

In the Court of Paras Doger, District Judge, Mandi, District Mandi, H.P.

CIS Registration No. : 605 of 2024
CIS CNR No. : HPMA01-002496-2024
Arbitration Act No. : 605 of 2024
CIS Filing No. : 1403 of 2024
Date of Filing. : 01.07.2024
Date of decision : 17.07.2026

Thakur Ram S/o Shri Biangu, resident of Village Bhour, P.O. Kanaid, Tehsil Sundernagar, District Mandi, H.P.
...Applicant.

Versus

- 1. Special Land Acquisition Officer -cum- Competent Authority under National Highway Act, 1956 -cum- Assistant Commissioner to Deputy Commissioner, Bilaspur, District Bilaspur, H.P.
- 2. National Highway Authority of India Ltd. Project Implementation Unit V.P.O. Gutkar, Tehsil Sadar, District Mandi, H.P. through its Project Director.
...Respondents.

APPLICATION UNDER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996, SEEKING SETTING ASIDE THE IMPUGNED AWARD DATED 18.01.2024 PASSED BY LEARNED ARBITRATOR-CUM-DIVISIONAL COMMISSIONER, MANDI, DISTT. MANDI, H.P.

For the applicant/Landowner : Sh. Vishal Thakur, Ld. Counsel.
For respondent No.1/SLAO : Sh. Vinod Bhardwaj, Ld. D.A.
For respondent No.2/NHAI : Sh. Lokesh Kapoor, Ld. Counsel.

J U D G M E N T

By way of the present application under Section 34 of the Arbitration and Conciliation Act, 1996, the applicant/landowner has assailed the award dated 18.01.2024 passed by learned Arbitrator-cum-Divisional Commissioner, Mandi Division Mandi, H.P., exercising the power of Arbitrator under the National

Highways Act, 1956. (For the sake of convenience the parties hereinafter be referred to as landowner, Competent Authority and NHAI and National Highways Act, 1956 shall be referred to as “Act of 1956” and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 shall be referred to as “Act of 2013”).

2. In brief, the facts giving rise to the present applications are that the land of the landowner situated in village Bhour, Tehsil Sundernagar, District Mandi was acquired by the respondent No.2 for building (widening/four laning etc.), maintenance, management and operation of NH-21 on the stretch of land from KM 126.500 to KM 188.917, Bilaspur to Nerchowk section, and after dispensation of enquiry, the respondent No.1/Competent Authority passed supplementary award No.38/1 dated 19.02.2018 and determined the value of the acquired structure No.835 to the tune of ₹9,52,156/-.

3. Thereafter, being aggrieved by the supplementary award of the Competent Authority dated 19.02.2018, the respondent/landowner filed a claim application under section 3G(5) of the Act of 1956 before the Ld. Arbitrator, Mandi for enhancement of the compensation and the Ld. Arbitrator vide impugned order dated 18.01.2024 partly allowed the application of the landowner. The claim of the landowner for increase of compensation of the acquired structure was declined by the Ld. Arbitrator, however, he was held entitled to all the statutory benefits contained under section 30(1) of the Act No.30 of 2013 and interest @ 9% for the first year and 15% per annum thereafter as the case may be in accordance with law on the amount of compensation, if already not paid.

4. Feeling dis-satisfied, the applicant-landowner

preferred the present application for setting-aside the impugned award passed by the learned Arbitrator on the premise that the Ld. Arbitrator has grossly erred in acting beyond its powers under the NH Act, 1956 and against the substantive law in force in India, thus rendering the award against the just compensation for which the landowner was entitled for his acquired structure. It is submitted that the Ld. Arbitrator failed to appreciate the evidence produced by the landowner in support of his case, specifically the evidence of the expert, who assessed the value of the building and material on the spot. It is submitted that similar building of other persons of the same village having the same age has been considered and the compensation has been enhanced, hence, there is contradictory decision taken by the Ld. Arbitrator, which deserves to be set aside. It is submitted that the Ld. Arbitrator has wrongly returned its findings on the issues as no cogent reasons for rejecting the assessment of the private valuer has been given in the judgment and thus, the order under appeal is against the law and facts and deserves to be set aside. It is submitted that the NHAI did not adduce any evidence in rebuttal to the evidence adduced by the landowners, as such, there was no material on record to reject the application of the landowners. It is submitted that the impugned award is not in accordance with the public policy and law. It is submitted that the impugned award is in conflict with the public policy of India such as the adequate compensation has not been awarded to the landowner. It is submitted that the order passed by the Ld. Arbitrator is in contravention of fundamental policy of the Act has been enacted for the betterment of public whose property has been acquired and they are deprived of their property forever. It is prayed that the application be allowed and the impugned arbitral award dated

18.01.2024 be set aside.

