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An award passed after inordinate, substantial, and unexplained delay is contrary to the public policy of India and amenable to challenge under the Arbitration Act

The Delhi High Court (“**High Court**”) in *Department of Transport, GNCTD v. Star Bus Services Private Limited*¹ has *inter alia* held that an award passed after inordinate, substantial, and unexplained delay is contrary to justice and therefore in conflict with the public policy of India. The Delhi HC has affirmed that such awards may be challenged under Section 34 of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”).

Brief Facts

The Department of Transport, GNCTD (“**Petitioner**”) invited bids for extending bus services in Delhi. In response, Star Bus Services Private Limited (“**Respondent**”) submitted its proposal. Accordingly, the parties entered into a concession agreement dated April 12, 2010 (“**CA**”) whereby the Respondent was *inter alia* required to induct 231 (two hundred thirty one) buses; and provide a consolidated depot at Gadaipur, Delhi. During the subsistence of the CA, issues arose between the parties due to the termination of the CA by the Respondent on February 4, 2016. Consequently, the Respondent initiated arbitration proceedings against the Petitioner in terms of the CA.

In terms of the CA, and by way of an order dated March 11, 2016 passed by the Delhi HC, a Ld. Sole Arbitrator (“**Arbitrator**”) was appointed to adjudicate the disputes between the parties (“**Order of Appointment**”). After hearing the parties, the award was passed by the Arbitrator (“**Impugned Award**”). However, the Impugned Award was passed 18 (eighteen) months after the date of the final hearing of the arbitral proceedings. The Impugned Award held that the Petitioner is in breach of the CA for its failure to provide the consolidated depot. The Impugned Award directed the Petitioner to pay the Respondent an amount of INR 57,04,47,373 (Indian Rupees fifty seven crore four lakh forty seven thousand three hundred seventy three) along with interest at 9% per annum from June 5, 2016 till the date of payment. Aggrieved by the Impugned Award, the Petitioner filed the present petition challenging the award under Section 34 of the Arbitration Act.

Before the Delhi HC, the Petitioner *inter alia* contended that it was prejudiced by the unexplained and gross delay in passing the Impugned Award since the Arbitrator had *inter alia* failed to adjudicate its claims in accordance with the Order of Appointment. Relying on the decisions of the Supreme Court in *Hari Engg. Works (P) Ltd v. Bharat Heavy Electricals Ltd*² and *State of Punjab v. Hardyal*³, the Petitioner contended that the Arbitrator had failed to explain the delay in passing the Impugned Award and as such, the Impugned Award was liable to be set aside. The Petitioner contended that the Arbitrator had ignored vital material documents to wrongly conclude that the Petitioner was in

¹ 2023 SCC OnLine Del 2890

² 2008 SCC OnLine Del 1080

³ (1985) 2 SCC 629

breach of the terms of the CA. Further, the Petitioner contended that the Arbitrator had recorded majority of the facts incorrectly, overlooked vital material facts, and ignored evidence advanced by the Petitioner. The Impugned Award was perverse, in derogation of various laws, and contrary to the public policy of India. The Petitioner also submitted that the Impugned Award was vitiated by fraud since the Respondent had failed to disclose that it had diverted INR 26,73,29,885 (Indian Rupees twenty six crore seventy three lakh twenty nine thousand eight hundred eighty five) to Argentum Auto Private Limited for the alleged purchase of 100 (one hundred) buses which were admittedly never inducted. In view of the aforesaid contentions, the Petitioner submitted that the Impugned Award was liable to be set aside.

The Respondent *inter alia* submitted that the Petitioner's contention that it had been prejudiced by the delay in passing the Impugned Award was unfounded. A bare perusal of the Impugned Award indicated that the Arbitrator had applied his mind and duly considered the pleadings, evidence and submissions made by the parties. The Respondent contended that the adequacy of consideration, validity of conclusions, and reasoning for such conclusions were not grounds for challenge under Section 34 of the Arbitration Act. Further, with regard to the Petitioner's contention that the Impugned Award was vitiated by fraud, the Respondent submitted that the Petitioner was aware of the payment of INR 26,73,29,885 (Indian Rupees twenty six crore seventy three lakh twenty nine thousand eight hundred eighty five) to Argentum Auto Private Limited, which was also voluntarily disclosed by the Respondent in its Affidavit of Evidence. For the aforesaid reasons, and given the fundamental breaches committed by the Petitioner, the Respondent submitted that it would be highly inequitable for the Impugned Award to be set aside.

