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OSA No. 171 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18-06-2026

Pronounced on : 08.07.2026

CORAM

THE HON'BLE MR JUSTICE P. VELMURUGAN

AND

THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

OSA No. 171 of 2019

AND

CMP NO. 15197 of 2019

Board of Trustees,
Chennai Port Trust,
No.1. Rajaji Salai,
Chennai 600 001

..Appellant

Vs

Chennai Bunkering Terminal Private Limited,
'Neeladri', No.9, Cenotaph Road,
Alwarpet, Chennai 600 018

..Respondent

Prayer: Original Side Appeal filed under Order XXXVI, Rule 1 of the Original Side Rules, read with Clause 15 of Letters Patent Act, praying to set aside the Judgment and Decree dated 30.04.2019 made in O.P. No.415 of 2018 on the file of this Court.

For Appellant:

Mr.AR.L.Sundaresan,
Additional Solicitor General of India
for Mr. K. Lavan

For Respondent:

Mr. V.P. Raman



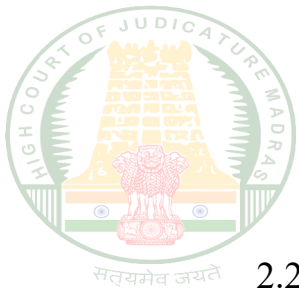
Judgment

WEB COPY (Judgment of the Court was delivered by K.Govindarajan Thilakavadi J.)

The present Original Side Appeal has been filed by the Appellant/Chennai Port Trust praying to set aside the Judgment and Decree dated 30.04.2019 made in O.P. No.415 of 2018 by the learned Single Judge of this Court.

2. The facts leading to filing of the present Original Side Appeal are as follows:

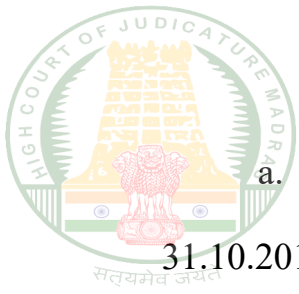
2.1. The Appellant/Chennai Port Trust invited tenders in January 2012 for the development of a Barge Handling Facility at Chennai Port. The Respondent/Chennai Bunkering Terminal Private Limited's (CBTPL) bid was accepted, and a Letter of Intent dated 30.01.2013 and a Concession Agreement dated 30.03.2013 were executed. The Respondent/CBTPL furnished the required bid security and performance bank guarantee. Under the agreement, the Appellant/Chennai Port Trust was required to obtain environmental and statutory clearances. Owing to delays in obtaining such clearances, the parties mutually extended the time for fulfilling the Conditions Precedent.



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2.2. According to the Respondent/CBTPL, the Appellant/Chennai Port Trust suppressed the Madras High Court's order restricting the import of coal and iron ore, which substantially reduced cargo traffic and rendered the DPR projections commercially unviable. The Respondent/CBTPL consequently submitted a revised project design and financial model. Although an expert appointed by mutual consent endorsed the revised proposal, the Appellant/Chennai Port Trust rejected the recommendations and insisted upon compliance with the original Conditions Precedent. The Respondent/CBTPL thereafter invoked the arbitration clause by issuing a notice dated 24.12.2015.

2.3. Subsequently, the Appellant/Chennai Port Trust forfeited the Respondent's / CBTPL security deposit and invoked the bid security bank guarantee. Apprehending invocation of the performance bank guarantee, the Respondent/ CBTPL approached this Court by filing O.A. No.66 of 2016 seeking interim protection. This Court initially granted a status quo order and later directed that the application be treated as one under Section 17 of the Arbitration and Conciliation Act, 1996, leaving it to the Arbitral Tribunal to affirm, modify, or vacate the interim order. Thus, the Respondent/CBTPL prayed for the following reliefs:



a. Declaration that the termination of the agreement vide letter dated 31.10.2015 as wrongful and to direct the Appellant/Chennai Port Trust to accept the modified plan submitted by the Respondent/CBTPL for the execution of the agreement dated 30.03.2013.

b. Permanent Injunction restraining the Appellant/Chennai Port Trust from invoking the performance Bank Guarantee amounting to Rs.1,36,00,000/-

3. The Appellant/Chennai Port Trust filed their counter statement by contending that the bidding documents, including the Detailed Project Report (DPR), Request for Qualification (RFQ) and Request for Proposal (RFP), required every bidder to independently verify the project's feasibility and assumptions before submitting its bid. The Respondent/CBTPL neither raised any objection regarding the projected bunkering volumes during the pre-bid meeting nor conducted adequate due diligence, and therefore could not subsequently challenge the project's viability.

