



A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.5028 of 2025

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

National Aluminium Company Ltd., Bhubaneswar & Ors. ***Petitioner(s)***

-versus-

M/s. Maheswari Brothers Coal Ltd., Hyderabad ***Opposite Party (s)***

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s) : *Mr. Manoj Kumar Mishra, Sr. Adv.*
Along with associates

For Opposite Party (s) : *Mr. Swayamjit Rout, Adv.*

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-15.07.2025

DATE OF JUDGMENT: -24.07.2025

Dr. S.K. Panigrahi, J.

1. The present Writ Petition is preferred by the Petitioners challenging the judgment dated 28.08.2024 passed by the learned District Judge, Khurda at Bhubaneswar in ARBA Case No.7 of 2023 wherein the learned Appellate Court was pleased to dismiss the appeal filed by the present Petitioners under Section 37 of the A&C Act.

I. FACTUAL MATRIX OF THE CASE:

2. The present Opposite Party pursuant to an open tender dated 21.10.2008 was given the purchase order dated 29/30.4.2009 for supply



of 1,00,000 MT of washed coal at a price inclusive of basic price of coal, railway freight, logistic charges, taxes, etc. on a continuous basis to be completed within a period of 3 months from the date of the purchase order.

3. The specifications for supply of washed coal were mentioned at Clause 1 of the purchase order which also included other terms and conditions pertaining to the delivery schedule, contracts cum performance bank guarantee, acceptance with penalty and rejection, payment terms, termination, arbitration, etc.
4. The present Opposite Party accordingly started dispatching the washed coal through rail as per the dispatch schedule. Dispute arose, when the Petitioner observed that the coal supplied through Rake Nos. 16 to 23 from Vishakapatnam siding contains a higher moisture than the acceptable limit specified in Clause 1 of the purchase order.
5. Relying on the analysis report of the washed coal provided by Mitra S.K. Coal Inspection Private Limited dated 22.7.2009, 23.7.2009 and 27.7.2009 for Rake Nos. 16, 17 and 18 the present Petitioner vide letter dated 31.7.2009 intimated to the Opposite Party that the moisture content for the rakes have exceeded the acceptable range and hence as per the terms of the purchase order, these rake loads will be rejected and no payment against the same will be made.
6. A similar letter dated 14.8.2009 was issued by the Petitioner intimating the Opposite Party of the same issue qua Rake Nos. 19,20,21,22 and 23.



7. In response, vide letter dated 3.9.2009, the Opposite Party stated that all the parameters except total moisture are in conformity with the specifications laid out in the purchase order. The reason for higher moisture was ascribed to the heavy rainfall which, despite precautions might have entered the rakes in transit.
8. Vide letter dated 17.6.2011, the Opposite Party requested release of payment for Rake Nos. 16 to 23. A meeting was convened on 27.9.2011 between the officials of both parties for reconciliation of outstanding amounts as the Opposite Party contended that it continued dispatching rakes during heavy monsoon due to the constant demand put forth by the Petitioner who was facing an acute shortage of coal and would have had to shut down if not for the deliveries made by the Opposite Party. The Opposite Party in the meeting was asked to recast their outstanding amounts for further review.
9. However, on 5.4.2012, the Opposite Party referred the dispute for arbitration and sought appointment of an arbitrator by invoking Clause 15 of the purchase order. Accordingly Retd. Justice Basudev Panigrahi was appointed as the Ld. Sole Arbitrator to adjudicate upon the dispute between the present Parties vide letter dated 2.8.2012.
10. The Ld. Sole Arbitrator after referring to the pleadings and evidence led in the arbitration proceeding, vide award dated 24.6.2017 directed the present Petitioners to pay Rs. 26,77,38,990/- to the present Opposite Party within a period of 3 months from the date of order failing which, the entire awarded amount would carry interest at the rate of 12% p.a.



11. Being aggrieved, the present Petitioners resorted to an application u/s 34 of the A&C Act before the Ld. Senior Civil Judge (Commercial Court), Bhubaneswar, praying for setting aside the award. The Ld. Senior Civil Judge (Commercial Court), Bhubaneswar vide order dated 28.8.2023 after referring to the materials placed on record, dismissed the arbitration petition with the observation that the present Petitioners have failed to make out a case requiring interference with the award.
12. Still aggrieved, the present Petitioners preferred an application u/s 37 of the A&C Act before the Court of the Ld. District Judge, Khurda at Bhubaneswar. Vide order dated 28.8.2024, the Ld. District Judge was of the view that there is neither any 'patent illegality' nor violation of any 'public policy' in the arbitral award. Furthermore it was observed that the errors alleged do not go to the root of the matter, warranting interference and therefore the order dated 28.8.2023 passed by the Ld. Senior Civil Judge (Commercial Court), Bhubaneswar was upheld.
13. At this stage, the present Petitioners approached the Supreme Court of India in SLP(C) Diary No. 57336/2024, wherein the Apex Court vide order dated 15.1.2025 was pleased to permit the present Petitioners to approach this Court in its writ jurisdiction. Hence, the present Petition.
14. Now that the broad facts leading up to the instant Petition have been laid down, this Court shall endeavour to fully summarise the contentions of the Parties and the broad grounds that have been urged to seeking the exercise of this Court's writ jurisdiction.



II. PETITIONERS' SUBMISSIONS:

15. It is submitted by Ld. Counsel for the Petitioners that the impugned award suffers from patent illegality and is contrary to the public policy of India, hence, deserves to be set aside vis-a-vis the impugned order passed by Ld. Senior Civil Judge (Commercial Court), Bhubaneswar, being illegal & arbitrary, is also liable to be set aside. He further contended that the reasons assigned by the Arbitral Tribunal while deciding the arbitration proceeding are irrational and perverse to the settled position of law, which on perusal will shock the conscience of the Court. He again contended that the glaring fact that the Respondent failed to supply washed coal in eight Rakes, i.e., Rake Nos. 16 to 23, as per the specifications provided in the Purchase Order, leading to non-performance in term of the Purchase Order, makes the Respondent solely responsible for its own loss and the same was not taken into account in its proper perspective by the Arbitral Tribunal, resulting in passing an erroneous award.