Issue

Whether the Impugned Award is vitiated by fraud, patently illegal and in conflict with the public policy of India?

Whether the delay in the pronouncement of the Impugned Award after the final arguments were concluded had vitiated the Impugned Award?

Findings and Analysis

The Delhi HC allowed the petition and *inter alia* observed as follows:

- 1) The scope of interference with an arbitral award under Section 34 of the Arbitration Act is fairly narrow. The courts must limit themselves to examining the award and refrain from enquiring into the facts of the case. A court cannot sit in appeal while adjudicating a challenge to an award under Section 34 of the Arbitration Act.
- 2) In the present case, the Petitioner failed to establish fraud as the basis of the Impugned Award. In fact, the Arbitral Tribunal had duly considered the submissions of both the parties and passed a reasoned award. As such, on merits, the Petitioner was incorrect in contending that the Impugned Award was in conflict with the public policy of India.
- 3) Contrary to the provisions of the Arbitration Act, arbitration laws in jurisdictions such as China and Taiwan permit parties to determine a time limit within which an award may be passed. Moreover, in jurisdictions such as France, Italy, and Switzerland, delay in rendering an award can lead to its non-recognition and non-enforcement. Since the Arbitration Act does not provide for delay as a ground for setting aside an award, courts have adopted a case-to-case analysis of the same.
- 4) In *Hari Engg. Works (P) Ltd v. Bharat Heavy Electricals Ltd*⁴, the Delhi HC has *inter alia* held that since courts have limited power to set aside awards, the Arbitration Act imposes an additional responsibility and obligation upon arbitrators to make and publish awards within a reasonable time and without undue delay. An award passed after undue delay is – (a) contrary to justice; and (b) defeats the fundamental basis for alternative dispute redressal.
- 5) Section 29-A of the Arbitration Act provides time limits within which arbitral disputes are to be adjudicated. These time limits are imposed to *inter alia* ensure that the efficacy of oral submissions is not lost. Instances of

⁴ 2008 SCC OnLine Del 1080

considerable and unexplained delay in passing an award would result in reconstructed opinions rather than reproduced opinions. Given that the recollection of submissions and proceedings are likely to fade with time, an award passed by an arbitrator in such circumstances would be prejudicial and unjust.

- 6) In *ONGC Ltd. v. Saw Pipes Ltd*⁵ the Supreme Court analysed the phrase “public policy of India” under Section 34(2)(b)(ii) of the Arbitration Act and *inter alia* held that an award that is patently in violation of statutory provisions cannot be said to be in public interest since the same is likely to adversely affect the administration of justice.
- 7) In the present case, no application had been filed by the parties to extend the mandate of the Arbitrator. As such, the Impugned Award was in the teeth of the law due to the lack of jurisdiction of the Arbitrator.

Considering the above, the Delhi HC set aside the Impugned Award on the grounds that it was rendered after inordinate delay and following the expiry of the mandate of the Arbitrator. As such, the Impugned Award was against the public policy of India and amenable to challenge under Section 34 of the Arbitration Act.

JSA Comment

The findings of this judgment underline the importance of adhering to the timelines within which an arbitral award is required to be passed under the Arbitration Act. While the Arbitration Act provides for the reduction of an arbitrator’s fee for delays attributable to the arbitrator, the same is yet to be strictly enforced by the courts. Effective and strict enforcement of Section 29-A of the Arbitration Act will be a step in right direction to make India an arbitration hub and provide a time bound mechanism for dispute resolution.

Further, it is also advisable for parties to be proactive in seeking an extension of the mandate of the arbitrator, whenever required, to avoid setting aside an award on account of lack of jurisdiction.

⁵ (2003) 5 SCC 705

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