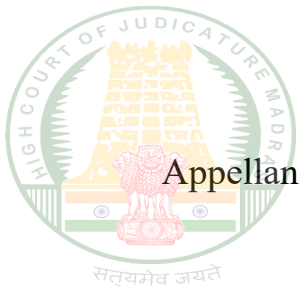
3.1. The Appellant/Chennai Port Trust further submitted that the Respondent/CBTPL's revised project design and phased development plan constituted a material deviation from the Concession Agreement and amounted to an impermissible post-tender modification affecting the approved tariff,



minimum guaranteed cargo, performance standards and revenue sharing. The revised proposal was rejected by both the Independent Engineer and the Appellant/Chennai Port Trust and although the Expert recommended its acceptance, the recommendation was declined as being beyond the scope of the Concession Agreement.

3.2. The Appellant/Chennai Port Trust also denied compelling the Respondent/CBTPL to obtain third-party financing and asserted that it merely required the Respondent/CBTPL to submit a financial plan in accordance with the Concession Agreement. It is further maintained that the environmental clearance had been obtained on 27.08.2014, delays were mutually condoned by extending the time for fulfilling the Conditions Precedent, the project site was ready for handover, and despite repeated extensions, the Respondent/CBTPL failed to achieve financial closure and fulfil its contractual obligations.

3.3. The Appellant/Chennai Port Trust contended that, after issuing a final termination notice granting the Respondent / CBTPL 90 days to fulfil the Conditions Precedent, and upon the Respondent / CBTPL failure to comply within the stipulated period, it validly terminated the Concession Agreement on 01.02.2016 and forfeited and encashed the bid security bank guarantee in accordance with Article 3.6 of the Concession Agreement. Thus, the



Appellant/Chennai Port Trust prayed for the following reliefs:

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(a) Dismissing all the claims made by the Respondent/CBTPL in their Statement of Claim.

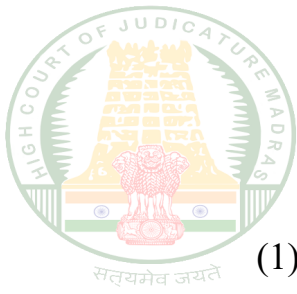
(b) Declaring the termination of the Agreement vide letter dated 01.02.2016 issued by the Appellant/Chennai Port Trust under Article 3.6 of the CA as valid.

(c) Permitting the Appellant/Chennai Port Trust to encash the Bank Guarantee towards Performance Guarantee to an extent of Rs.1.36 Crores.

(d) Directing the Respondent/CBTPL to pay a sum of Rs.1,15,55,548/- along with applicable interest towards loss of revenue suffered by the Appellant/Chennai Port Trust.

(e) Directing the Respondent/CBTPL to pay the Appellant/Chennai Port Trust the cost of the legal proceedings to be incurred by it, which amounts to Rs.75,000/-.

3.4. The Arbitral Tribunal, framed the following issues:



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(1) Whether the Respondent/CBTPL violated any terms of concession agreement dated 30.03.2013 entered into between the parties and if so, what are the violations?

(2) Whether the termination of contract made by the Appellant/Chennai Port Trust is valid?

(3) Whether the Respondent/CBTPL is entitled to all or any of the claims made by it in its claim statement?

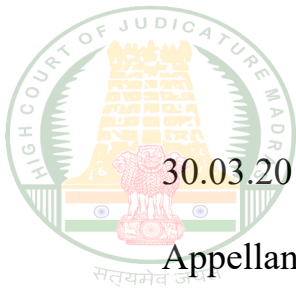
(4) Whether the Appellant/Chennai Port Trust is entitled to all or any of the counter-claim made by It in its defence statement?

(5) Whether the claimant/Respondent is entitled to claim interest on the amount claimed by it and if so, what is the rate of interest and for what period?

(6) Whether the claimant/Respondent is entitled to any cost and if so, what is the cost?

(7) To what other relief the parties are entitled to?

