

**ADDITIONAL DISTRICT JUDGE, EXERCISING THE POWERS
OF PRINCIPAL CIVIL COURT UNDER THE ARBITRATION
AND CONCILIATION ACT, 1996, AT BATHINDA.**

CIS No.: ARB-17-2019
CNR: PBBT01-005387-2019
DATE OF DECISION: 02.04.2025
NEXT DATE: 05.05.2025

1. Union of India through its Secretary, Ministry of Shipping Road Transport and Highways (Development of Road Transport and Highways), Transport Bhawan, Parliament Street, New Delhi.
2. National Highway Authority of India through its Chief Engineer, Road Transport and National Highways (NHDP-IVA) Room No. 320, Transport Bhawan, 1 Parliament Street, New Delhi.
3. Executive Engineer, Public Works Department (B&R) Division No.1, Mini Secretariat Bathinda.

.....Objectors/Petitioner(s).

VERSUS

1. Anjana Garg wife of Ajay Garg son of Kewal Kumar resident of H.No. 41, Panchvati Nagar, Mittal Mall, Bathinda.
2. Nisha Rani wife of Bhagwan Dass son of Valeti Ram R/o Railway Road, Goniana Mandi, Tehsil and District Bathinda.
3. Asha Rani wife of Prem Chand son of Lal Chand resident of Dasmesh Nagar Bathinda.
4. Sh. Harjeet Singh, IAS, Commissioner, Faridkot Division Faridkot-cum-Sole Arbitrator.

..... Respondents

5. State of Punjab through District Collector, Bathinda.

..... Pro forma Respondents.

In a Petition under Section 34 of the Arbitration and Conciliation Act 1996, for setting aside the award dated 21.01.2019 which was corrected on 23.01.2019

Application under section 36(2) of Arbitration and Conciliation Act, 1996 amended up to date for staying the operation of award dated 21.01.2019 which was corrected on 23.01.2019 till the final decision of objection petition.

Present : Sh. Kamaljit Bansal, Advocate for petitioner.
Respondent no. 1 to 4 ex parte vide order dated 11.11.2024.
Sh. Amandeep Singh, LAC Clerk on behalf of respondent no. 5.

ORDER

1. Arguments on application under section 36 (2) of the Arbitration and Conciliation Act 1996 addressed today.
2. This application under section 36(2) of Arbitration and Conciliation Act, 1996 has been filed by the petitioners Union of India and NHAI for staying the operation of arbitral award dated 21.01.2019 which was corrected on 23.01.2019 till the decision of objection petition filed by petitioners, on the grounds that the impugned arbitral award is patently wrong, illegal, against law and facts, principles of natural justice and terms of contract, hence same deserves to be set aside. The arbitrator has mis-used his power and passed the award against the terms and provisions of law and the whole award is non-speaking. The learned arbitrator has given the award illegally against the law and facts which is against public policy. Hence, the award is liable to be set aside. That in case, the operation of the impugned award is not stayed, then the objectors shall suffer an irreparable loss which cannot be compensated in any manner. As such, the operation of award be stayed till the final decision of the objection petition.

3. Respondent nos. 1 to 4 initially contested the application and filed a reply to the same praying for dismissal of the same or in the alternative, for staying the execution of the award, after directing the applicant to deposit the award amount to be released to the answering respondent. It is submitted by the respondents in the reply that the petition has been erroneously filed before the regular Court where as it ought to have been filed before commercial court designated for Bathinda District under the commercial court Act 2015. Hence the very institution of the main petition under Section 34 of the Arbitration and Conciliation Act, 1996 as amended upto date is defective/faulty and deserves to be rejected. The claimants have no locus standi to file the present reference. The reference is not maintainable according to law. The claimant have not come to the court with clean hands and have suppressed the true and correct facts from the court and are not entitled to any discretionary relief from the Hon'ble Court. However, at a later stage, the said contesting respondents no.1 to 4 have been proceeded ex-parte in this petition.

4. I have heard the learned counsel for the petitioners and have perused the record carefully.

5. In order to decide the application in hand in a speaking manner, it would be appropriate to reproduce the amended provisions of Section 36 of Arbitration and Conciliation Act 1996 which are relevant, which reads as under :

Section 36 - Enforcement (1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub section (2), such award shall be enforced in accordance with the

provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the Court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award enforceable, unless the Court grants an order of stay of the operation of the said arbitral award, in accordance with the provisions of sub section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of Code of Civil Procedure, 1908 (5 of 1908)

Provided further that where the Court is satisfied that a prima facie case is made out -

(a) that the arbitration agreement or contract which is the basis of the award, or

(b) the making of award, was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.

