2025 INSC 1457

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO OF 2025
(Arising out of SLP (C) No. 14529 of 2023)

RAMESH KUMAR JAIN ….APPELLANT

VERSUS

BHARAT ALUMINIUM COMPANY LIMITED (BALCO) ….RESPONDENT

J U D G M E N T

ARAVIND KUMAR, J.

1. Heard. Leave Granted.

2. We have been called upon to examine the correctness of the Judgement and order dated 03.05.2023 passed by the High Court of Chhattisgarh at Bilaspur in ARBA No. 05 of 2017 whereby the arbitral award dated 15.07.2012 passed by the sole Arbitrator awarding a sum of Rs. 3,71,80,584 (Three crores seventy-one lacs eighty thousand five hundred eighty-four only) along with the statutory

interest to the appellant, affirmed by the Commercial Court by judgement and order dated 02.01.2017 in MJC No. 33/16 while exercising jurisdiction under section 34 Arbitration and Conciliation Act, 1996 (hereinafter "**A&C Act**") has been set aside by the High Court in exercise of its limited appellate jurisdiction under section 37 of the A&C Act.

3. The facts shorn of unnecessary details are set forth herein under:

3.1. The respondent-Bharat Aluminum Company Limited (in short "BALCO") invited a tender for the purpose of mining and transporting 3,70,000 Metric Tons (MTs) of Bauxite from Mainpat mines to respondent's Korba Alumina plant. The appellant submitted his bid at Rs. 697/- per metric ton which happened to be the lowest among all the bids received. Therefore, the respondent, after negotiation, entered into an agreement with the appellant for mining and transporting of 2,22,000 MTs of Bauxite from the Mainpat Mines to Alumina plant at rate of Rs. 634.20 per MT on 11.12.1999. The said work had to be completed within a period of 18 months i.e., by May 2001 but it was extended up to September 2001. After the appellant had completed supplying the agreed quantity of bauxite, the respondent by letter dated 05.01.2002 requested the appellant to continue the work of mining and transporting and the rate for the extra work was agreed to be decided in due course of time after consulting with the appellant. Thereafter, appellant

continued the work and supplied total quantity of 1,95,000 MT of Bauxite between 16.06.2001 to 31.03.2002. Subsequently, dispute arose between the parties regarding the payment of extra work performed by the appellant which led to invocation of arbitration clause and the claimant approached the High Court by filing an application seeking appointment of an arbitrator under section 11(6) of the A&C Act. The High Court by way of order dated 12.04.2007 in MCC No. 192 of 2006 referred the said dispute to the Tribunal as per clause J of the agreement between the parties.

3.2. The sole arbitrator after considering the pleadings filed by the appellant and respondent formulated 13 (Thirteen) issues. The learned sole arbitrator after hearing both the parties at length passed the arbitral award dated 15.07.2012 in favour of the appellant as follows:

Claim Heading	**Description**	**Amount Awarded**
Para 19.1	Claim for extra work of 1,95,000 MT allowed @Rs. 10 per metric ton	Rs.31,85,000/- (including interest @10% p.a. from 31.03.2001 till Aug 2007
Para 19.2	Claim for restriction and quantity of Trucks	Rs.1,23,06,058/- (including interest

	resulting in extra cost of transportation	@10% p.a. from March 2002 till July 2007)
Para 19.3	Claim for removal of extra overburden	Nil
Para 19.4	Claim for idle manpower and machinery during the strike period of 67 days	Rs.71,36,568/- (including interest @10% p.a. from 13.03.2001 till 25.08.2007
Para 19.5	Claim on interest on account of delay in respect of 15th R.A. Bill	Rs.8,30,157/- (Interest has been awarded @18% p.a. for a period of 90 days and thereafter from 01.06.2001 to 31.08.2007
	TOTAL	**Rs. 2,34,57,783/-**

3.3. On the above sum, 12% p.a. interest was awarded from 01.09.2007 to 15.07.2012 which came to Rs. 1,37,22,801 (One crore thirty-seven lacs twenty-two thousand eight hundred and one only). Hence, on adding the said sum the total award of Rs. 3,71,80,584 and statutory interest as per section 31(7)(b) of the A&C Act from the date of award till payment by the respondent was ordered by the arbitral tribunal.

3.4. Being aggrieved by the arbitral award, the respondent preferred an objection petition under section 34 of the A&C Act bearing no. MJC No. 33/16 before the Commercial court. On meticulous consideration the civil court came to the conclusion that the sole arbitrator had given a well-reasoned findings on each claim after considering the oral and documentary evidence which could not be regarded as arbitrary or capricious especially in the light of section 34(2)(b)(ii) of A&C Act and therefore, refused to interfere and affirmed the arbitral award dated 15.07.2002 by way of judgement and order dated 02.01.2017.