3.5. The learned Arbitrator, after analysing the oral and documentary evidence, rejected the prayer of the Respondent/CBTPL for declaration of the termination of the agreement vide letter dated 31.10.2015 as wrongful and to direct the Appellant/Chennai Port Trust to accept the modified plan submitted by the Respondent/CBTPL for the execution of the agreement dated



30.03.2013, however, granted the relief of permanent injunction restraining the Appellant/Chennai Port Trust from invoking the Bank Guarantee amounting to Rs.1.36 crores.

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4. Aggrieved over the same, the Respondent / CBTPL filed an Arbitration Petition in O.P. No.415 of 2018 before this Court. The learned Single Judge, vide his orders dated 30.04.2019, allowed the said petition by setting aside the Award of the Arbitral Tribunal holding that the Award, being in contravention of fundamental policy of Indian Law, therefore, being in conflict with public policy of India and that the same is vitiated by patent illegality.

5. Challenging the same, the Appellant/Chennai Port Trust, has come forward with the present Original Side Appeal.

6. Mr.AR.L.Sundaresan, learned Additional Solicitor General of India appearing for the Appellant/Chennai Port Trust, would contend that the Chennai Port envisaged a proposal during 2012 to develop a Barge Handling facility of size 150 x 15 m and an approach trestle with a required length and width of 5 m on piled structure having a dredged depth of (-) 9 m CD to handle 4000 DWT vessels, at an estimated cost of Rs.27.29 crores, through Public Private Partnership ('PPP') mode. The successful Developer would be responsible for construction of berth, dredging, installation of all equipment at the facility and



Operation and Maintenance thereof.

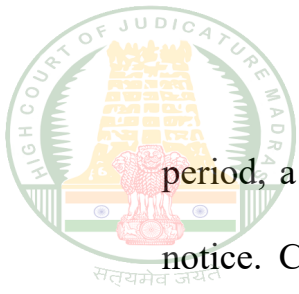
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6.1. Duly following the tender process, IMC Limited was selected as a successful developer who quoted a Revenue share of 10.17% and Letter of Intent was issued to them on 30.01.2013. A Concession Agreement (CA) was executed on 30.01.2013 with the Chennai Bunkering Terminal Private Limited (CBTPL), the Respondent herein, a special purpose vehicle incorporated to implement the project by the bidder viz., IMC Limited.

6.2. As per Clause 3.2 of the CA, the conditions precedent should be complied within 90 days from the date of agreement by both the parties. However, the concessioning authority may grant additional time for compliance of conditions precedent to the concessionaire as per Clause 3.3.

6.3. The Chennai Port Authority / Appellant fulfilled the conditions precedent on 27.08.2014 by obtaining environmental clearance. The concessionaire was advised periodically to fulfil the conditions precedent set forth in the Concession Agreement and the time of compliance was extended several times.

6.4. Since the Respondent / CBTPL did not achieve its financial closure, which is one of the conditions precedent envisaged in CA, within the extended

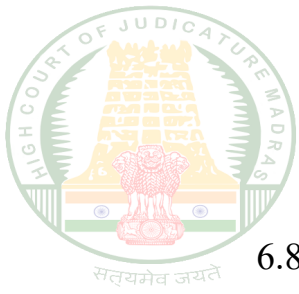


period, a termination notice was issued on 31.10.2015 by giving three months notice. Consequent to it, the CA was terminated on 01.02.2016 and the bid security amounting to Rs.27.29 lakhs was forfeited.

6.5. Meanwhile, the Respondent / CBTPL invoked Arbitration Proceedings. The learned Arbitrator, after hearing, passed an Arbitral Award dated 30.03.2013, wherein it was stated that the termination notice issued by the Appellant/ Chennai Port Trust dated 31.10.2015 is valid.

6.6. The Appellant/ Chennai Port Trust planned to develop the Bunker Berth as an inhouse project considering the growth of Bunker cargo during 2016. The Berth size was increased from 150 m x 15 m to 182 m x 16.45m, with estimated cost of Rs.44 crores. The berth can be operated by several parties unlike the earlier facility contemplated through PPP mode. An amount of Rs.22 crores has also been sanctioned as Grant-in-aid under SAGARMALA programme for the project by Government of India.