5. The NHAI filed reply to the application, wherein the preliminary objection regarding maintainability and limitation have been taken. It is submitted that the landholders did not comply with the provisions of section 34(5) of the Act of 1996, which provides for issuance of the prior notice to the other party in respect of filing of the objection under section 34 of the Act of 1996. It is submitted that the Ld. Arbitrator after recording detailed reasons, had duly rejected the claim of enhancement vide impugned award dated 18.01.2024, but awarded the statutory benefits under section 30(3) of the Act of 2013 i.e. solatium @ 30% along with interest under section 80 of the Act of 2013 i.e. 9% per annum for the first year and 15% per annum thereafter. It is submitted that in view of the provisions contained in section 105(3) of the Act of 2013, only the provisions enshrined under section 26 to 30 read with first, second and third schedule of the Act of 2013 to the extent of the determination of compensation have been made applicable to the acquisition made under the Act of 1956 and hence, the provision of section 80 of the Act of 2013 is not apply to the acquisition made under the Act of 1956. It is submitted that perusal of the arbitral award shows that no evidence was produced by the applicant before the Ld. Arbitrator to show that the compensation determined by the Competent Authority is less and liable to be enhanced. It is submitted that the landowner has been adequately compensated for the acquired structure as per the value determined by the valuer of the NHAI in accordance with the CPWD manual and guidelines and HPPWD norms after considering the necessary deductions including depreciation. It is submitted that no cogent documentary evidence was placed on record by the landowner to provide his

claims and the Ld. Arbitrator after judiciously perusing the evidence placed on record by the landowner correctly not enhanced the amount of compensation vide impugned award.

6. In para-wise reply to the grounds of application, it is submitted that the Ld. Arbitrator wrongly and illegally awarded interest under section 80 of the Act of 2013 in complete ignorance and violation of section 105(3) of the Act of 2013. It is denied that the compensation awarded to the landowner for the acquired structure was not just or was liable to be enhanced. It is submitted that the no cogent evidence in the form of valid valuation report had been produced before the Ld. Arbitrator to show that the compensation awarded by the Competent Authority for the structure No.835 was liable to be enhanced. It is submitted that so far as the contention of the applicant regarding enhancement of the compensation for the similar building is concerned, the same is wrong, as no copy of any award, whereby, the enhancement was made by the Ld. Arbitrator, was produced by the landowner. It is submitted that the present application under section 34 of the Act of 1996 is barred by limitation as the impugned award was passed by the Ld. Arbitrator on 18.01.2024 and the objection petition was to be filed within a period of three months i.e. 18.04.2024, whereas, the instant application was filed on 01.07.2024 i.e. after a delay of 75 days from the expiry of a period of three months. It is prayed the present petition filed by the landowner be dismissed and in view of the above contentions raised by the NHAI, the application filed by the NHAI be allowed and the impugned award being illegal be partly set aside.

7. On the other hand, the Land Acquisition Officer/Competent Authority though appeared through Ld. Public Prosecutor, but did not file any reply to the application.

8. I have heard Learned counsels for the parties and have gone through the record with minute care.

9. The following points arise for determination :

1. **Whether the impugned award passed by the Ld. Arbitrator is liable to be set aside being not in accordance with the parameters of the Act?**
2. **Final Order.**

10. For the reasons to be recorded hereinafter, while discussing the aforesaid points for determination, my findings on the above points are as under:

Point No.1: No.

Final Order: The application is dismissed as per operative part of the judgment.

REASONS FOR FINDINGS.

POINT NO.1.

11. Before adverting to the merits of the case, it would be apposite to first examine the ambit and scope of interference this Court is entitled to make, as per the provisions of Section 34 of the Arbitration and Conciliation Act, 1996.