3.5. The respondent being not satisfied with the findings of civil court invoked the limited appellate jurisdiction of the High Court under Section 37 of A&C Act by preferring ARBA No. 05 of 2017 against judgement and order dated 02.01.2017. The said appeal came to be allowed by the impugned judgement and the arbitral award dated 15.07.2012 affirmed by civil court by order dated 02.01.2017 has been set aside.

3.6. Aggrieved by the same, the appellant, the original claimant, is in appeal before us.

REASONING ASSIGNED UNDER THE IMPUGNED JUDGEMENT

4. At the outset, before examining the submissions made by the learned Senior counsels appearing on behalf of the parties, we deem it apt and appropriate to examine the reasonings given by the high court for setting aside the concurrent

findings in favour of the appellant. Hence the same has been encapsulated hereinbelow.

5. The first and foremost reason given by the High Court is that fixation of additional cost from Rs. 634.20 PMT to the tune of Rs. 644.20 PMT by addition of Rs. 10/- per metric ton for the extra work determined by the sole arbitrator on the basis of principle of "*quantum meruit"* was without jurisdiction since the letter dated 05.01.2002 whereunder the appellant was obligated to perform extra work of excavation did not fix any rate. Therefore, in the absence of the agreement, the arbitrator could not have fixed the rate, as such it amounted to rewriting of the contract. The High Court further relied upon the decision of this court in ***Mahanagar Telephone Nigam Limited v. Tata Communications Limited***[1] to arrive at an conclusions that principle of "*quantum meruit"* could not have been applied since its application is limited to cases wherein the price has not been fixed by the contract but in the instant case since previously the rate was accepted and work was done, fixation of amount of compensation additionally by Rs. 10/- PMT was erroneous which falls under the realm of exceeding jurisdiction or rewriting of the contract which according to the High Court tantamounts to "patent illegality".

6. Another reason assigned by the High Court for allowing the appeal of the respondent was that the learned arbitrator had assessed the damages only on the basis of oral statement and on the guess work, therefore, the same was not sustainable and according to the High Court it also fell within the sweep of

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[1] **(2019) 5 SCC 341**

patent illegality. Further, the High Court while considering the award with respect to extra cost for transportation borne due to restriction on carrying capacity of trucks relied upon the specific statement made by the claimant during the trial in respect of Question No. 45 to arrive at conclusion that respondent was not *prima facie* responsible for any reduction in weight, hence the loss caused on transportation cannot be attributed to the respondent. It was held that arbitrator had merely relied upon the tabular statement given by the appellant without examining the basis of rate and calculation on which the loss was determined. Hence, it was of the opinion that claim of appellant was not based on the evidence and facts relied upon. Therefore, in the absence of any documentary evidence on record to show that appellant was restricted to carry only 10.2 MT, the award on the basis of alleged loss was only a guess work. In this regard, the High Court placed reliance on the decisions of this court rendered in ***Kailash Nath Associates v. Delhi Development Authority and Anr.***[2] to hold that Arbitrator cannot rewrite the award and the part of findings of the arbitrator which is without any evidence and beyond the terms of contract would be a patent illegality.

7. The High court further concluded that the tribunal in respect of idle machinery and idle manpower merely relied upon the tabular chart tendered by the appellant which was only a self-declaratory opinion and not based on evidence of facts.

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[2] **(2015) 4 SCC 136**

SUBMISSIONS ON BEHALF OF THE PARTIES

8. Learned Senior Counsel Shri Mukul Rohatgi appearing on behalf of the appellant submitted that the High Court exceeded its jurisdiction in reappraising the factual matrix and arriving at a different conclusion to that of the arbitrator. The High Court was acting as an appellate court while the jurisdiction in section 37 of A&C Act is restricted by virtue of the act and the lens of scrutiny under the said provision is very narrow. The High Court went into the merits of the case and has re-appreciated and re-examined the documents and evidence on record which was impermissible under section 37 of the A&C Act. To buttress the said contention, the learned senior counsel relied upon the law laid down by this court in ***Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation***[3]**.**

9. The learned senior counsel further submitted that under section 34 and section 37 of the Act, the court does not sit in appeal and it cannot go into the merits of the matter. Hence, in the present case, the High court acted in excess of jurisdiction conferred upon it by law. In this regard reliance was placed upon the case of ***MMTC Limited v. Vedanta Ltd.***[4]