6.7. Consequent to the above Arbitral Award, on 31.03.2018, Letter of Acceptance (LOA) was issued to the L1 Bidder, M/s. Geo Tech-Threekay (JV), Cochin, for the construction of Bunker Berth, with a contract period of 450 days and contract value of Rs.39,37,30,960/- and the firm had also accepted the order dated 31.03.2018.

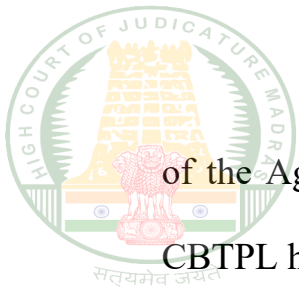


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6.8. The contract awarded to Geo Tech-Threekay (JV) is a work contract, and the entire investment is made by Chennai Port Authority / Appellant and not as a PPP project as awarded to Respondent / CBTPL. The construction of Bunker Berth awarded during March 2018, was completed in all respects on 20.01.2023 with the executed value of Rs.52.07 crores.

6.9. The learned Additional Solicitor General of India would contend that the main factor leading to the termination of the agreement was because the Respondent / CBTPL was not interested to build the Barged Jetty as stipulated in the agreement and gave a modified project structure consisting of a low cost pontoon structure and proposed construction in three phases on 14.11.2014 and 08.12.2014 which is in complete deviation from the technical proposal envisaged in the Concession Agreement, morefully at Appendix 4.

6.10. Further, the revised proposal given by the Respondent/CBTPL, which culminated in the termination of its agreement would not cater to the basic requirement for which the project was conceived by the Appellant / Chennai Port Trust. In fact, the revised proposal of the Respondent / CBTPL materially alters the broad parameter provided for the construction of the Barged Jetty by the Appellant / Chennai Port Trust as envisaged in the Concession Agreement. Therefore, the major factum leading to the termination



of the Agreement was that the modified design proposed by the Respondent / CBTPL had been rejected both by the independent Engineer and the Concession Authority, viz., the Appellant / Chennai Port Trust. He would further submit that in the first stage after the Letter of Intent was issued, conditions precedent prescribed in Article 3 of the CA had to be fulfilled by both the parties. The Award of the Concession shall be subject to the satisfaction of conditions precedent. Even as per the definition of the term “Date of Award of Concession” given under Article 1, the concession given by the Concessions authority to the concessionaire under Article 2.1 commences only from the date when the conditions precedent is fulfilled by both the parties. That is to say, the Respondent / CBTPL gets the right to design the project only when it fulfils the conditions precedent. Therefore, there is no scope of revised design before that date. While so, the Respondent / CBTPL has submitted an alternative layout / design relying upon a provision in Appendix 1, which provision itself imposes three conditions,

- (i) the alternative design proposed should not materially alter the broad parameters as provided for the construction of Barged Jetties in the CA.
- (ii) The changes proposed are subject to retaining the minimum dimension of the Jetty with designed capacity specified thereon.
- (iii) Such modified design should have the approval of CHPT and the Independent Engineer.



The alternative / revised plan failed to meet all the above three conditions. The Respondent / CBTPL can submit an alternative design to the original design only after conditions precedent Phase and during the construction phase, that too, only if the Respondent / CBTPL can establish and convince the Appellant / Chennai Port Trust and Independent Engineer that it has encountered certain operational problems during the course of execution of the original design and therefore, it has to be modified to overcome such operational difficulties. Moreover, the proposed alternative design cannot change the minimum dimension of the Jetty as provided in the Concession Agreement. Hence, the learned Arbitral Tribunal rightly upheld the termination of the agreement.

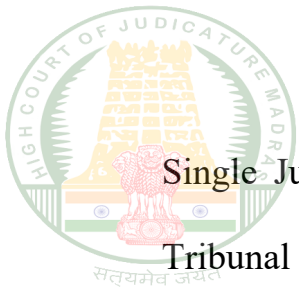
6.11. Assailing the order of the Arbitral Tribunal, the Respondent / CBTPL preferred an application under Section 34 of the Arbitration and Conciliation Act, 1996, (A&C Act, 1996) on the ground that the petition fits into Section 34(2)(b)(ii) read with Clause (ii) of Explanation 1 and Section 34(2-A) of A&C Act, 1996. That is, the Arbitral Award is in conflict with public policy of India as it is in contravention with fundamental policy of Indian law and that the impugned Award is vitiated by patent illegality appearing on the face of the Award.