16. It was also contended that the letters of the Opposite Party stating that due to heavy rainfall, the moisture percentage has gone up beyond the stipulated parameters has not been taken into account by the Ld. Arbitral Tribunal as the same is a material admission of their own breach of the terms of the purchase order.

III. OPPOSITE PARTY'S SUBMISSIONS:

17. *Per contra*, it is submitted by Ld. Counsel for the Opposite Party that the interference of this Court under writ jurisdiction is restricted to



orders that are passed which are patently lacking in inherent jurisdiction which requires a perversity that stares one in the face. The same not being the case, this Writ Petition is bad in law and ought to be dismissed.

18. It is also earnestly contended that the scope of Section 37 of the A&C Act being limited to reviewing the order passed u/s 34 of the A&C Act essentially means that this Court also ought not to undertake an independent assessment of the merits or the evidence in the matter and ought to restrict itself to only reviewing whether the Ld. Courts below have committed any inherent error in adjudicating the matter.

19. It is further brought to this Court's notice that the present Petitioners have consumed the entire coal delivered in Rake Nos. 16 to 23 and have subsequently questioned its moisture percentage to avoid payment. When the coal itself was consumed, there is no scope for the present Opposite Party to withdraw the said rakes. The mere fact of consumption also amounts to satisfaction of the purchase order and therefore, the Opposite Party is liable to receive the price of coal delivered in the alleged rakes.

IV. ISSUES FOR CONSIDERATION:

20. Having heard the parties and perused the materials available on record, this court has identified the singular following issue that has to be determined which have emerged contentiously during the course of the hearing and is germane to finally decide the *lis* at hand;



A. WHETHER THIS COURT OUGHT TO INTERFERE WITH THE IMPUGNED ORDER?

21. The law is well settled that Arbitral Tribunals are a species of tribunals over which the High Court exercises writ jurisdiction. Challenge to an order of an arbitral tribunal can be raised by way of a writ petition. In *Union of India v. R. Gandhi, President Madras Bar Association*¹ the Supreme Court observed on the question as to what constitutes 'Courts' and 'Tribunals' as under:

"38. The term 'Courts' refers to places where justice is administered or refers to Judges who exercise judicial functions. Courts are established by the state for administration of justice that is for exercise of the judicial power of the state to maintain and uphold the rights, to punish wrongs and to adjudicate upon disputes. Tribunals on the other hand are special alternative institutional mechanisms, usually brought into existence by or under a statute to decide disputes arising with reference to that particular statute, or to determine controversies arising out of any administrative law. Courts refer to Civil Courts, Criminal Courts and High Courts. Tribunals can be either private Tribunals (Arbitral Tribunals), or Tribunals constituted under the Constitution (Speaker or the Chairman acting under Para 6(1) of the Tenth Schedule) or Tribunals authorized by the Constitution (Administrative Tribunals under Article 323A and Tribunals for other matters under Article 323B) or Statutory Tribunals which are created under a statute (Motor Accident Claims Tribunal, Debt Recovery Tribunals and consumer fora). Some Tribunals are manned exclusively by Judicial Officers (Rent Tribunals, Motor Accidents Claims Tribunal, Labour Courts and Industrial Tribunals). Other statutory

¹ (2010) 11 SCC 1



Tribunals have Judicial and Technical Members (Administrative Tribunals, TDSAT, Competition Appellate Tribunal, Consumer fora, Cyber Appellate Tribunal, etc)."

22. Similar observations were made by the Supreme Court in *SREI Infrastructure Finance Limited*²as under:

"14. Arbitration is a quasi judicial proceeding, equitable in nature or character which differs from a litigation in a Court. The power and functions of arbitral tribunal are statutorily regulated. The tribunals are special arbitration with institutional mechanism brought into existence by or under statute to decide dispute arising with reference to that particular statute or to determine controversy referred to it. The tribunal may be a statutory tribunal or tribunal constituted under the provisions of the Constitution of India. Section 9 of the Civil Procedure Code vests into the Civil Court jurisdiction to entertain and determine any civil dispute. The constitution of tribunals has been with intent and purpose to take out different categories of litigation into the special tribunal for speedy and effective determination of disputes in the interest of the society. Whenever, by a legislative enactment jurisdiction exercised by ordinary civil court is transferred or entrusted to tribunals such tribunals are entrusted with statutory power. The arbitral tribunals in the statute of 1996 are no different, they decide the lis between the parties, follows Rules and procedure conforming to the principle of natural justice, the adjudication has finality subject to remedy provided under the 1996 Act. Section 8 of the 1996 Act obliges a judicial authority in a matter which is a subject of an agreement to refer the parties to arbitration. The reference to arbitral tribunal thus can be made by judicial authority or an arbitrator can be appointed in accordance with the arbitration agreement under Section 11 of the 1996 Act."

² (2018) 11 SCC. 470



23. Thus, the Apex Court held that arbitral tribunals are private tribunals unlike those tribunals set up under the statute or specialized tribunals under the Constitution of India. Thus, a Petition under Article 227 challenging orders of an Arbitral Tribunal would be maintainable.

24. At this juncture, it is necessary to set out certain provisions of the Arbitration and Conciliation Act, 1996.

Section 5 states:

“5. Extent of judicial intervention.—Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.”