10. The Learned senior counsel vehemently submitted that arbitral tribunal has given detailed reasons for the conclusion that it had reached while passing the award. Further, the claims awarded by the arbitral tribunal have been supplemented with proper reasons and justifications. The award was upheld by the commercial court, Raipur and the application under section 34 of the Act

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[3] **(2022) 1 SCC 131**
[4] **(2019) 4 SCC 163**

was dismissed as "being without substance". Hence, it was not proper for the High Court to set aside the award in the name of patent illegality, merely because the reason that the High Court's interpretation of facts were different than that of the arbitral tribunal.

11. He further submitted that Interpretation of the contract is a matter for the arbitrator to determine based on evidence and communications and an error in interpretation is not a basis for interference under section 34 of A&C Act. To back his contention, he placed reliance upon ***Hindustan Construction Company Ltd. v. NHAI***[5]***, MMTC Ltd. (supra)*** and ***Associate Builders v. Delhi Development Authority***[6]**.**

12. The learned senior counsel while placing reliance upon ***Parsa Kente Collieries Ltd. v. RRVUN Ltd.***[7] vehemently submitted that arbitral tribunal is the master of evidence and findings of facts which are arrived at by the arbitrators based on evidence on record and not to be scrutinized, as if the court was sitting in appeal.

13. He further submitted that as long as there is material available before the arbitrator to show damages have been suffered, but such material does not give him an insight into the granular details, the arbitrator is permitted the leeway to employ honest guesswork and/or a rough and ready method for quantifying the damages. To buttress the said contention, the learned senior counsel relied upon ***Construction and Design Services v. Delhi Development Authority***[8]**.**

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[5] **(2024) 2 SCC 613**
[6] **(2015) 3 SCC 49**
[7] **(2019) 7 SCC 236**
[8] **(2015) 14 SCC 263**

14. He also submitted that High court with respect to extra work from July 2001 to March 2002, was factually not correct in stating that earlier rate was agreed between the parties. For the subsequent period from July 2001 onwards, the respondent had taken out fresh tenders which were later withdrawn despite the petitioner being the lowest bidder. Nonetheless the respondent requested the petitioner to continue the work but the rates were never agreed between the parties which is an admitted fact as evident from the letters dated 15.08.2001 and 05.01.2002.

15. He also submitted that the tribunal considered the fact that the strike at respondent's plant was an issue between the management and workers of the respondent. Since there was no Force Majeure clause in the contract and the strike was not an Act of God, the petitioner was entitled for compensation with respect to idle machinery and manpower.

16. *Per Contra,* Learned Senior Counsel Shri Ranjith Kumar appearing for the respondent submits that there was no clause for in the contract for increasing the rate except for the diesel variation clause. He further contended that petitioner from the beginning of the contract, started protesting and raising unnecessary demands for increasing the price of the contract by comparing it with the contract awarded by the respondent to a third party. The respondent through its letter dated 25.03.2000 had already informed the petitioner that it should not be of his concern who the respondent pays or at what rate, for the bauxite purchased from outside.

17. He further contended that it was specifically mentioned in the contract that the contractor should investigate and inspect the work, site and surrounding area

and keep all circumstances in mind before submitting the tender. He also submitted that the Sole arbitrator after holding that neither party has agreed to the rate, has proceeded to guess that the prices have arisen by Rs. 10/- without any evidence or materials to support such findings. He further contended that additional work was executed at existing rate, and that the additional work was executed at existing rate, and that the claimant had accepted the amount and did not challenge the same. The respondent paid the petitioner Rs. 657/- throughout the period and the rate was impliedly agreed between the parties.

18. With reference to route map, the learned senior counsel contended that there was no specific route map prescribed in the contract for transportation of the bauxite. The petitioner contended that they had to carry the bauxite from the longest route which was costing them additional 50 KM distance for which the respondent was liable to pay as per the diesel variation clause, which is completely baseless. It was an admitted fact that the petitioner was not bound by the contract to follow any particular route. Further, bare perusal of clause 2(a) of the contract i.e., the diesel variation clause shows that it depends on the rate of the diesel and not on the distance and the word 'average' has been mentioned for the entire contract irrespective of the route which the contractor choses for transportation.

19. He further submits that the Learned sole arbitrator without appreciating the specific bar under clause 6 and without giving a simple meaning to the terms therein, went beyond the terms of the contract to allow the claim for idle machinery. The arbitrator adopted a hyper-technical approach which is not permissible while interpreting the terms of the contract.