6.12. The learned Additional Solicitor General of India appearing for the Appellant/Chennai Port Trust submitted that, the specific contention raised by



the Respondent/CBTPL in 34 petition is that an expert named Mr. Joseph Mathew was examined as C.W.1 and his proof affidavit was filed and that the Appellant /Chennai Port Trust chose not to cross examine the said expert witness. No reference was made about C.W.1 anywhere in the Award. Therefore, the Award is in contravention of fundamental policy of Indian law, and in conflict with public policy of India. Further, it was submitted by the Respondent / CBTPL that, when the learned Arbitral Tribunal returned a finding that both parties have not violated the terms of said agreement, it should follow as a natural sequitur that termination notice is bad. To the contrary, the Tribunal upheld the termination of the agreement. Hence, the Award passed by the learned Arbitrator is patently illegal. The said argument putforth on the side of the Respondent/CBTPL is unsustainable. However, the learned Single Judge, accepting the contentions of the Respondent/CBTPL, erroneously set aside the Arbitral Award.

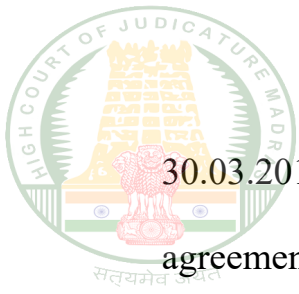
6.13. The learned Additional Solicitor General of India appearing for the appellant would submit that the Proof Affidavit filed by C.W.1 would reveal that it is against the express provisions of the contract and that is the reason the Appellant / Port Trust by choice did not cross examine C.W.1, and further his opinion is about the merit of the alternative design which was irrelevant at that stage and therefore, the evidence of C.W.1 was discarded by the learned Arbitrator which would not amount to perversity. Even otherwise, the learned



Single Judge possessed the jurisdiction to remand the matter to the Arbitral Tribunal to consider the evidence of C.W.1 instead of upturning the well reasoned Award passed by the Arbitral Tribunal. To support his contentions, he has relied upon the judgment of the Hon'ble Supreme Court in the case of **Gayatri Balasamy vs. ISG Novasoft Technologies Limited** reported in **(2025) 7 SCC 1**. His further contentions is that though the learned Arbitrator returned a finding that both the parties have not violated the terms of the agreement, he had upheld the termination of the agreement on the ground that the design submitted by the Respondent / CBTPL materially altered the broad parameters provided for the construction of the Barged Jetty as envisaged in the Concession Agreement and therefore, the same would not amount to patent illegality.

6.14. Further it is submitted that the learned Single Judge had dealt with issues such as “seeking damages” by the Respondent / CBTPL which does not fall within the domain of the claims made by the Respondent / CBTPL before the Arbitral Tribunal. The learned Single Judge, without considering all the above factors, erroneously set aside the well reasoned Award of the Arbitral Tribunal.

7. On the other hand, Mr.V.P. Raman, the learned counsel for the Respondent / CBTPL would submit that the termination of the CA dated



30.03.2013 is illegal and that it has not violated any of the terms of the agreement, and that the design submitted by the Respondent / CBTPPL was in compliance with the requirements under the agreement. Due to the rejection of design submitted by the Respondent / CBTPPL the financial plan submitted for the proposed design was also wrongfully rejected. While so, the Appellant / Chennai Port Trust has terminated the Agreement by invoking the wrong provision under Article 16. The Appellant / Chennai Port Trust could terminate the agreement for non compliance with CP, the same can be done only under Article 3.6 of the Agreement which is the self contained code for the purpose of the right to terminate and damages to be claimed. Therefore, under Clause 3.6, termination can be on account of failure to comply with CP and under Article 16 for an event of default.

7.1. It is further submitted that the impugned Award does not make any reference to the evidence of C.W.1, despite the fact that the Proof Affidavit of C.W.1 was available before Arbitral Tribunal, is clearly perverse which is one of the facets of contravention of fundamental Policy of Indian law, besides being patently illegal. Further it is submitted that the Appellant / Chennai Port Trust failed to cross examine the said witness. Therefore, non cross examination of a witness with respect to a particular fact, the Arbitral Tribunal ought to have accepted the witness evidence and for which the learned counsel has relied upon the decision in the case of *Muddasani Venkata Narsaiah (dead) through*



legal representatives vs. Muddasani Sarojana reported in (2016) 12 SCC 288.