12. The Hon'ble Apex Court of India in **Project Director, National Highways No.45 E and 220, National Highways Authority Of India Versus M. Hakeem And Another, 2021 (9) SCC 1**, has held that:

“What is important to note is that, far from Section 34 being in the nature of an appellate provision, it provides only for setting aside awards on very limited grounds, such grounds being contained in sub-sections (2) and (3) of Section 34. Secondly, as the marginal note of Section 34 indicates, “recourse” to a court against an arbitral award may be made only by an application for setting aside such award in

accordance with sub-sections (2) and (3). "Recourse" is defined by P.Ramanatha Aiyar's Advanced Law Lexicon (3rd Edn.) as the enforcement or method of enforcing a right. Where the right is itself truncated, enforcement of such truncated right can also be only limited in nature. What is clear from a reading of the said provisions is that, given the limited grounds of challenge under sub-section (2) and (3), an application can only be made to set aside an award. This becomes even clearer when we see sub-section (4) under which, on receipt of an application under sub-section (1) of Section 34, the court may adjourn the Section 34 proceedings and give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or take such action as will eliminate the grounds for setting aside the arbitral award. Here again, it is important to note that it is the opinion of the Arbitral Tribunal which counts in order to eliminate the grounds for setting aside the award, which may be indicated by the court hearing the Section 34 application."(Para 16)

Section 34 of Arbitration and Conciliation act 1996 proceedings does not contain any challenge on the merits of the award. (Para 23)

Thus, there can be no doubt that given the law laid down by the Supreme Court, Section 34 of the Arbitration and Conciliation Act, 1996 cannot be held to include within it a power to modify an award. To state that the judicial trend appears to favour an interpretation that would read into Section 34 of the Arbitration and Conciliation Act Act, 1996 a power to modify, revise or vary the award would be to ignore the previous law contained in the Arbitration Act, 1940 as also to ignore the fact that the Arbitration and Conciliation Act, 1996 was enacted based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 which makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the "limited remedy" under Section 34 of the Arbitration and Conciliation Act, 1996 is coterminous with the "limited right", namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration and Conciliation Act, 1996." (Paras 31 to 42)

13. Subsequently, the questions raised by three judges bench of Hon'ble Apex Court in **Gayatri Balasamy v. M/s. ISG Novasoft Technologies Ltd** decided on 20.02.2024, the Hon'ble Supreme Court on 30.04.2025, in the aforesaid case, has observed and held that:

“31. The next question that arises is whether the power to set aside an award includes the power to partially set it aside.

II. Severability of Awards

In the present controversy, the proviso to Section 34(2)(a)(iv) is particularly relevant. It states that if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the arbitral award which contains decisions on matters non-submitted may be set aside. The proviso, therefore, permits courts to sever the non-arbitrable portions of an award from arbitrable ones. This serves a two-fold purpose. First, it aligns with Section 16 of the 1996 Act, which affirms the principle of kompetenz-kompetenz — that is, the arbitrators' competence to determine their own jurisdiction. Secondly, it enables the court to sever and preserve the “valid” part(s) of the award while setting aside the “invalid” ones. Indeed, before us, none of the parties have argued that the court is not empowered to undertake such a segregation.

33. We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the “invalid” portion of an arbitral award from the “valid” portion, while remaining within the narrow confines of Section 34, is inherent in the court's jurisdiction when setting aside an award.

34. To this extent, the doctrine of omne majus continet in se minus—the greater power includes the lesser—applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be

inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.

35. However, we must add a caveat that not all awards can be severed or segregated into separate silos. Partial setting aside may not be feasible when the “valid” and “invalid” portions are legally and practically inseparable. In simpler words, the “valid” and “invalid” portions must not be inter-dependent or intrinsically intertwined. If they are, the award cannot be set aside in part.

37. We would now proceed to examine, the permissibility and scope of the court’s modification powers, within the parameters of Section 34 of the 1996 Act. In doing so, we will distinguish the court’s power of modification from: (i) the court’s power of setting aside an award; (ii) the arbitrator’s power under section 33 to correct, reinterpret, and/or issue an additional award; and (iii) the of the court to remand the award to the arbitrator under Section 34(4).

IV. A Limited power of modification can be located in section 34.

43. Equally, Section 34 limits recourse to courts to an application for setting aside the award. However, Section 34 does not restrict the range of reliefs that the court can grant, while remaining within the contours of the statute. A different relief can be fashioned as long as it does not violate the guardrails of the power provided under Section 34. In other words, the power cannot contradict the essence or language of Section 34. The court would not exercise appellate power, as envisaged by Order XLI of the Code of Civil Procedure, 1908.