Section 37 which is also material states as follows:

“37. Appealable orders.—(1) An appeal shall lie from the following orders (and from no others) to the court authorised by law to hear appeals from original decrees of the Court passing the order, namely—

(a) refusing to refer the parties to arbitration under Section 8;

(b) granting or refusing to grant any measure under Section 9;

(c) setting aside or refusing to set aside an arbitral award under Section 34.

(2) An appeal shall also lie to a court from an order granting of the Arbitral Tribunal—

(a) accepting the plea referred in sub-section (2) or sub-section (3) of Section 16; or

(b) granting or refusing to grant an interim measure under Section 17.



(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

25. What is also important to note is that under Section 29-A of the Act which was inserted by the Amendment Act, 2016 a time-limit was made within which arbitral awards must be made, namely, 12 months from the date the Arbitral Tribunal enters upon the reference. Also, it is important to note that even so far as Section 34 applications are concerned, Section 34(6) added by the same amendment states that these applications are to be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other parties.
26. Given the aforesaid statutory provision and given the fact that the 1996 Act repealed three previous enactments in order that there be speedy disposal of all matters covered by it, it is clear that the statutory policy of the Act is that not only are time-limits set down for disposal of the arbitral proceedings themselves but time-limits have also been set down for Section 34 references to be decided. Equally, in *Union of India v. Varindera Constructions Ltd.*³ The Supreme Court has imposed the selfsame limitation on first appeals under Section 37 so that there be a timely resolution of all matters which are covered by arbitration awards.
27. Most significant of all is the non obstante clause contained in Section 5 which states that notwithstanding anything contained in any other

³ (2020) 2 SCC 111



law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed [see Section 37(2) of the Act].

28. Coming now to the question as to what would be the scope of interference under Article 226/227 against orders passed by the Arbitral Tribunals, though, a number of judgments have been cited by both parties, recent decisions of the Supreme Court and of this Court have settled the issue.

29. While there is no doubt that the arbitral tribunal is a tribunal over which writ jurisdiction can be exercised, the said interference by a writ court is limited in nature. Recently, in *Deep Industries Ltd. v. ONGC Ltd.*⁴ decided on 28th November, 2019, the Supreme Court considered *S.B.P. & Company v. Patel Engineering Ltd.*⁵ and *Fuerst Day Lawson Limited v. Jindal Exports Limited*⁶ and observed as under:

“17. This being the case, there is no doubt whatsoever that if petitions were to be filed Under Articles 226/227 of the Constitution against orders passed in appeals Under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional

⁴ (2020) 15 SCC 706

⁵ (2005) 8 SCC 618

⁶ (2011) 8 SCC 333



provision which remains untouched by the non-obstante Clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed Under Article 227 against judgments allowing or dismissing first appeals Under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us herein above so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction."

30. Recently, in ***Surender Kumar Singhal v. Arun Kumar Bhalotia***⁷ the Delhi High Court, after considering all the decisions, of the Supreme Court, ***Deep Industries*** (supra); ***Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd.***⁸; ***Punjab State Power Corpn. Ltd. v. EMTA Coal Ltd.***⁹; ***Virtual Perception OPC (P) Ltd. v. Panasonic India (P) Ltd.***¹⁰ and ***Ambience Projects & Infrastructure (P) Ltd. v. Neeraj Bindal***¹¹ has laid down circumstances in which such petitions ought to be entertained. The relevant portion of the said judgment reads as under:

"24. A perusal of the abovementioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Articles 226/227 in challenges to orders by an Arbitral Tribunal including orders passed under Section 16 of the Act:

(i) An Arbitral Tribunal is a tribunal against which a petition under Articles 226/227 would be maintainable.

⁷ 2021 SCC OnLine Del 3708

⁸ (2022) 1 SCC 75

⁹ (2020) 17 SCC 93

¹⁰ 2022 SCC OnLine Del 566

¹¹ 2021 SCC OnLine Del 4023



(ii) The non obstante clause in Section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a constitutional provision.

(iii) For interference under Articles 226/227, there have to be exceptional circumstances.

(iv) Though interference is permissible, unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere.

(v) Interference is permissible only if the order is completely perverse i.e. that the perversity must stare in the face.

(vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process.

(vii) Excessive judicial interference in the arbitral process is not encouraged.

(viii) It is prudent not to exercise jurisdiction under Articles 226/227.

(ix) The power should be exercised in “exceptional rarity” or if there is, “bad faith” which is shown.

(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided.”

26. A perusal of the above would show that it is only under exceptional circumstances or when there is bad faith or perversity that writ petitions ought to be entertained.”

31.The power of superintendence vested in High Courts under Article 227 of the Constitution of India is a constitutional safeguard designed to ensure that subordinate courts and tribunals act within their jurisdiction and adhere to principles of fairness, legality, and procedural propriety. However, the exercise of this power in the



context of arbitration proceedings governed by the Arbitration and Conciliation Act, 1996, has been subject to considerable judicial scrutiny and debate. The Arbitration Act is a self-contained code aimed at promoting minimal judicial interference and ensuring the speedy resolution of disputes through a quasi-judicial process. Section 5 of the Act categorically mandates that judicial authorities shall not intervene in matters governed by the Act, except where expressly provided. This non obstante clause, coupled with the limited appellate mechanism under Section 37, underscores a deliberate legislative intent to restrict court involvement and expedite the arbitral process. The Supreme Court in *SBP & Co. v. Patel Engg. Ltd.*¹² emphasized the autonomy of the arbitral process, affirming that courts must respect the statutory scheme. While Article 227 is a constitutional provision and therefore cannot be ousted by statutory language, the Courts have repeatedly held that this extraordinary jurisdiction must be exercised with great restraint, especially in arbitration matters. Any intervention should be confined to cases where there is a patent lack of jurisdiction or perversity that is apparent on the face of the record. The overarching goal is to preserve the integrity and efficiency of the arbitral process.