6. Ld. Counsel for petitioners/applicants argued that the arbitral award in question dated 21.01.2019 which was corrected on 23.01.2025 is liable to be set aside as the same is in contravention of the Fundamental Policy of Indian law and the same is vitiated by patent illegalities on the face of the said award as Ld. Arbitrator has proceeded to apply The Right to Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 (referred to as RFCTLARR Act of 2013) on the basis of the comprehensive guidelines under National

Highways Act issued by Ministry of Road Transport and Highways, dated 28.12.2017 as per which the compensation is to be determined as per Schedule I, but the arbitrator applied the Schedule I of the said Act only in a selective and pick and choose manner as while he granted solatium to the extent of 100% to the landowners and even applied the multiplier factor also as per schedule I of the said Act, but did not determine the market rate of the acquired property as per Section 26 of the said Act as required by same Schedule I, thereby unduly prejudicing the petitioners and unduly benefiting the landowners, which is against the spirit of law. He further argued that the concerned arbitrator has proceeded to change the category of acquired land to commercial without there being any such evidence on record and he also passed the award in violation of the provisions of Section 29-A of the Act and thus in case the enhanced amount which has been unjustly awarded by Ld. Arbitrator to the decree holders/landowners, is released to him/them, then the same is going to cause irreparable loss to the petitioners/applicants as there is every likelihood that the objection petition of the petitioners under Section 34 of the Arbitration and Conciliation Act, 1996 against arbitral award in question would be accepted on account of aforesaid illegalities and as such the Arbitral Award in question may be stayed in terms of Section 36(2) of Arbitration and Conciliation Act, 1996.

7. Adverting to the facts of the present case, there is no dispute of the fact that the contesting respondents-landowners have already received the amount of compensation granted to them by CALA-cum-SDM Bathinda vide his award dated 07.11.2014. The dispute in the

present objection petition is only with regard to the enhanced amount granted by the Arbitrator vide his arbitral award dated 21.01.2019 which was corrected on 23.01.2019. The said impugned award has already been challenged by the Government of India and NHAI by filing the present objection petition under Section 34 of the Act. The aforesaid arguments raised by Ld. Counsel for petitioners/applicants makes out a case for consideration of the impugned award on merits and at length. In view of the said arguments as well as the fact that passing of final award in this case has also been stayed by the Hon'ble High Court, a clear prima facie case is made out for staying the operation of impugned award as the disposal of present objection petition is going to take some time.

8. Now once this court has come to the conclusion that a prima facie case is made out to stay the operation of the impugned arbitral award, then the next question which this court is required to answer is whether the said award is to be stayed without any condition or subject to any conditions.

9. In this regard, Ld. Counsel for petitioners/applicants argued that in case the petitioners Government of India and NHAI are directed to deposit any share of the enhanced amount awarded by Ld. Arbitrator, then the petitioners are going to suffer a lot of loss as the said amount which would be required to be deposited cannot be used by the Government for other development projects and four laning of other roads and further the said amount would remain lying idle, yielding no benefit for either of the parties and since the petitioners are a department of Government of India, so there is no possibility of any loss to the land

owners in case the objection petition of petitioners is eventually dismissed as in that case the petitioners would be under an obligation to make the payment of enhanced amount to the landowners. He further argued that also in case any amount is ordered to be released to the landowners, then it most of the times ensues a fresh round of unwanted litigation between the parties again in the eventuality of the objection petition under section 34 being decided in favour of Government of India and NHAI, since the landowners refuse to refund the said amount in such cases on their own.

10. On the other hand, the landowners have been waiting for the said enhanced amount of compensation for several years and further since the award in question is in the nature of a money decree, so there is no question of staying the arbitral award without the condition of directing the petitioners/applicants to deposit security.

11. In context of this proposition, the Hon'ble Apex Court has laid in "**Pam Developments Pvt. Ltd. Vs. The State of West Bengal & Anr., 2019 (3) RCR (civil) 603.**" *that no special favour is required to be shown to the Government. In para No. 24, Hon'ble Apex Court observed as under:*

24. "Arbitration proceedings are essentially alternate dispute redressal system meant for early/quick resolution of disputes and in case a money decree award as passed by the Arbitrator against the Government is allowed to be automatically stayed, the very purpose of quick resolution of dispute through arbitration would be defeated as the decree holder would be fully deprived of the fruits of the award on mere filing of objection under section 34 of the Arbitration Act. The Arbitration Act is a special Act which provides for quick resolution of disputes between the parties and Section 18 of the Act makes it clear that the parties shall be treated with equality. Once the Act mandates so, there cannot be any special treatment given to the Government as a party. As

such, under the scheme of Arbitration Act, no distinction is made nor any differential treatment is to be given to the Government, while considering an application for grant of stay of a money decree in proceedings under section 34 of the Arbitration Act. As we have already mentioned above, the reference to CPC in section 36 of the Arbitration Act is only to guide the Court as to what conditions can be imposed, as the same have to be consistent with the provisions of the Arbitration Act”.