44. We are of the opinion that modification represents a more limited, nuanced power in comparison to the annulment of an award, as the latter entails a more severe consequence of the award being voided in toto. Read in this manner, the limited and restricted power of severing an award implies a power of the court to vary or modify the award. It will be wrong to argue that silence in the 1996 Act, as projected, should be read as a complete prohibition.

45. We are thus of the opinion that the Section 34 court can apply the doctrine of severability and modify

*a portion of the award while retaining the rest. This is subject to parts of the award being separable, legally and practically, as stipulated in **Part II** of our **Analysis**.*

14. Therefore, in view of the recent judgment of the Hon'ble Supreme Court, under Section 34, the court in the appellate hierarchy do not have a power to modify the arbitral award, however, the Court can apply the doctrine of severability and set aside a portion of the award while retaining the rest, subject to parts of the award being separable, legally and practically. Further, the power to set aside will not include the power to modify since the power to modify is not a lesser power subsumed in the power to set aside and both are qualitatively different. Further, Hon'ble Apex Court held the law laid down in the judgment in Hakeem (supra) to be correct with only exception to carry out corrections in computational errors, clerical errors or typographical errors and any other errors of similar nature.

15. It is contended by Ld. Counsel for the applicant - NHAI that the impugned award is perverse and against the public policy and the impugned award has been passed on incorrect application of the basic principles of settled law. Therefore, the impugned award is patently illegal and liable to be set aside.

16. Patent illegality is nowhere defined under the Act. In general, it is a ground to set aside the arbitral award if the award is found to be opposed to substantive provisions of law or requirement of the Arbitration and Conciliation Act, 1996, or against the terms of the contract.

17. It has been held by their Lordships of Hon'ble Supreme Court in **Delhi Airport Metro Express Pvt. Ltd. vs. Delhi Metro Rail Corporation Ltd. 2022(1)SCC 131** as under:-

"25. Patent illegality should be illegality which goes to

the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression 'patent illegality'. Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression 'patent illegality'. What is prohibited is for courts to re-appreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award Under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a Clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression 'patent illegality'.

18. Therefore, the ground of patent illegality, with inbuilt exception, is available in the statute for setting aside domestic award, if the decision of the Arbitrator is found to be perverse, or, so irrational that no reasonable person would have arrived at the same or construction of the contract is such that no fair or reasonable person would take or the view of the Arbitrator is not even possible.

19. Further, it has been observed by the Hon'ble Apex Court in **Patel Engineering v. North Eastern Electrical Power Corporation Ltd.** 2020(7) SCC 167 (Para-20) that the expansive definition given to the term public policy of India has been done

away with, after the amendment of the Arbitration and Conciliation Act in the year 2015.

20. Otherwise also, the National Highway Act, 1956 has been enacted with the object to acquire land, building, maintenance, management, or operation of the National Highways, on the payment of the compensation to the landowners or person interested for such acquisition. Therefore, to my mind, the determination of the just and fair compensation determined by the Arbitrator to the landowners, whose property has been acquired, for such purpose/development cannot be said to be against the public policy.

21. Further, it has been laid down by Hon'ble Supreme Court in case titled as National Highways Authority of India Vs. Sri. P. Nagaraju @ Cheluvaiah & Anr. (2022) 9 SCALE 823 that the award passed by the Competent Authority under National Highways Act is an offer of compensation by an acquiring authority and the Ld. Arbitrator is not supposed to critically examine the award passed by the Authority. It will be open to the Ld. Arbitrator to rely upon the additional material brought on record to determine the just and fair compensation. The legislature has conferred right upon the person aggrieved by the award of the Competent Authority to approach the Arbitrator. Thus, Arbitrator has the jurisdiction to pass the award after taking into consideration the evidence led by the parties in the arbitration proceedings. Merely, the award of the Arbitrator is contrary to the award of the Competent Authority is no ground to set it aside.

22. Ld. Counsel for the NHAI contended that the application filed by the landowner is barred by limitation as the same has been filed after delay of 75 days from the expiry of period of three months.