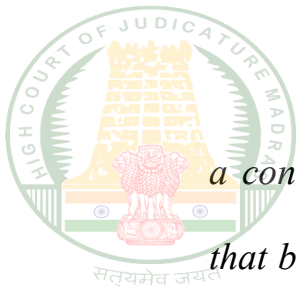
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Further he would submit that, when the Arbitral Tribunal returned a finding that both the parties have not violated the terms of said Agreement, it should follow as a natural sequitur that termination notice is bad. Therefore, negating the claim of the Respondent / CBTPL the termination notice is bad after returning a finding that both the parties to the lis have not violated the terms of agreement is a patent illegality on the face of the Award. Hence, the learned Single Judge considering the above submissions made on behalf of the Respondent / CBTPL, rightly set aside the Award passed by the learned Arbitrator, warrants any interference by this Court.

8. Heard on both sides. Records perused.

9. It is to be noted that, the learned Single Judge has set aside the Award passed by the Arbitral Tribunal first on the ground that, the Arbitral Tribunal has completely ignored and excluded the evidence of C.W.1 and returned a finding, i.e., without a whisper about the evidence of C.W.1. and therefore, the Award of the Arbitrator found to be perverse. With regard to the second ground of attack, the observation made by the learned Single Judge is extracted as hereunder:

“a mere reading of impugned Award of AT reveals that termination of



a contract on the ground of breach has been sustained after holding that both contracting parties have not violated the terms of contract. It is so patent and so conspicuous that it appears on the face of the Award. It is made clear that it is not a case of erroneous application of law. It is a case of conclusion and finding running into each other. In other words, it is a case of finding and conclusion contradicting one another. Appreciation of evidence is forbidden qua test of patent illegality and this Court reminded itself of this obtaining position while testing the impugned Award.”

Accordingly, the learned Single Judge held that the Award is vitiated by patent illegality.

9.1. It is relevant to note the following:

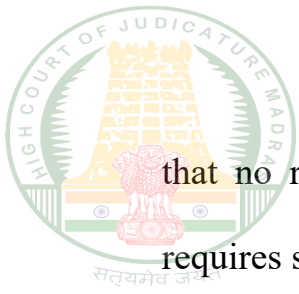
34. Application for setting aside arbitral award.—(1)***

(2) An arbitral award may be set aside by the court only if—

(a) the party making the application furnishes proof that—

(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;”

The third juristic principle is that a decision which is perverse or so irrational



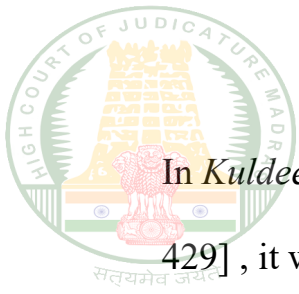
that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

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- (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.

9.2. A good working test of perversity is contained in two judgments. In *Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons* [1992 Supp (2) SCC 312] , it was held :

“7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.”

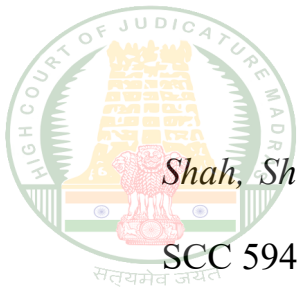


In *Kuldeep Singh v. Commr. of Police* [(1999) 2 SCC 10 : 1999 SCC (L&S) 429], it was held :

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“10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.”

9.3. It must clearly be understood that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In *P.R.*

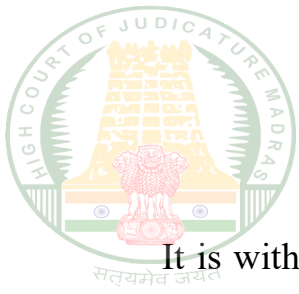


Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd. [(2012) 1

SCC 594 : (2012) 1 SCC (Civ) 342] , this Court held :

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“21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at.”



It is with this very important caveat that the two fundamental principles which form part of the fundamental policy of Indian law (that the arbitrator must have a judicial approach and that he must not act perversely) are to be understood.

