), the arbitral tribunal held that the termination of the Contract was illegal and without following the procedure of the Contract. The Award was unsuccessfully challenged (**Challenge Proceedings**) under section 34 of the Arbitration and Conciliation Act, 1996 (**the Act**). Subsequently, under section 37 of the Act, an appeal was filed against the order passed in the Challenge Proceedings (**Appeal**).

¹ Special Leave to Appeal (C) No. 13117 of 2019

Feeling aggrieved and dissatisfied with the judgment passed in the Appeal, the Petitioner has preferred the present petition before the Hon'ble Supreme Court of India (**the Court**).

Findings of the court

The Court observed that the tribunal had appreciated the evidence, considered various clauses of the Contract, and given cogent reasons for holding that the termination of the Contract was illegal and contrary to the terms of the Contract.

Perusing its decision in *Progressive* – MVR^2 the Court noted that in proceedings under section 34 of the Act, when the view taken by the arbitrator is a plausible view, and/or when two views are possible, a particular view taken by the tribunal which is also reasonable should not be interfered with.

The Court also took note that in *Datar Switchgear Ltd.*³, it had held that the "arbitral tribunal is the master of evidence and the findings of fact which are arrived at by the arbitrators on the basis of evidence are not to be scrutinized as if the Court was sitting in appeal now stands settled by a catena of judgements..."

Finally, noting its decision in *Associate Builders*⁴ the Court noted that an award passed by the tribunal can be interfered with in the proceedings under section 34 and 37 of the Act only in a case where the finding is perverse and/or contrary to the evidence and/or the same is against public policy.

Having noted the foregoing decisions, the Court concluded that the finding of the tribunal to the effect that the termination of the Contract was illegal and without following the due procedure under the provisions of the Contract, being a finding based on appreciation of evidence was neither perverse nor contrary to the evidence on record and thus couldn't have been interfered with by the courts. Since cogent reasons were given by the tribunal while allowing the respective claims and that since the claims were only partly allowed and even disallowed, the Court held that there was proper application of mind by the tribunal. Hence, as such, the courts in the Challenge Proceedings and the Appeal had rightly not interfered with the Award. Consequently, the Court found no requirement in the present case to interfere with the Award.

In view of the reasons stated above, the Award was upheld and the present Petition was dismissed by the Court with no order as to costs.

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² NHAI v. Progressive – MVR, (2018) 14 SCC 688

³ Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd, (2018) 3 SCC 133

⁴ Associate Builders v. DDA (2015) 3 SCC 49