HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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D.B. Civil Miscellaneous Appeal No. 1905/2023
CNR: RJHC010670192023 | URN: CMA / 5314U / 2023

The Executive Engineer, Public Work Department, Kuchaman City , Parbatsar, Dist. Nagaur, Rajasthan.

----Appellant

Versus

1. M/s Trimurti Construction, Through Partner Pankaj Gupta S/o Shri Dharmendra Gupta, 12/163 Gurudayal Marg, Hathibhata, Ajmer.
2. R P Modirataa, Sole Arbitrator, Retired Commandant, Brtf, C/o Shri Arun Mathur, R/o 468 Krishna Niwas, 7Th B Road, Sardarpura, Jodhpur

----Respondents

For Appellant(s)	:	Mr. Ayush Gehlot
For Respondent(s)	:	Mr. Kuldeep Kumar Shah

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE PRAVEER BHATNAGAR

Judgment

Date of conclusion of arguments:- 20.08.2026

Date on which the judgment was Reserved:- 20.08.2026

Whether the full judgment or only the operative part is pronounced:- Full Judgment

Date of pronouncement:- 25.08.2026

Per: Praveer Bhatnagar, J.

1. By way of filing the instant appeal, the appellant has assailed the judgment and order dated 3.6.2023 delivered by the Commercial Court at Ajmer in Civil Miscellaneous Case No. 45/19. In the impugned Judgment, the court upheld the Award dated

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11.3.2016 in favour of the respondents and dismissed the appellant's plea under Section 34 of the Arbitration Act.

2. In brief, the appellant issued a work order valued at Rs. 6,35,43,815 to the respondents via an official order dated 15 May 2013. However, progress was halted due to resistance from residents and villagers, prompting the appellant to withdraw the work order. As a result, the respondents filed a formal claim with the arbitral tribunal, which they contested by submitting a detailed written reply refuting the respondents' claim under various heads. After thoroughly reviewing the case, the Tribunal rendered an arbitral award in favour of the respondents. The appellant challenged the award by filing an application under Section 34 of the Arbitration Act before the Commercial Court. After hearing the arguments, the court dismissed the application and upheld the arbitral award. Dissatisfied with this outcome, the appellant filed the current appeal.

3. Learned counsel representing the appellants argues that the arbitral award was against public policy. They emphasize that the Arbitral Tribunal failed to properly frame the issues, despite the serious and complex allegations involved in the case. They contend that resolving these issues required a meticulous examination of each party's oral testimony and documentary evidence, including witness affidavits and relevant correspondence.

4. Conversely, the respondents' counsel defends the impugned order, stating that the appellant explicitly admitted in its written statement that work could not commence due to persistent resistance from local villagers, who protested against the project.

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Moreover, the respondents' materials were reportedly stolen, leading to an FIR.

5. After ensuring a fair hearing for both sides and considering all submissions, the Tribunal delivered a detailed, well-reasoned order accepting the respondents' claims on multiple grounds, including breach of contractual obligations and interference with project activities. Accordingly, counsel argues that the appeal lacks merit and should be dismissed. Counsel also cites the following judgments to support the arguments:

i. 2022 Livelaw (SC) 121 Indian Oil Corporation Ltd. Through Its Senior Manager V. M/S Shree Ganesh Petroleum Rajgurunagar Through Its Proprietor Mr. Laxman Dagdu Thite, decided on 01.02.2022

ii. Civil Appeal No/2023 [Arising Out Of SLP (Civil) No. 8791/2020] M/S Unibros Vs All India Radio, decided on 19.10.2023.

iii. Civil Appeal Nos. 9781-9782 Of 2024 @ SLP (C) Nos. 8128-8129 Of 2021 Pam Developments Private Limited Versus State Of West Bengal & Anr. decided on 23.08.2024.

iv. 2020 SCC Online Del 2496: Steel Authority Of India Ltd. (Sail) Versus Primetals Technologies India Pvt. Ltd., decided on 12.03.2020

v. Civil Appeal No. 1968 Of 2012, Batliboi Environmental Engineers Limited Versus Hindustan Petroleum Corporation Limited And Another, decided on 21.09.2023.

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6. In the aforesaid backdrop, we have heard the rival contentions and perused the material available on record.