Hon'ble Supreme Court has also deprecated the practice of grant of stay upon the operation of the award of arbitrator by the courts without imposition of any condition in various cases such as in **"Dewas Transport Pvt. Ltd. Vs. The State of Madhya Pradesh Civil Appeal No. 5888 of 2019, decided on 26.07.2019."** & also in **"Manish Vs. Godawari Marathawada Irrigation Development Corporation Law Finder Document ID # 1954128, decided on 16.07.2018"**.

Similarly, Hon'ble Delhi High Court in **"Power Mech Projects Ltd. Vs. Sepco Electric Power Construction Corporation, Law Finder Document ID #1690182"**, also directed the petitioner to deposit 100% of the award amount of Rs.142 Crores to secure the respondent at the time of grant of stay to the petitioner.

Hon'ble Punjab & Haryana High Court in **"M/s Shri Krishna Builders Vs. Punjab State Agriculture Marketing Board and Anr. Law Finder Document ID # 1648646"**, also observed as under :

“Proviso to Section 36(3) of the Act would cast an obligation on the Court to stay the arbitral award by treating the award to be a decree for payment of money and due regard has to be given to be provision for grant of stay as if same is a money decree under CPC. Money decree cannot be stayed arbitrarily without any cogent reason. The reason put forward by the Court in the impugned order is that the respondent Board is an instrumentality of the State and would not run away after the decision of the objections and the award/petitioner would be entitled to receive interest on the awarded amount. In case of payment of the money to the petitioner, it would be

difficult for the respondent Board to recover at a subsequent stage.

4. *In my considered opinion, impugned order is not in consonance with the amended provisions of section 36 of the Act and needs to be revisited by the Court by adhering to the real import of the amended Act/provision.”*

In **“Toyo Engineering Corporation & Anr. Versus Indian Oil Corporation Ltd. Law Finder Document ID #1863471, decided on 02.08.2021”**, again Hon'ble Apex Court stayed the award, subject to deposit of 100% of the award amount.

Hon'ble Supreme Court of India in **“The Project Director National Highways Authority of India Vs. Saraswatibai Chandrakant Shinde & Ors. Law Finder Doc ID # 2026547”** directed the NHAI to deposit 50% of the compensation amount as awarded by the arbitral court, with the executing court within a period of 4 weeks and to release the same to the landowners and to deposit the remaining 50% of the compensation within 4 weeks after determination of proceedings under section 34 of the Arbitration Act pending with the court. Similar directions were again issued by the Hon'ble Supreme Court in **“National Highways Authority of India Vs. Sheetal Jaidev Vade & Ors. in Civil Appeal No. 5256 of 2022 D/d 24.08.2022”**

12. There is no material on record to observe at this stage, that the impugned award was induced by any fraud or corruption and thus no ground is made out for grant of unconditional stay upon the operation of the impugned award. Accordingly in view of the aforesaid discussion as well as the aforesaid propositions of law, the application of the applicants/petitioners is allowed and the operation of the impugned

arbitral award is stayed till the disposal of the objection petition under Section 34 of the 1996 Act, subject to the applicants/petitioners depositing entire enhanced amount of compensation (as per the arbitral award) with the executing court within a period of three months alongwith the calculation sheet of the calculated amount, in the shape of a fixed deposit or a bank guarantee. The said amount shall however be released to the landowners only after the decision of the petition under Section 34 of the Act. This court is of the opinion that such a direction will subserve and balance the interest of both the parties as well as the interest of justice also. Any observation of mine in this order shall not be construed to be an expression on the merits of the case.

13. Passing of final order in this case has been stayed by the Hon'ble High Court. Now further order of the Hon'ble High Court be awaited for 05.05.2025.

Pronounced in Open Court :

02.04.2025

Rakhi

(Mahesh Grover)

Additional District Judge, Exercising the
Powers of Principal Civil Court Under The
Arbitration and Conciliation Act, 1996 at
Bathinda UID No. PB0243