32. In recent judicial pronouncements, including *Deep Industries (supra)*, the Apex Court has emphasized that although Article 227 cannot be curtailed by any statutory enactment like Section 5 of the Arbitration and Conciliation Act, the High Courts must exercise self-restraint

¹² (2005) 8 SCC 618



while considering interference in arbitral proceedings. The Court acknowledged the supremacy of the constitutional provision but cautioned that indiscriminate use of writ jurisdiction would undermine the legislative objective of speedy and efficient dispute resolution through arbitration. It observed that entertaining petitions under Articles 226 or 227 against interlocutory or even final orders passed under Sections 16 or 17 of the Arbitration Act would result in delaying the arbitral process and open floodgates for unwarranted challenges. Importantly, the Court held that only in instances where the order suffers from a patent lack of jurisdiction or where there is a manifest miscarriage of justice should the High Court step in. The rationale was rooted in the principle that arbitral tribunals, while not civil courts, are adjudicatory bodies that derive their authority from party autonomy and statutory recognition. Excessive judicial interference in this sphere would erode the foundational principles of arbitration and compromise its purpose as an alternate dispute resolution mechanism. The Court thus laid down a threshold of "exceptional rarity" as a guiding principle. Consequently, even if maintainability under Article 227 is established, the jurisdiction ought not to be exercised merely because an error of law or fact exists, unless such error amounts to perversity or a jurisdictional transgression. The Court was particularly wary of the potential derailment of the arbitral process if supervisory jurisdiction were exercised routinely over orders passed either by arbitral tribunals or in first appeals under Section 37 of the Act. Acknowledging the supremacy of the



Constitution and the enduring nature of Article 227, the Court nevertheless maintained that statutory policy must be respected and judicial review should not be used as a backdoor appeal mechanism. The Court held that although the power under Article 227 is untouched by the non obstante clause in Section 5, such power must be exercised with utmost circumspection and only in cases where orders are so patently lacking in inherent jurisdiction or are manifestly perverse that judicial conscience is shocked. This nuanced stance balances constitutional principles with statutory purpose. The Court further explained that if Article 227 petitions were freely entertained against Section 37 orders, it would negate the legislative scheme that provides for only a single appeal and bars second appeals under Section 37(3). Consequently, High Courts must tread carefully, ensuring that their intervention does not undermine the finality and expedition that the Arbitration Act seeks to promote. This decision thus reinforces the principle that while constitutional remedies remain available, they are not to be used as substitutes for appeals explicitly barred by a self-contained statute such as the Arbitration and Conciliation Act.

33. The decision in *Surender Kumar Singhal (supra)*, further crystallized the judicial standards governing Article 227 interference in arbitral matters. After analyzing key Supreme Court precedents, the Delhi High Court unequivocally held that the supervisory power under Article 227 can only be exercised when there is demonstrable perversity or the order of the arbitral tribunal is patently without



jurisdiction. The Court noted that arbitral tribunals, being private adjudicatory bodies created under the Arbitration and Conciliation Act, 1996, are distinct from statutory or constitutional tribunals. Despite this, given their function of adjudicating legal disputes and their obligation to adhere to principles of natural justice, they fall within the scope of judicial review under Article 227. However, the Act's statutory framework, particularly Sections 5 and 37, reflects a clear legislative intent to restrict judicial intervention. Section 5's non obstante clause ensures that in matters governed by the Act, no judicial authority shall intervene unless specifically provided. Section 37, by allowing a limited and exhaustive list of appealable orders, reinforces the notion of finality and minimal interference. The Court warned that permitting Article 227 challenges as a routine remedy would effectively create a "second bite at the cherry," contrary to the Arbitration Act's policy and purpose. Therefore, only orders reflecting egregious illegality or mala fides warrant constitutional scrutiny. The judgment also crystallized the principles governing the exercise of writ jurisdiction over arbitral orders, emphasizing that such powers under Article 227 must be exercised only in the rarest of rare cases. The decision made clear that arbitral tribunals, though private in nature, are still "tribunals" within the meaning of Article 227 and therefore subject to the High Court's supervisory control. However, this supervisory control is not equivalent to appellate review. Rather, the writ court's role is confined to correcting manifest illegality, bad faith, or perversity so glaring that it indicates a patent lack of



jurisdiction. The High Court reiterated that if orders passed by arbitral tribunals were routinely challenged and overturned under Article 227, it would nullify the entire purpose of a separate arbitration regime and revert the process to the very judicial delays it sought to eliminate. The judgment stressed the necessity of discouraging such litigation unless the arbitral order offends the basic structure of justice.

34. While Article 227 cannot be statutorily ousted due to its constitutional origin, its invocation must be exercised with extreme caution in arbitration matters. If High Courts were to routinely entertain petitions under Article 227 against orders passed under Section 37 of the Arbitration Act, the entire purpose of creating a streamlined arbitral regime would be frustrated. Arbitration proceedings, by their very nature, are intended to be quick and efficient alternatives to traditional litigation. Excessive judicial interference undermines this objective and delays finality in commercial disputes. Interference of this Court under Article 227 is not only exceptional but should be exercised in situations where the order in question is so perverse that it lacks inherent jurisdiction. It reaffirmed that routine errors of law or fact, or disagreements on the merits, cannot be grounds for invoking this extraordinary jurisdiction. The policy underlying the Arbitration Act, reinforced by its non obstante clause in Section 5 and constricted appellate structure in Section 37, demands judicial deference to arbitral decisions. Therefore, unless there is an egregious illegality or



an abuse of power that offends basic judicial conscience, this Court must refrain from invoking Article 227.