7. It is admitted that, in response to the claim submitted by the respondents before the Arbitral Tribunal, the appellant filed a written reply, raising specific objections to the facts outlined in paragraphs 1 and 2 of the claimant's petition, which reads as follows:

> *"CLAIM NO. 1: IDLING OF MEN FROM 03.06.13 TO 10.10.13 (130 DAYS): RS 12,49,665/-*
>
> ***1. FACTS OF THE CLAIM:***
> *That though the date of commencement of work was 25.05.13, but it took some time to collect the labour required for-the work and the claimant was able to muster the labour by 03.06.13 and then he took all these labour with the bajri and stones to the site on 06.06.13 and since then all these labour and staff were available at site waiting for the instruction and police protection to start the work but inspite of various meetings with the residents and local MLA as well as administrative officers, no fruit full result came out and the local residents did not permit the labour to continue with the work. The claimant had to put more men on vigilance to safe guard the machines lying at the site. It was only after recommendation of withdrawal of the work by the respondent that the claimant released the labour after paying their dues. In this view the entire labour was sitting idle at site from 03.06.13 to 10.10.13 the details of idling of men is given below:-*

S.No	***Particulars***	***Period***	***Cost***
1	*Labour-30*	*03.06.13 to 30.06.13* ***(Annexure-13)***	*Rs.1,84,440/-*
2	*Labour-30*	*01.07.13 to 31.07.13* ***(Annexure-14)***	*Rs.2,10,825/-*
3	*Labour-30*	*01.08.13 to 31.08.13* ***(Annexure-15)***	*Rs.2,02,140/-*
4	*Labour-30*	*01.09.13 to 30.09.13* ***(Annexure-16)***	*Rs.1,99,440/-*
5	*Labour-30*	*01.10.13 to 31.10.13* ***(Annexure-17)***	*Rs.73,350/-*
6	*Ashok Kumar (Foreman)*	*Salary @ Rs.20,000/-p.m. (from 01.06.13 to 10.10.13)* ***(Annexure-18)***	*Rs.86,670/-*
7	*Aman Sharma (Supervisior)*	*Salary @ Rs.15,000/-p.m. (from 01.06.13 to 10.10.13)* ***(Annexure-19)***	*Rs.65,000/-*
8	*Aakash Bhargav*	*Salary @ Rs.25,000/-p.m.*	*Rs.1,08,330/-*

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	(Site Engineer)	*(from 01.06.13 to 10.10.13)* ***(Anneuxre-20)***	
9	*Mannu Kumar (Munnim)*	*Salary @ Rs.12,000/-p.m. (from 01.06.13 to 10.10.13)* ***(Annexure-21)***	*Rs.52,000/-*
10	*Jakir Hussain (Driver)*	*Salary @ Rs.6,000/- p.m.(from 01.06.13 to 10.10.13)* ***(Annexure-22)***	*Rs.25,800/-*
11	*Vijay Kumar (Chowkidar)*	*Salary @ Rs.9500/- p.m.(from 01.06.13 to 12.10.13)* ***(Annexure-23)***	*Rs.41,670/-*
		Total	*12,49,665/-*

2. POINT IN ISSUE.
In view of above submissions of facts of the claim, the point in issue is loss of Rs 12,49,665/- against the idling of labour and staff from 03.06.13 to 10.10.13 except the chowkidar who was kept upto 12.10.13, with interest @18% p.a. from 10.10.13 till date of payment.

3. RELIEF:
The claimant prays that this claim may kindly be allowed and the award may kindly be passed in favour of claimant of Rs.12,49,665/- on account of idling of Labour and staff from 10.10.13 till date of payment with interest @18% p.a. in terms of Section 34 of the Interest Act and Section 31(7) of Arbitration and Conciliation Act, 1996."

8. And thus claim Rs.12,49,665/- in the aforesaid head. Similarly, in claim No. 2, the respondent has claimed Rs. 19,56,000/-, stating that the machinery was lying idle at the site. In this head, the respondent has claimed Rs.19,56,000/-. Similarly, in the other heads also, the claimant has specifically claimed various quantum of amounts. Though the reply filed by the appellant before the arbitral tribunal is not paragraph-wise, in paragraphs 6 and 9 of the reply, the following averments were made:-

> *"6. That the averments made by the claimant in para no.6 of the claim petition are not admitted in the manner they have been stated. In this regard, it is respectfully submitted that the claimant has not engaged any permanent or temporary labour at site. Only one JCB machine was brought at site on 19.6.2013 from 11.00 a.m. to 4.00 p.m. with 2 supervisors and 3 Beldars. Also, claimant brought, one tractor trolly Bajri at site in presence of non- claimant.*
> *9. That the averments made by the claimant in para no.9 of the claim petition are not disputed so far as they are in conformity with the record of the case. In the respectful submissions of the non-*

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claimant, the fact of engagement of men/machineries at site was denied vide letters dated 9.9.2013 and 20.9.2013. Further, it was, duly communicated to the claimant that if the dispute of the land is not sorted out, the action for withdrawal of work/contract would be taken. Not only that, but the Site In-charge Assistant Engineer, PWD Sub Division Makrana also reported vide letter dated 2.9.2013 that the claimant or his any representative has not contacted him for start of the work.