23. The impugned award was passed on 18.01.2024. The perusal of the record further shows that covering letter for the issuance of the signed award passed by the Arbitrator -cum- Divisional Commissioner, Mandi was issued on 02.04.2024 and as per the pleadings of the landowners the signed copy of the award dated 18.01.2024 was received on 28.06.2024. Section 34 (3) of the Act of 1996 provides a total period of three months for challenging the arbitral award and the Court has discretion to extend it by additional 30 days. However, the extension is only granted if the Court finds sufficient cause for such delay. In the present case, even if the limitation to file is presumed to be reckoned from 02.04.2024, i.e. the date on which the signed copy of the award was sent through post to the parties, the objection petition was to be filed on or before 02.07.2024. The present application was filed by the landowner on 01.07.2024, which is well within the prescribed period of limitation of three months.

24. It is contended on behalf of the landowner that adequate compensation for the acquired structure has not been granted to them and the Ld. Arbitrator failed to appreciate the evidence of the applicant and his witness i.e. the expert who assessed the value of the building and its material on record. Further, it is submitted that the similar building of other person of the same village having the same age has been considered and the compensation has been enhanced, hence, there is contradictory decision taken by the Ld. Arbitrator, which deserves to be set aside.

25. Perusal of the arbitral award shows that the Ld. Arbitrator has specifically held that after comparative analysis of the assessment reports of the structure prepared by the expert of the NHAI as well as that of the land owners, it was observed that

the valuer of the landowner has also applied the same yardstick while assessing and calculating the market value of the acquired structure as was applied by the valuer of the NHAI. The Ld. Arbitrator after appreciating the entire evidence came to the conclusion that the market value of the structure was valued properly and justly and requires no enhancement. So far as the contention of the landowner that compensation of similar type and nature of building situated in same village was enhanced. This plea cannot be accepted. There is nothing on record to suggest that the Ld. Arbitrator applied different parameters in other similar cases. Ld. Arbitrator had specifically held that the valuer of the NHAI as well as the private valuer of the landowner, both, have adopted the same formula for assessing the market value of the acquired structure. Moreover, each claim for compensation is required to be adjudicated on the basis of the evidence led in the particular case and the arbitral award passed in some other matter cannot be taken into consideration for the determination of compensation in the present case without proof of complete comparability like their location, class, nature of construction, plinth area, age, condition, quality of construction etc.

26. It is further contended on behalf of the landowner that the applicant–NHA failed to adduce any oral or documentary evidence in rebuttal to the evidence led by the landowners before the learned Arbitrator and in the absence of any rebuttal evidence, there was no material available on record to reject the claim of the landowner for further enhancement of compensation.

27. The learned Arbitrator was required to assess the entire material available on record and was not bound to accept the claim of the applicant merely because the NHAI did not adduce any evidence. Perusal of the impugned award shows that the

learned Arbitrator considered the pleadings, oral testimony and documentary evidence adduced by the parties and thereafter recorded reasoned findings while determining the compensation payable. The applicant has failed to demonstrate that any material evidence was ignored or that the findings recorded by the learned Arbitrator suffer from perversity or patent illegality.

28. The contention that the award is contrary to the public policy of India is equally untenable. An arbitral award cannot be set aside on the ground of public policy merely because the landowner considered the compensation awarded to be inadequate.

29. The legislature has made the arbitrator a final court on facts and it is not permissible to re-appreciate the evidence led before him unless there is patent illegality. No case of patent illegality can be said to be made in the application; therefore, the award of the Id. Arbitrator on facts has to be treated as final. Moreover, as already discussed above, this Court can not sit as an Appellate Authority over the findings of the Arbitrator and cannot re-appreciate the evidence to conclude that the award suffers from infirmity appearing on the face of the award and it is not permissible for this Court to enhance the compensation awarded by the learned arbitrator except to carry out correction in computation errors, clerical error or any other type of similar nature. Accordingly, the point No.1 is answered in the negative.

30. No other point was urged.

FINAL ORDER

31. In view of the abovesaid discussion and observations, the present application filed by the applicant/ landowner is dismissed. Memo of costs be prepared. The parties are left to bear

their respective costs. Pending application(s), if any, are also disposed off, being rendered infructuous. The record of Learned Arbitrator be sent back along with authenticated copy of the this judgment and the record of this Court, after due completion, be consigned to the Record Room.

Announced and signed in the open Court today on this 17th day of July, 2026.

(Paras Doger)
District Judge
Mandi District Mandi (HP).

Certified that I have signed the Page Nos.
1 to 16 of the Judgment.

(Paras Doger)
District Judge
Mandi District Mandi (HP).

'Sanjeev'