35. This Court shall keep these principles in mind as it adjudicates upon the contentions of the Parties. Before undertaking the aforesaid exercise, it would be apposite to consider as to how the expressions (a) “in contravention with the fundamental policy of Indian law”; (b) “in conflict with the most basic notions of morality or justice”; and (c) “patent illegality” have been construed.

36. The phrase “fundamental policy of Indian law” entered arbitral discourse long before the 2015 amendments, when *Renusagar Power Co. Ltd. v. General Electric Co.*¹³ confined “public policy” challenges to three narrow heads: (i) fundamental policy of Indian law, (ii) interests of India, and (iii) justice or morality.

37. Subsequent decisions—most notably *ONGC v. Western Geco*¹⁴—stretched that first head by equating “fundamental policy” with Wednesbury-style reasonableness review, permitting courts to re-enter the merits on the pretext of testing arbitral reasoning. Because that approach threatened the speedy, final nature of arbitration, Parliament rolled it back through the Arbitration and Conciliation (Amendment) Act, 2015.

38. Explanation 1 to Section 34(2)(b)(ii) and 48(2)(b) now insists that an award offends public policy ‘only’ if it violates India’s “fundamental

¹³ (1984) 4 SCC 679

¹⁴ (2014) 9 SCC 263



policy,” a concept deliberately narrower than “contrary to the policy of Indian law.” *Ssangyong Engg. & Construction Co. Ltd. v. NHAI*¹⁵ crystallised the post-amendment position: “fundamental policy” reverts to the *Renusagar* (supra) standard, and *Western Geco’s* (supra) judicial-review expansion “no longer obtains.” Mere statutory error—or even an award at odds with substantive Indian law—will not suffice unless the breach strikes at bedrock norms that undergird the administration of justice, such as disregard of natural-justice guarantees, wilful disobedience of binding precedents, or flouting statutes integrally linked to public interest. Crucially, courts must respect Explanation 2, which bars merits review under this ground; their scrutiny stops at identifying systemic, structural affronts to India’s legal order, not re-weighting evidence or legal interpretation.

39. To determine whether an award crosses that threshold, courts apply a two-step lens. First, they must ask whether the complained-of rule is itself “fundamental”: does it form part of the basic architecture that sustains the rule of law—e.g., *audi alteram partem*, jurisdictional competence, adherence to superior-court decrees, etc. Second, they ought to examine whether the tribunal’s conduct amounts to ‘contravention’, not merely imperfect application. Thus, failure to supply any reasons, refusal to hear a party on pivotal issues, or adjudicating matters wholly outside the reference may qualify; but a plausible yet contestable contractual construction, or even wrongful exclusion of a document, ordinarily will not.

¹⁵ (2019) 15 SCC 131



40. *Associate Builders v. DDA*¹⁶ had assimilated *Western Geco* (supra) - style “perversity” and “judicial approach” tests into public-policy analysis; *Ssangyong* (supra) decisively excised those limbs, ruling that courts may not treat facial misinterpretations of law or contract as “fundamental-policy” breaches. Likewise, contraventions of statutes unconnected to public interest—say, stamp-duty underpayment—lie outside this head. The result is a calibrated, high-bar standard: intervention is warranted only where the award undermines essential legal tenets that any fair-minded observer would recognise as indispensable to India’s justice system. By retrenching the scope, the 2015 amendments realign Indian arbitration with the UNCITRAL model and global best practice, ensuring that “fundamental policy” remains an exceptional filter, not a backdoor appeal on facts and law.

41. The “morality or justice” limb, present since *Renusagar* (supra), was likewise tightened in 2015. Explanation 1 now demands conflict with the “most basic notions” of morality or justice—language intentionally inserted to prevent subjective or elastic expansion. Indian courts have long recognised that justice and morality are context-sensitive; what shocks one era may not perturb another. Therefore, post-amendment jurisprudence treats this ground as a safety valve for truly egregious awards—those that outrage the court’s conscience because they subvert elementary fairness intelligible to any reasonable layperson, whether legally trained or not. The Law Commission’s 246th Report, echoed by *Ssangyong*

¹⁶ (2015) 3 SCC 49



(supra), emphasised that importing *Wednesbury* or proportionality tests here would “open the floodgates,” defeating legislative intent. Consequently, an award may be annulled under this head only if it institutionalises manifest injustice—e.g., sanctions fraud, enforces a contract obtained by duress, or imposes liabilities that blatantly contradict mutual assent—thereby eroding society’s faith in adjudicatory fairness.

42. In practice, Indian courts deploy a conscience-shock test grounded in universal principles rather than parochial moral codes. For instance, in *Ssangyong* (supra), the majority of an arbitral tribunal unilaterally rewrote a price-adjustment formula by applying an internal NHAI circular never agreed to by the contractor, effectively creating a new bargain. The Supreme Court held that foisting a unilateral modification on an unwilling party violated “the most basic notions of justice,” as voluntariness lies at the heart of contract law. Similarly, awards enforcing contracts tainted by corruption or transactions forbidden by law (e.g., betting agreements) would offend basic morality. By contrast, awards involving commercial hardship, uneven economic results, or arguable legal mistakes ordinarily pass muster, for equity courts cannot rewrite bargains *ex post*. The guiding principle is restraint: morality-oriented intervention is reserved for circumstances where a lay observer would perceive the outcome as plainly unconscionable—where the tribunal’s decision legitimises wrongdoing rather than merely errs in quantification or interpretation. This cautious approach upholds arbitral autonomy,

protecting parties' bargain to accept a chosen tribunal's view, while ensuring that arbitration does not become a cloak for fundamental injustice. It mirrors international jurisprudence thereby strengthening India's reputation as an arbitration-friendly jurisdiction that simultaneously safeguards core ethical minima.