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The appellant has also reiterated its specific denial of the respondent's claims in para 8 of its reply.

9. It is also undisputed that the Arbitral Tribunal decided the case in favour of the respondent without framing any contested questions of fact or recording any evidence regarding the parties' disagreements. Before relying on the claimant's documents, the Arbitral Tribunal also did not seek the appellants' admission/denial of them.

10. We begin by thoroughly examining sub-clauses (i) and (ii) of clause (b) within Sub-section (2) of Section 34, which specify the detailed provisions and stipulations outlined in these particular sub-Sections.

"34. Application for setting aside arbitral award. –
xx xx xx
(2) An arbitral award may be set aside by the Court only if –
(a) ...
(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.
Explanation 1. *—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if, —*
(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or
(ii) it is in contravention with the fundamental policy of Indian law; or
(iii) it is in conflict with the most basic notions of morality or justice.
Explanation 2. *–For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute."*
Section 34(2)(b) contains two sub-clauses, both giving the court the power to set aside an award. The first states that an award can be overturned if the subject matter isn't capable of resolution through arbitration under the applicable law at the time. The second allows for setting aside an award if it conflicts with India's public policy. According to Explanation No. 1, an award is deemed to clash with

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India's public policy only if it was affected by or involved fraud, corruption, or similar misconduct, or if it violates the core principles of Indian law or goes against basic notions of morality and justice.

11. The current award has been challenged under Section 34(b), with the argument that it breaches fundamental principles of Indian law and contradicts basic notions of justice, including the principle of natural justice.

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12. The Apex Court has clearly elucidated what defines the "public policy of India" in the case of ONGC Ltd. v. Saw Pipes Ltd. (2003) 5 SCC 705. Relevant portion whereof is reproduced hereinbelow:-

> *" 31..., the phrase 'public policy of India' used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice."*

13. In Bharat Coking Coal Ltd. Vs. L.K. Ahuja (2004) 5 SCC 109, the Honble Apex Court reaffirmed the principle that a claim for such loss of profit will only be considered when supported by adequate evidence and observed as under:-

> *"24. ... It is not unusual for the contractors to claim loss of profit arising out of diminution in turnover on account of delay in the matter of completion of the work. What he should establish in such a situation is that had he received the amount due under the contract, he could have utilised the same for some other business in which he could have earned profit. Unless such a plea is raised and established, claim for loss of profits could not have been granted. In this case, no such material is available on record. In the absence of any evidence, the arbitrator could not have awarded the same."*

14. Yet again, the Honble Apex Court in the matter of Unibros vs All India Radio (2023 SCC OnLine SC 1366) on 19.10.2023 held as under:

> *" The arbitral award in question, in our opinion, is patently illegal in that it is based on no evidence and is, thus, outrightly perverse;*

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therefore, again, it is in conflict with the "public policy of India" as contemplated by section 34(2)(b) of the Act."

15. Thus, the above Legal precedents make it clear that an arbitral award issued without properly identifying key issues of serious disputed facts—and without evidence or a fair hearing—violates natural justice. When a decision is based solely on pleadings, especially where facts remain contested, it breaches fundamental principles of justice. Furthermore, if an arbitral award is made contrary to the core procedures and principles of natural justice, Section 34 of the Arbitration and Conciliation Act, 1996, treats such an award as against public policy.

16. The learned Commercial Court dismissed the appellant-State's application solely because, under Section 34, courts lack the authority to re-examine or re-appreciate evidence. However, this reasoning seems to conflict with well-established legal principles, particularly as the appellants had explicitly challenged factual issues outlined in paragraphs 6, 8 & 9 of their written reply before the Arbitral Tribunal. Their objection directly concerns disputed questions of fact, which should have been decided based on oral or documentary evidence. The arbitral award, however, lacked crucial material because it was based only on the claim itself. This suggests that both parties' evidence should have been considered, and without it, the Tribunal's conclusion appears to contravene public policy. The Commercial Court failed to thoroughly scrutinize the pleadings submitted before the Tribunal, instead adopting a flawed view that re-evaluating the evidence was unnecessary, and dismissed the application under Section 34. Such an approach contradicts established legal principles. The

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Tribunal's decision to reject the Appellants' application under Section 34 cannot stand.

17. Resultantly, the appeal is allowed; the Commercial Court's order confirming the award and rejecting the application under Section 34 is set aside, and the award passed by the arbitral Tribunal in favour of the respondent is also set aside.

18. Stay application and all pending applications are disposed of accordingly.

(PRAVEER BHATNAGAR),J (DR.PUSHPENDRA SINGH BHATI),J

KP Singh Dewasi/- Dhananjay Sharma

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