20. He has also submitted that the arbitrator after holding that the petitioner had not submitted any documentary evidence on record in respect of the claim for alleged loss due to idle machinery and manpower, however erroneously granted 75% of the alleged amount claimed. The High Court rightly held that there is no evidence to show that the mining process came to stand still and there is no document to show the expenses incurred by the petitioner.

21. He submitted that petitioner continued to work and execute a quantity of 1,95,000 MT from 16.06.2001 to 31.03.2002 and respondent was paying the petitioner at the existing rate plus Rs. 23/- as diesel escalation. The respondent paid the petitioner Rs. 657/- inclusive of diesel rate throughout the period and the rate was impliedly agreed between the parties. The contention of the petitioner that they were expecting a payment of Rs. 697/- PMT is baseless for the reason that the tender 01.01.2001 was cancelled because the bidders offered a very high rate which was not acceptable to the respondent.

22. He further submitted that there was no documentary evidence on record to show that the penalty was imposed by the respondent over the carrying capacity. The Arbitrator wrongly allowed the claim for extra cost of transportation to be borne by the respondent in the absence of any evidence. Only an unsubstantiated tabular statement was placed on record by the petitioner and the basis on which the facts and figures were arrived at therein was absent since there was no evidence.

23. He vehemently submitted that the contract does not permit the Ld. Arbitrator to decide the rates between the parties. It could not have applied the principle of *quantum meruit* and fixed the rates between the parties. The Award, is thus,

against the most basic notions of morality and justice. To buttress his submissions, he placed reliance upon ***SsangYong Engineering v. NHAI***[9]***, MTNL v. TATA Communications***[10]**,** and ***Alopi Parshad v. Union of India***[11]**.**

24. He also submitted that Ld. Arbitrator has re-written the contract since the rates were fixed at Rs. 634.20/- PMT and the extension of contract was on the same terms and conditions. Once the rates are fixed, the arbitrator could not award an additional amount. To back the said contention, he has placed reliance upon ***Satyanarayan Construction Company v. Union of India***[12]**.**

25. He lastly submitted that Ld. Arbitrator while awarding a sum of Rs. 10/- as a reasonable compensation to the petitioner has not been relied upon any evidence and merely a guesswork. He has placed reliance upon ***Kailash Nath Associates v. DDA***[13]**,** to buttress the said contention.

POINT FOR OUR CONSIDERATION

26. Having heard the learned senior counsels at length on behalf of both the parties and after examining the material on record, we are of the considered opinion that the core issue that arises for our consideration is: Whether interference with the arbitral award by the High Court under Section 37 of the Arbitration and Conciliation Act, 1996 on the ground of patent illegality is sustainable when

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9 (2019) 15 SCC 131
10 (2019) 5 SCC 341
11 AIR 1960 SC 588
12 (2011) 15 SCC 101
13 (2015) 4 SCC 136

once the award has been affirmed under section 34 of the Arbitration and Conciliation Act, 1996?

DISCUSSION & OUR ANALYSIS

27. The Arbitration and Conciliation Act, 1996 avows to provide a speedy, cost-effective & efficacious mode of alternative dispute resolution with a policy of minimal judicial intervention. The same is apparent from the legislative intent explicitly mandated under section 5 of A&C Act which envisages an embargo upon the judiciary to interfere in arbitral proceedings save in circumstance expressly stipulated under Part I of the Act. Hence, it is clear that judicial interference is circumscribed with only exception being the statutorily mandated remedies which we find under section(s) 34 and 37 of the A&C Act.

28. The bare perusal of section 34 mandates a narrow lens of supervisory jurisdiction to set aside the arbitral award strictly on the grounds and parameters enumerated in sub-section (2) & (3) thereof. The interference is permitted where the award is found to be in contravention to public policy of India; is contrary to the fundamental policy of Indian Law; or offends the most basic notions of morality or justice. Hence, a plain and purposive reading of the section 34 makes it abundantly clear that the scope of interference by a judicial body is extremely narrow. It is a settled proposition of law as has been constantly observed by this court and we reiterate, the courts exercising jurisdiction under section 34 do not sit in appeal over the arbitral award hence they are not expected to examine the legality, reasonableness or correctness of findings on facts or law unless they come under any of grounds mandated in

the said provision. In ***ONGC Limited. v. Saw Pipes Limited***[14]**,** this court held that an award can be set aside under Section 34 on the following grounds: "(a) contravention of fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality, or (d) in addition, if it is patently illegal."