43. Section 34(2-A), inserted in 2015, introduced "patent illegality appearing on the face of the award" as a separate annulment ground for domestic awards (it does not apply to foreign or Part II enforcement). The provision codifies and confines the doctrine earlier derived from *ONGC v. Saw Pipes*¹⁷, which had blended patent illegality with public policy. Parliament's aim was twofold: (i) retain a mechanism to nullify awards that flout obvious legal mandates, yet (ii) bar disguised appeals on facts or law. Accordingly, the proviso forbids setting aside "merely on the ground of erroneous application of law" or "re-appreciation of evidence." *Ssangyong* (supra) interprets patent illegality as errors that "go to the root of the matter" but are not subsumed within fundamental policy—thus covering blatant violations of substantive statutes, the Arbitration Act itself, or contract terms, provided they are manifest on the award's face. Notable examples include deciding disputes beyond the contract's scope, granting relief contrary to an express prohibition, or ignoring mandatory statutory caps. The test is objective and record-based: the error must be apparent without forensic excavation; hidden or debatable mistakes remain immune.

¹⁷ (2003) 5 SCC 705



44. Courts evaluating patent illegality utilise the “perversity” benchmarks articulated in *Associate Builders* (supra) and reaffirmed in *Delhi Metro Rail Corporation v. DAMEPL*¹⁸. An award is perverse—and hence patently illegal—when (i) findings rest on no evidence, (ii) irrelevant factors decisively influence the outcome, (iii) vital evidence is ignored, (iv) reasons are wholly absent, or (v) the tribunal addresses matters beyond its jurisdiction. However, even these indicators must reveal themselves plainly on the award or arbitral record; courts cannot marshal new material or conduct painstaking re-evaluation. The focus is procedural and jurisdictional fidelity, not substantive correctness. Importantly, patent illegality is unavailable in international commercial arbitration seated in India—reflecting India’s commitment to align with the UNCITRAL Model Law and minimise judicial intrusion where foreign parties are involved. Taken together, the 2015 framework establishes a tiered control system: “fundamental policy” and “most basic notions of morality or justice” guard systemic and ethical frontiers applicable to all awards, while “patent illegality” offers an additional, carefully cabined safeguard for domestic awards to weed out egregious but non-fundamental legal flaws. This architecture balances finality with legitimacy, ensuring Indian courts remain sentinels of legality without morphing into appellate arbiters, thereby promoting efficiency and investor confidence in India-seated arbitration.

¹⁸ 2024 INSC 292



45. In *MMTC Ltd. v. Vedanta Ltd.*¹⁹, the Supreme Court took note of various decisions including that in *Associate Builders* (supra) and expounded on the limited scope of interference under Section 34 and further narrower scope of appeal under Section 37 of the 1996 Act, particularly when dealing with the concurrent findings (of the arbitrator and then of the Court). The Supreme Court, inter alia, held as under :

*“11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of the Hon’ble Supreme Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the “fundamental policy of Indian law” would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and *Wednesbury* [Associated Provincial Picture Houses v. *Wednesbury Corpn.*, (1948) 1 KB 223 (CA)] reasonableness. Furthermore, “patent illegality” itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.*

12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of

¹⁹ (2019) 4 SCC 163



the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See *Associate Builders v. DDA* [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] Also see *ONGC Ltd. v. Saw Pipes Ltd.* [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] ; *Hindustan Zinc Ltd. v. Friends Coal Carbonisation* [Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 SCC 445] ; and *McDermott International Inc. v. Burn Standard Co. Ltd.* [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181])

13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the Court under



Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the Court under Section 34 and by the Court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.”

46.In *Ssangyong Engg.* (supra), the Supreme Court has set out the scope of challenge under Section 34 of the 1996 Act in further details in the following words :

“37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within “the fundamental policy of Indian law”, namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

38. Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.

39. To elucidate, para 42.1 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.

40. *The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).*

41. *What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse."*

47. The limited scope of challenge under Section 34 of the Act was once again highlighted by the Supreme Court in **PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust**²⁰ and the Supreme Court particularly explained the relevant tests as under :

²⁰ 2021 SCC OnLine SC 508



“40. It will thus appear to be a more than settled legal position, that in an application under Section 34, the Court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of “public policy of India”, which has been held to mean “the fundamental policy of Indian law”. A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Sections 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the “most basic notions of morality or justice”. It is only such arbitral awards that shock the conscience of the Court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.

41. A decision which is perverse, though would not be a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. However, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality.

42. To understand the test of perversity, it will also be appropriate to refer to paras 31 and 32 from the judgment of this Court in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], which read thus : (SCC pp. 75-76)



'31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

- (i) a finding is based on no evidence, or*
- (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or*
- (iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse."*

48.In *Delhi Airport Metro Express (P) Ltd. v. DMRC*²¹, the Supreme Court again surveyed the case law and explained the contours of the Courts' power to review the arbitral awards. Therein, the Supreme Court not only reaffirmed the principles aforesaid but also highlighted an area of serious concern while pointing out "a disturbing tendency" of the Courts in setting aside arbitral awards after dissecting and reassessing factual aspects. The Supreme Court also underscored the pertinent features and scope of the expression "patent illegality" while reiterating that the Courts do not sit in appeal over the arbitral award. The relevant and significant passages of this judgment could be usefully extracted as under :

"26. A cumulative reading of the Uncitral Model Law and Rules, the legislative intent with which the 1996 Act is made, Section 5 and Section 34 of the 1996 Act would make it clear that judicial interference with the arbitral awards is limited to the grounds in Section 34. While deciding

²¹ (2022) 1 SCC 131



applications filed under Section 34 of the Act, Courts are mandated to strictly act in accordance with and within the confines of Section 34, refraining from appreciation or reappreciation of matters of fact as well as law. (See Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd. [Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd., (2020) 2 SCC 455 : (2020) 1 SCC (Civ) 570] , Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd. [Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75 : (2022) 1 SCC (Civ) 374] and Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306] .)