9.4. Therefore, in Arbitration Law, an Award is considered perverse when the Arbitral Tribunal's findings are fundamentally irrational, unsupported by the record, or so observed that no reasonable person could have arrived at them. Perversity is recognised as a form of 'Patent Illegality' under Section 34 of the A&C Act, 1996, and is a ground for a Court to set aside the Award. An Arbitral Award generally amounts to perversity in the following scenarios:

1. **Findings based on no evidence:** The Award relies on facts or conclusions that have absolutely no evidentiary backing.
2. **Ignorance of vital evidence:** The Arbitrator completely disregards crucial, material evidence presented by the parties that could have changed the outcome.
3. **Reliance on irrelevant material :** The Tribunal bases its decision on evidence or factors that are extraneous, irrelevant, or not part of the dispute.
4. **Unreasonable or impossible interpretation:** The Arbitrator's reading of the contract or evidence is so illogical and absurd that it defies all

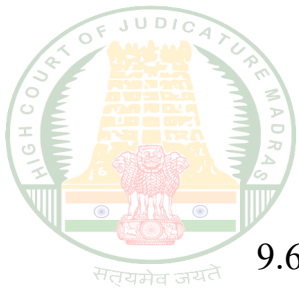


reasoning, effectively rewriting the agreement.

5. Manifestly untenable inferences: The Tribunal fails to draw logical, necessary inferences from the facts, or draws conclusions that are utterly implausible, leading to a gross miscarriage of justice.

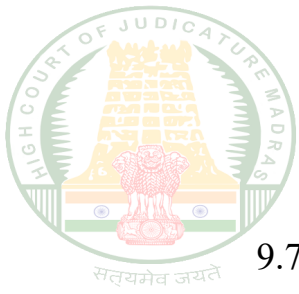
Therefore, Courts strictly maintain that perversity is not an excuse to re appreciate evidence or re examine the merits of the case. As established by the Hon'ble Supreme Court of India in catena of decisions, an Award will only be overturned if the Arbitrator's view is one that is fundamentally impossible, rather than just and alternative, plausible interpretation. It has held that for an award to be “perverse” it would need to be “not only against the weight of evidence but altogether against the evidence”. **(Ref: Associates Builders vs. Delhi Development Authority reported in (2015) 3 SCC 49)**

9.5. Hence, it must clearly be understood that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts.



9.6. In the present case, it is submitted on behalf of the Respondent/CBTPL in the proceedings under Section 34 of the A&C Act,1996, before the learned Single Judge that though an Expert was examined as C.W.1 by the Respondent/CBTPL before the Arbitration Tribunal and a detailed Proof Affidavit was filed, the same was not considered by the Arbitration Tribunal and there is no reference to C.W.1 or to Expert evidence in the impugned Award. Admittedly, one Mr. Joseph Mathew has filed his Proof Affidavit as C.W.1 on 24.05.2017 stating about the revised plan. Whereas, the Appellant / Chennai Port Trust would contend that the new design is completely different in dimensions and financial requirements specified in the agreement. Further, the contents of the Proof Affidavit of C.W.1 was against the express provisions of the contract. As per Section 92 of the Indian Evidence Act, no oral evidence can be made against the admitted documentary evidence. Hence, the Appellant / Chennai Port Trust, by choice, did not cross examine the Respondent's/CBTPL witness since the alternative design materially altered the broad parameters provided for the construction of Barged Jetties as contemplated in the Concession Agreement. Further, the changes proposed was not approved by the Appellant/Chennai Port Trust and the Independent Engineer. He would further submit that the contents of Proof Affidavit is nothing but an opinion of the revised plan and therefore, it is not a material evidence which could change the outcome of the Award.

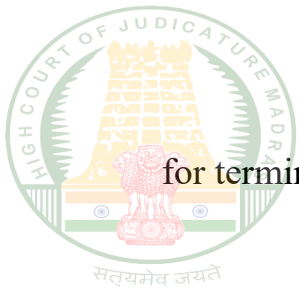
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9.7. While so, it is the duty of the Respondent/CBTPL to establish before the learned Single Judge in the proceedings under Section 34 of the A&C Act, 1996, that the evidence of C.W.1 is crucial and that the Tribunal has completely ignored such evidence and passed the Award. As stated above, an Award can be perverse only if it is irrational, defies all logic, or ignores vital evidence. The Respondent/CBTPL failed to explain that the evidence of C.W.1 is vital and goes to the root of the matter. Therefore, the Award passed by the learned Arbitrator ignoring the evidence of C.W.1 will not amount to perversity.