29. When it comes to section 37 of the A&C Act it provides for a limited appellate remedy against an order either setting aside or refusing to set aside an arbitral award passed by civil court in exercise of its power under section 34. This court in ***MMTC Ltd. v. Vedanta Ltd.***[15]***,*** at Paragraph 14 observed that interference with an order made under section 37 cannot travel beyond the restrictions laid down in section 34. Further in ***Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking***[16] this court at Paragraph 18 observed that the scope of appellate scrutiny under section 37 is necessarily co-extensive with the parameters mandated under section 34 of the Act and hence the said provision does not enlarge the jurisdiction of the appellate court. Even this court has observed in ***M/s. Hindustan Construction Company Limited v. M/s. National Highways Authority of India***[17]***,*** wherein one of us (Justice Aravind Kumar) was part of the bench at Paragraph 26 that the standard of scrutiny of an arbitral award is very narrow and it is not the judicial review of an award. Further in Paragraph 27 it was observed that awards which contains reasons, especially when they interpret contractual terms, ought not to be interfered with lightly**.** This court has also observed in ***Larsen Air Conditioning and***

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[14] **(2003) 5 SCC 705**
[15] **(2019) 4 SCC 163**
[16] **(2023) 9 SCC 85**
[17] **2023 INSC 768**

Refrigeration Company v. Union of India and Ors.[18] at Paragraph 15 that the scope of interference in exercise of appellate power under section 37 is even narrower to review the findings of the awards, if it has been upheld or substantially upheld under section 34. Hence, it is very well settled that arbitral awards are not liable to be set aside merely on the ground of erroneous in law or alleged misappreciation of evidence and there is a threshold that the party seeking for the award to be set aside has to satisfy, before the judicial body could enter into the realm of exercising its power under section(s) 34 & 37. It is also apt and appropriate to note that re-assessment or re-appreciation of evidence lies outside the contours of judicial review under section(s) 34 and 37. This court in ***Punjab State Civil Supplies Corporation Limited & Anr. v. M/s. Sanman Rice Mills & Ors.***[19]***,*** at Paragraph 12 observed that even when the arbitral awards may appear to be unreasonable and non-speaking that by itself would not warrant the courts to interfere with the award unless that unreasonableness has harmed the public policy or fundamental policy of Indian law. It might be a possibility that on re-appreciation of evidence, the courts may take another view which may be even more plausible but that also does not leave scope for the courts to reappraise the evidence and arrive at a different view. This court in ***Batliboi Environmental Engineers Limited v. Hindustan Petroleum Corporation Limited & Anr.***[20] held that the arbitrator is generally considered as ultimate master of quality and quantity of evidence. Even an award which is based on little or no evidence would not be held to be invalid

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[18] **(2023) 15 SCC 472**
[19] **2024 INSC 742**
[20] **2023 INSC 850**

on this score. At times, the decisions are taken by the arbitrator acting on equity and such decisions can be just and fair therefore award should not be overridden under section 34 and 37 of the A&C Act on the ground that the approach of the arbitrator was arbitrary or capricious.

30. Hence, in the light of the aforesaid discussion, we would deal with the submissions made by the learned senior counsels on behalf of the parties. But there is yet another aspect that warrants our attention before delving into the analysis of submission and that is the setting aside of the impugned order by the High Court by placing reliance on the ground of "patent illegality" therefore, it becomes imperative to understand the true import of the said term before we move further.

31. Prior to 2015 amendment, the ground of "patent illegality" emerged as result of judicial interpretation in ***ONGC Ltd.*** *(supra)* while interpreting "public policy" mandated under section 34(2)(b)(ii) of A&C Act wherein this court for the first time read patent illegality as a sub-ground to set aside the award on the broader purport of "public policy". In Paragraph 22 of the decision this court observed: *Therefore, in a case where the validity of award is challenged, there is no necessity of giving a narrower meaning to the term "public policy of India". On the contrary, wider meaning is required to be given so that the "patently illegal award" passed by the arbitral tribunal could be set aside."* This court went on to illustrate what would constitute patent illegality at Paragraph 22 and we extract the same for easy reference:

> *"……Take for illustration a case wherein there is a specific provision in the contract that for delayed payment of the amount due*

and payable, no interest would be payable, still however, if the arbitrator has passed an award granting interest, it would be against the terms of the contract and thereby against the provision of Section 28(3) of the Act which specifically provides that "Arbitral Tribunal shall decide in accordance with the terms of the contract". Further, where there is a specific usage of the trade that if the payment is made beyond a period of one month, then the party would be required to pay the said amount with interest at the rate of 15 per cent. Despite the evidence being produced on record for such usage, if the arbitrator refuses to grant such interest on the ground of equity, such award would also be in violation of sub-sections (2) and (3) of Section 28. Section 28(2) specifically provides that the arbitrator shall decide ex aequo et bono (according to what is just and good) only if the parties have expressly authorised him to do so. Similarly, if the award is patently against the statutory provisions of substantive law which is in force in India or is passed without giving an opportunity of hearing to the parties as provided under Section 24 or without giving any reason in a case where parties have not agreed that no reasons are to be recorded, it would be against the statutory provisions. In all such cases, the award is required to be set aside on the ground of "patent illegality"."

32. In ***Associate Builders v. Delhi Development Authority***[21]**,** this court attempted to filter out what contemplated patent illegality in paras 42.1 to 42.3 under the following three subheads: firstly, contravention of the substantive law of India; secondly, contravention of the Arbitration Act itself and thirdly, contravention of Section 28(3) of the Arbitration Act which mandates the Arbitral Tribunal to decide the case in accordance with the terms of the contract, taking into account the usages of the trade applicable to the transaction. With regard to the third sub-head Justice R.F. Nariman, observed by stating that: *if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that*

[21] **2014 SCC OnLine SC 937**

the award can be set aside on this ground. Construction of term 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.

33. In 2015, by way of the Arbitration and Conciliation (Amendment) Act a new sub-section (2A) to section 34 of A&C Act was inserted which in addition to statutorily recognizing the 'patent illegality' ground for setting aside a domestic arbitral award made it an independent and distinct ground from 'public policy' under section 34. The proviso to the newly inserted clause further 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".* The legislative intent behind insertion of this proviso was to avoid excessive intervention to arbitral award by the courts under the ground of 'patent illegality'. However, the Amendment clarified that "an erroneous application of the law" or "re-appreciation of evidence" does not fall under patent illegality. Hence, the courts are not to treat every factual error or every divergent interpretation as an illegality. The illegality must be of a kind that strikes at the heart of the award's validity. For instance, if an arbitrator ignores a binding precedent or a clear prohibition in the contract, that may be patent illegality. Likewise, a finding based on no evidence at all can be said to be perverse and thus patently illegal. But where there is some evidence and a reasonably plausible inference has been drawn by the arbitrators, the courts should ordinarily refrain themselves from supplanting the views arrived by the arbitrator as that would be the true import of the legislative intent inherent in the Amendment Act.

34. Thereafter, this court elucidated the meaning of the expression 'patent illegality' in ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI***[22] while taking into consideration the amendment act of 2015 and held it as a glaring, evident illegality that goes to the root of the award. This includes: (a) an award deciding matters outside the scope of the arbitration (beyond the contract or submission); (b) an award contradicting the substantive law of India or the Arbitration Act itself; (c) an award against the terms of the contract; and (d) an award so unreasoned or irrational that it manifests an error on its face.

35. Considering the aforesaid precedents, in our considered view, the said terminology of 'patent illegality' indicates more than one scenario such as the findings of the arbitrator must shock the judicial conscience or the arbitrator took into account matters he shouldn't have, or he must have failed to take into account vital matters, leading to an unjust result; or the decision is so irrational that no fair or sensible person would have arrived at it given the same facts. A classic example for the same is when an award is based on "no evidence" i.e., arbitrators cannot conjure figures or facts out of thin air to arrive at his findings. If a crucial finding is unsupported by any evidence or is a result of ignoring vital evidence that was placed before the arbitrator, it may be a ground the warrants interference. However, the said parameter must be applied with caution by keeping in mind that "no evidence" means truly no relevant evidence, not scant or weak evidence. If there is some evidence, even a single witness's testimony or a set of documents, on which the arbitrator could rely

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[22] **(2019) 15 SCC 13**

upon or has relied upon to arrive at his conclusions, the court cannot regard the conclusion drawn by the arbitrator as patently illegal merely because that evidence has less probative value. This thin line is stood crossed only when the arbitral tribunal's conclusion cannot be reconciled with any permissible view of the evidence.