28. This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by Courts while examining the validity of the arbitral awards. The limited grounds available to Courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the Courts. There is a disturbing tendency of Courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object, which is minimal judicial interference with arbitral awards. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorising them as perverse or patently illegal without appreciating the contours of the said expressions.



29. 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 reappreciate 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".

30. Section 34(2)(b) refers to the other grounds on which a court can set aside an arbitral award. If a dispute which is not capable of settlement by arbitration is the subject-matter of the award or if the award is in conflict with public policy of India, the award is liable to be set aside. Explanation (1), amended by the 2015 Amendment Act, clarified the expression "public policy of India" and its connotations for the purposes of reviewing arbitral awards. It has been made clear that an award would be in conflict with public policy of India only when it is induced or affected by fraud or corruption or is in violation of Section 75 or Section 81 of

the 1996 Act, if it is in contravention with the fundamental policy of Indian law or if it is in conflict with the most basic notions of morality or justice.

42. The Division Bench referred to various factors leading to the termination notice, to conclude that the award shocks the conscience of the Court. The discussion in SCC OnLine Del para 103 of the impugned judgment [DMRC v. Delhi Airport Metro Express (P) Ltd., 2019 SCC OnLine Del 6562] amounts to appreciation or reappraisal of the facts which is not permissible under Section 34 of the 1996 Act. The Division Bench further held [DMRC v. Delhi Airport Metro Express (P) Ltd., 2019 SCC OnLine Del 6562] that the fact of AMEL being operated without any adverse event for a period of more than four years since the date of issuance of the CMRS certificate, was not given due importance by the Arbitral Tribunal. As the arbitrator is the sole Judge of the quality as well as the quantity of the evidence, the task of being a Judge on the evidence before the Tribunal does not fall upon the Court in exercise of its jurisdiction under Section 34. [State of Rajasthan v. Puri Construction Co. Ltd., (1994) 6 SCC 485] On the basis of the issues submitted by the parties, the Arbitral Tribunal framed issues for consideration and answered the said issues. Subsequent events need not be taken into account."

49. The position in *Associate Builders* (supra) was recently summarised as hereinbelow recorded by *Indian Oil Corpn. Ltd. v. Shree Ganesh Petroleum*²²:

"42. In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204 (two-Judge Bench)] , this Court held that an award could be said to be

²² (2022) 4 SCC 463



against the public policy of India in, inter alia, the following circumstances:

- 42.1. When an award is, on its face, in patent violation of a statutory provision.*
- 42.2. When the arbitrator/Arbitral Tribunal has failed to adopt a judicial approach in deciding the dispute.*
- 42.3. When an award is in violation of the principles of natural justice.*
- 42.4. When an award is unreasonable or perverse.*
- 42.5. When an award is patently illegal, which would include an award in patent contravention of any substantive law of India or in patent breach of the 1996 Act.*
- 42.6. When an award is contrary to the interest of India, or against justice or morality, in the sense that it shocks the conscience of the Court."*

50.In *Haryana Tourism Ltd. v. Kandhari Beverages Ltd.*²³, the Supreme Court yet again pointed out the limited scope of interference under Sections 34 and 37 of the Act; and disapproved interference by the High Court under Section 37 of the Act while entering into merits of the claim in the following words :

"8. So far as the impugned judgment and order [Kandhari Beverages Ltd. v. Haryana Tourism Ltd., 2018 SCC OnLine P&H 3233] passed by the High Court quashing and setting aside the award and the order passed by the Additional District Judge under Section 34 of the Arbitration Act are concerned, it is required to be noted that in an appeal under Section 37 of the Arbitration Act, the High Court has entered into the merits of the claim, which is not permissible in exercise of powers under Section 37 of the Arbitration Act.

²³ (2022) 3 SCC 237



9. As per settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to : (a) fundamental policy of Indian Law; or (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal. None of the aforesaid exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order [Kandhari Beverages Ltd. v. Haryana Tourism Ltd., 2018 SCC OnLine P&H 3233] passed by the High Court is hence not sustainable.”

51. As regards the limited scope of interference under Sections 34/37 of the Act, this Court also considers it apposite to refer to the following observations of a three-Judge Bench of the Supreme Court in ***UHL Power Co. Ltd. v. State of H.P.***²⁴:

“15. This Court also accepts as correct, the view expressed by the appellate court that the learned Single Judge committed a gross error in reappreciating the findings returned by the Arbitral Tribunal and taking an entirely different view in respect of the interpretation of the relevant clauses of the implementation agreement governing the parties inasmuch as it was not open to the said court to do so in proceedings under Section 34 of the Arbitration Act, by virtually acting as a court of appeal.

²⁴ (2022) 4 SCC 116



16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed."

52.As noticed, arbitral award is not an ordinary adjudicatory order so as to be lightly interfered with by the Courts under Sections 34 or 37 of the 1996 Act as if dealing with an appeal or revision against a decision of any subordinate Court. The expression "patent illegality" has been expounded by the Supreme Court in the cases referred hereinbefore. The significant aspect to be reiterated is that it is not a mere illegality which would call for interference, but it has to be "a patent illegality", which obviously signifies that it ought to be apparent on the face of the award and not the one which is culled out by way of a long-drawn analysis of the pleadings and evidence.

53.From the materials on record, it is evident that the dispute between the parties is limited to the supply of washed coal in 8 Rakes, namely Rake Nos. 16 to 23, which were delivered between 17.07.2009 and 01.08.2009. The Petitioners assert that the washed coal supplied in these 08 Rakes contained moisture levels exceeding 20%, thereby violating Clause 10(c) and 10(d) of the Purchase Order, and as such, the Opposite Party is not entitled to receive payment for this consignment. It is clear from the materials and arguments presented that the crux of the dispute centers around Clauses 1 and 10 of the Purchase Order, particularly Clause 1(c) read with Clause 10(c) and its



general instructions. These provisions must be duly considered when examining the claims and assessing entitlement. Accordingly, this Court finds it appropriate to first reproduce Clause 10 of the Purchase Order for reference:

“10. Acceptance with Penalty and Rejection:

...