9.8. The next ground on which the Award was set aside by the learned Single Judge is that, while returning a finding that there is no violation of agreement by both parties, ought not to have upheld the termination of agreement and the same is patently illegal. The termination of the agreement was because the Respondent/CBTPL had given a modified project structure consisting of a low cost pontoon structure which according to the Appellant / Chennai Port Trust is in complete deviation from the technical proposal in the Concession Agreement, morefully at Appendix 4. The learned Arbitrator though observed that none of the parties violated any terms and conditions of the contract, the only problem between the parties was pertaining to the design submitted by the claimant. By saying so, the learned Arbitrator upheld the termination of the contract. The learned Arbitrator justified himself the reason



for termination of the contract and the same will not amount to patent illegality.

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9.9. In the 1996 Act, the principle stands as the "patent illegality"

principle which, in turn, contains three sub-heads:

(i) Contravention of substantive law of India.

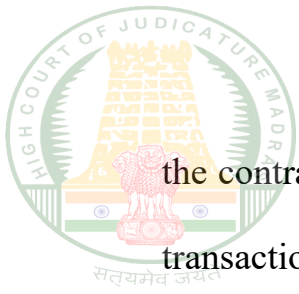
A contravention of the substantive law of India would result in the death knell of an arbitral award. Violation of Indian statutes i.e. the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice and would be regarded as being contrary to the fundamental policy of Indian law. Furthermore, the binding effect of the judgment of a superior court being disregarded would be equally violative of the fundamental policy of Indian law. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. This again is a really a contravention of Section 28(1)(a) of the 1996 Act.

(ii) Contravention of A&C Act, 1996

A contravention of the Arbitration Act itself would be regarded as a patent illegality- for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the 1996 Act, such award will be liable to be set aside.

(iii) Contravention of the terms of the contract.

In all cases, the Arbitral Tribunal shall decide in accordance with the terms of



the contract and shall take into account the usages of the trade applicable to the transaction. Thus, the third sub-head of patent illegality is really a contravention

of Section 28(3) of the Arbitration Act. This contravention must be understood with a caveat. An Arbitral Tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do. Further, interference on the ground of “patent illegality” is permissible only if the same goes to the root of the matter, and a public policy violation should be so unfair and unreasonable as to shock the conscience of the Court. **(Ref: McDermott International INC., vs. Burn Standard Co. Limited and others reported in (2006) 11 SCC 181)**

9.10. Further the learned Single Judge had dealt with issues such as seeking damages by the Respondent /CBTPL which does not fall within the domain of the claims made by the Respondent/CBTPL before the Arbitral Tribunal. Moreover, damages can be awarded when one party suffers a legally recognised loss, injury, or harm caused by another's wrongful act, such as, a breach of contract, etc., which is not found in the present case. The learned Single Judge has dealt with the issues in excess of what had been raised before



the Arbitral Tribunal.

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10. We find the award is based on pleadings and available documents on record and that the award is a reasoned one and it is clearly a plausible view taking into account each and every aspect of the matter. Hence, the impugned order dated 30.04.2019 made in O.P. No.415 of 2018 by the learned Single Judge is set aside.

11. In the result, this Original Side Appeal is allowed. No costs. Consequently connected miscellaneous petition is closed.

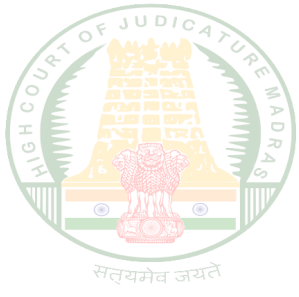
(P.V.,J.) (K.G.T.,J.)

08-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

BGA

To
Chennai Bunkering Terminal Private Limited
'Neeladri', No.9, Cenotaph Road,
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OSA No. 171 of 2



**P.VELMURUGAN J.
AND
K.GOVINDARAJAN THILAKAVADI J.**

BGA

**Pre delivery judgment in
OSA No. 171 of 2019
AND
CMP NO. 15197 of 2019**

08-07-2026