36. Having discussed the said law, we move ahead to another limb of the submission which was espoused by the respondent particularly with reference to obligations of the arbitrator to decide the dispute in accordance with the terms of the contract. It is a fundamental principle that the arbitrator cannot award anything that is contrary to the contract. The arbitrator is bound by clear stipulations *inter se* the parties, and an award ignoring such stipulations would violate public policy by undermining freedom of contract. However, that does not mean that not every award which gives a benefit not expressly mentioned in the contract is in violation. The arbitral tribunal in exercise of their power can very well interpret the implied terms or fill gaps where the contract is silent, so long as doing so does not contradict any express term. For example, if a contract is silent on interest on delayed payments, an arbitrator awarding reasonable interest is not contradicting the contract rather it is a power exercised by the arbitrator to fulfill the gap on the basis of equity which also mandated under Section 31(7)(a) of the A&C Act. Similarly, if a contract does not say either way about compensating extra work done at request, the arbitrator can imply a term or use principles of restitution to award a reasonable sum, without violating the terms of contract. The thin line is whether an express prohibition or restrictions in the contract is breached by the award? If the

answer is in affirmative, the award is liable to struck down. However, where the contract is simply silent on a legitimate claim which is inherently linked to the natural corollary of contractual obligation of the parties the arbitrator will be well within his powers to interpret the contract in the light of principles of the contractual jurisprudence and apply the equity to that situation. A contrary interpretation would lead to opening a floodgate whereby a party who may have dominant position would intentionally not ink down the natural obligation flowing from the contract and subsequently; after obtaining the benefit the party would agitate absence of express terms to sway away from even discharging his alternative obligation of compensating the party at loss. Hence the question which arises in such situations is, can the party who bears the brunt and suffers the loss due to silence under the contract regarding the natural contractual obligation which arises in usual course of business be left in limbo? In our view, that is the very purpose why section 70 of the Contract Act, 1872, has been an intrinsic part of our Contract Act. The said provision creates a statutory right independent of contract, often termed *quantum meruit* or unjust enrichment remedy. For ready reference the said provision has been extracted hereinbelow:

> ***"70. Obligation of person enjoying benefit of non-gratuitous act.*** *Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."*

37. The close scrutiny of the aforesaid provision reveals that it comes into play when one party confers a benefit on another in circumstances not governed by

a contract, without intent to act gratuitously. Hence in such situation, the party taking the benefit is bound to pay compensation to the party who had gratuitously taken the benefits and the courts including arbitral tribunals, can award compensation under Section 70 if the conditions are met.

38. Coming to submissions of the parties, we refrain ourselves from meticulously examining each submission made by the parties since most of the submissions raised are purely factual in nature and as observed hereinabove, the arbitrator is considered as the master on question of facts and even an erroneous interpretation of facts would not lead us to invoke our extra-ordinary jurisdiction, the only caveat being the said interpretation of facts is patently illegal that is it is based on no evidence or beyond the scope of contract.

39. Keeping the said position in mind, we have first meticulously examined the arbitral award dated 15.07.2012 passed by the Learned arbitrator with sole intent to analyze whether there is any part of the award which is based on no evidence or is alien to the terms of contract. However, the perusal of the award as a whole, in our view, does not reveal any findings arrived by the tribunal which seems unreasonable or capricious, rather, the arbitrator has scrutinized the material on record: oral evidence of Shri R.K. Jain, the claimant and Shri A. Hussain, the then Assistant General Manager & Engineer-in-charge, who was overseeing the performance of the contract in question, adduced during cross-examination by the Respondent; and documentary evidence in the form of affidavits and correspondence letters to arrive at individual findings of each claim. The sheer application of mind at the behest of the arbitrator is apparent from the very fact that the claims asserted by the appellant were not accepted

by the arbitrator as a gospel truth but were put on pedestal of evidentiary proof. The respondent has argued that the arbitrator has based its findings based on the calculation sheets and guesswork. We would have agreed with the respondent had there been no evidence available before the arbitrator to arrive at such findings but the same is not true since the arbitrator after considering the evidence on record has given its finding. For instance, the claim under Para 19.2 to the tune of Rs. 1,96,11,000 towards extra transportation cost incurred by the appellant on the premise of restricting the capacity of the truck was proved by the fact that after the District Transport Officer order was stayed by the High Court, the respondent did not allow the appellant to deliver at the weight of 11 MT which was not controverted by the respondent. Also, the arbitrator was conscious to draw adverse conclusions against the appellant, where he failed to sufficiently satisfy the basis of the claim and the arbitrator in such cases has either reduced the said claim substantially while applying the principle of *quantum meruit* (as evident from claim under Para 19.1 for executing the extra work) while balancing the interest of both the parties to the arbitral proceedings or has completely denied it (as evident from claim under Para 19.3 for removal of extra burden). Hence, in our view, the overall analysis of the arbitral award does not reveal any arbitrary exercise of power or findings which is based on lack of evidence as such to fall within the sweep of "patent illegality" as held by the impugned judgement. In our assessment, the High Court allowed itself to be deviated by things that are in truth within a range of normalcy in arbitral adjudication.