(c) Total Moisture: Prorate quantity reduction shall be made when total moisture are analyzed and found to be more than 12% and up to the maximum of 20% as per formula given below.

(For x% increase over the total moisture content, the weight will be reduced by x%)

Rake load material with total moisture contents above 20% will be rejected. No payments will be made to the party.

...

In case washed coal supplied is not acceptable even after applying penalty clause(s), the entire rake load of coal will be rejected. Since our siding is not open for dispatch of rejected coal by rail it will not be possible for NALCO to dispatch or the supplier to take back the rejected coal by rail. Hence, suppliers willing to take back the rejected material may have to make their own alternate arrangement. It will be the sole responsibility of the supplier to take back the rejected materials from NALCO, CPP at their own expense within 15 days from the date of intimation of rejection. In case the rejected coal is not taken back within the time limit, the material shall be forfeited by NALCO and no payment will be made to the supplier for the cost of the coal including railway freight whatsoever for such rejected coal. Any



rejection shall call for replacement with fresh supply within the contract will delivery period."

54. Clause 1 of the Purchase Order stipulates the specifications for coal, and specifically in Clause 1(c), it is mentioned that the total moisture content should not exceed 12%. A combined reading of Clause 1(c) with Clause 10(c) clarifies that where the moisture content of the supplied washed coal exceeds 12% but remains within 20%, the quantity will be proportionately reduced as per the specified formula. However, if the moisture content is found to be above 20%, the entire rake load must be rejected, and no payment is to be made.
55. Furthermore, the general instructions at the end of Clause 10 lay down the procedure to be followed upon rejection of the rake load of washed coal, which is binding on both parties. In this case, however, the washed coal supplied in the aforementioned 08 Rakes was immediately consumed by the Appellants. They then informed the Respondent that the moisture content exceeded 20%, thereby treating the coal as rejected. This was done without granting the Respondent the stipulated 15 days to respond or make arrangements to take back the rejected material, which constitutes a breach of the general instructions under Clause 10 by the Appellants.
56. Alternatively, learned counsel for the Appellants has argued that if at all the Respondent is entitled to payment for the delivery of these 08 Rakes, the value of the rejected coal as per the Purchase Order would be Rs. 10,38,43,552/-, and not the amount awarded by the Arbitral Tribunal. However, a perusal of the award shows that the Arbitrator



has provided detailed reasoning for the conclusions reached. The alleged irregularities pointed out by the Appellants are minor and do not amount to “patent illegality,” nor do they go to the root of the matter. Likewise, the award does not contravene “Public Policy,” as there is no substantial evidence on record to suggest this. The precedents cited by the Appellants to support the claim of “patent illegality” or violation of “Public Policy” do not apply to the facts of the present case.

57. The Arbitral Tribunal, in deciding the claims, has carefully evaluated the evidence presented and passed a well-reasoned award. The impugned order of the learned Senior Civil Judge (Commercial Court), Bhubaneswar is also a speaking order, passed within the bounds of its jurisdiction. Given that the scope under Section 37 of the Act is limited to reviewing whether the arbitral award could be set aside under Section 34 of the Act, there is no need to reiterate these findings further.

58. Therefore, it becomes clear that there is no patent illegality, bad faith, or perversity in the arbitral tribunal’s or the appellate court’s order that would justify interference under Article 227. The High Court’s supervisory jurisdiction is not meant to serve as an additional layer of appeal or to re-examine findings of fact or law unless there is a gross miscarriage of justice or a clear absence of jurisdiction. The impugned order does not exhibit any such glaring defect. The alleged errors pointed out are at best errors of law or fact that do not reach the threshold of “perversity” or “patent illegality” required for writ



intervention. There is no indication of malafide, bias, or a jurisdictional overreach that would warrant setting aside or interfering with the decision. Mere disagreement with the merits does not convert the petition into a fit case for extraordinary jurisdiction. The High Court must not allow itself to be drawn into acting as a quasi-appellate forum, especially where the statutory framework intends the arbitral process to be insulated from excessive judicial scrutiny. Consequently, this case clearly lacks any exceptional or rare circumstances that would justify exercising the High Court's constitutional power under Article 227 to interfere. The writ jurisdiction, therefore, must be exercised sparingly and respectfully in alignment with the statutory objectives of arbitration.

V. CONCLUSION:

59.In conclusion, while the High Court undeniably possesses supervisory jurisdiction under Article 227 over arbitral tribunals, this jurisdiction is inherently limited and must be exercised with utmost caution and restraint. Interference under Article 227 is permissible only in exceptional cases marked by patent illegality, bad faith, or a gross absence of jurisdiction. The present matter falls far short of this high threshold. The impugned arbitral and appellate orders do not suffer from any manifest error or jurisdictional defect warranting supervisory interference. Permitting writ jurisdiction to be exercised lightly in such matters would undermine the Arbitration Act's



fundamental purpose of providing a self-contained, efficient, and expeditious dispute resolution mechanism.

60. In view of the above, this Court does not find any reason to invoke its supervisory power in the present matter as there is no exceptional rarity, bad faith or perversity in the impugned order and thus, there is no reason to interfere with the arbitral process.

61. As an upshot of the above, present Writ Petition is dismissed. Pending applications, if any, also stand disposed of in the aforesaid terms.

62. No order as to costs. Ordered accordingly.

63. Interim order, if any, passed earlier stands vacated.

(Dr.S.K. Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 24th July, 2025/*