40. With regard to application of principle of *quantum meruit* the respondent had argued the Ld. Arbitrator had erroneously applied the said principle when the rates were already fixed between the parties. Even the High court observed in the impugned judgement that the said exercise tantamount to rewriting of contract. The Impugned judgement has proceeded on an erroneous understanding of the decision of this Court in ***Mahanagar Telephone Nigam Limited v. Tata Communications Limited***[23]**.** We say so because the said decision is applicable to situations where the contract between the parties fully governs the field and the consideration for the very work in dispute stands conclusively determined by express contractual terms. However, in the present case, after the currency of the earlier two contract the appellant continued to mine and transport the additional work of supplying the additional Bauxite to the tune 1,95,000 MT at the behest of the respondent, but the price thereof was left open to be finalized in due course of time by mutual consensus as is evident from the bare reading of Letter dated 05.01.2002 (Annexure P4) addressed by the respondent to the claimant, which exercise was never undertaken. In such a factual matrix, the arbitral tribunal cannot be said to have rewritten or varied the contract rather the arbitrator addressed a vacuum in the contractual arrangement by determining reasonable compensation in terms of Section 70 of the Contract Act, 1872, to obviate the possibility of unjust enrichment. The quantification of additional compensation at Rs. 10/- PMT i.e., from Rs. 634.20/- PMT to Rs. 644.20/- PMT represents an assessment of reasonable

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value for the extra work performed and does not amount to substitution of any agreed contractual rate as no such sum was mutually inked down by both the parties. Therefore, we disagree with said view of the High court as the arbitral award did not rewrite the contract but merely enforced a restitutionary obligation arising from admitted extra work directed and accepted by the respondent, where the aspect of consideration was consciously left open and later misused by the respondent to sway away from discharge of its usual contractual obligation. Hence, the High Court, in exercise of limited jurisdiction under Section 37, impermissibly re-appreciated facts and substituted its own interpretation, contrary to settled law under ***Associate Builders, Ssangyong Engineering*** and ***MMTC*** *(referred to supra).*

41. Further, we have no hesitation to hold that claims in the nature of *quantum meruit* or unjust enrichment can be decided by the arbitrator provided they fall within the scope of disputes referred either explicitly or by necessary implication. For instance, in a situation like the present, claim for payment for such work has been entertained as it relates to the performance of the contract. The measure of compensation under Section 70 is typically the value of the benefit obtained by the other party or the cost incurred by the claimant in doing the act (whichever is reasonable to avoid unjust enrichment). The law does not permit arbitrary awards under Section 70. The award must still be grounded in evidence of the benefit's value or the expense incurred. Nonetheless, tribunals have a degree of discretion to approximate a fair value, especially when exact evidence is hard to come by, so long as the final figure is reasonable and not pulled from thin air.

42. The errors pointed out in the impugned judgement, i.e., lack of evidence, percentage-based guess allowances, etc. do not, singly or cumulatively, amount to patent illegality warranting annulment. There were at least some evidence and logical rationale for each award element. The arbitrator's approach was certainly a possible view a reasonable man might take. The High Court, unfortunately, re-appreciated the evidence and came to a different view, which is impermissible. The High Court's scrutinized the award from a stricter standard of proof than arbitration law demands. Arbitrators are not bound by the strict rules of evidence as per Section 19 of the A&C Act and may draw on their knowledge and experience. It is settled that a court should not interfere simply because the arbitrator's reasoning is brief or because the arbitrator did not cite chapter and verse of the contract as long as the path can be discerned by which the arbitrator arrived at his conclusions. Here, the path is discernible and not absurd.

CONCLUSION

43. In light of the foregoing analysis, we are of the considered view that impugned judgement dated 03.05.2023 passed in ARBA No. 05 of 2017 cannot be sustained and the appeal deserves to be allowed. Accordingly, the appeal stands allowed and the aforesaid impugned judgement is set aside.

44. Consequently, the judgement and order dated 02.01.2017 passed by Commercial Court, Raipur in MJC No. 33/16 which affirmed the arbitral award

passed by the sole arbitrator dated 15.07.2012 is restored. Pending applications, if any, stands disposed of.

……., J.
[ARAVIND KUMAR]

……., J.
[N.V. ANJARIA]

New Delhi;
December 18th, 2025.