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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.02.2026

Pronounced on : 06.03.2026

CORAM:

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

OSA.No. 301 of 2020

OPG Power Generation Pvt. Ltd.,
No.6, Sardar Patel Road
Guindy, Chennai – 600 032.

... Appellant

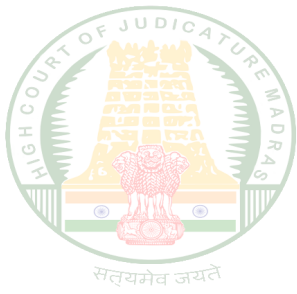
Vs.

Shree Karthik Papers Ltd.,
25, 50 Feet Road
Krishnaswamy Nagar,
Ramanathapuram,
Coimbatore – 641 045.

... Respondent

PRAYER: Appeal filed under Order 36 Rule 1 of O.S. Rules read with Clause 15 of Letters Patent Appeal and Section 37 of the Arbitration and Conciliation Act, 1996, against the order dated 19.08.2020 in O.P.No. 353 of 2020 passed by his Lordship Hon'ble Mr.Justice M.Sundar.

For Appellant : Mr. P.Vinod Kumar
for M/s. J.Sagar Associates



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For Respondent : Mr. M.Krishnappan
Senior Counsel
for Ms. R.Swarnalatha

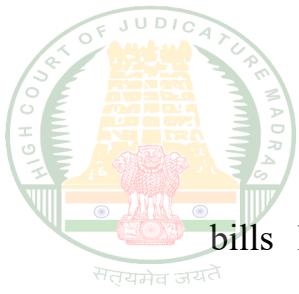
JUDGMENT

(Order of the Court was made by **C.V.KARTHIKEYAN, J.**)

The petitioner in O.P.No. 353 of 2020 which had been filed under Section 34 of the Arbitration and Conciliation Act, 1996, aggrieved by the order dated 19.08.2020 of the learned Single Judge of this Court, is the appellant herein.

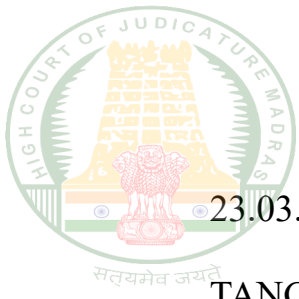
2. O.P.No. 353 of 2020 had been filed to set aside an arbitral award dated 31.01.2020 passed by the sole arbitrator. The respondent herein, Shree Karthik Papers Ltd., at Coimbatore, had filed a claim petition under Section 8(1) of the Arbitration and Conciliation Act, 1996 seeking to refer to arbitration the disputes which had arisen with regard to an agreement dated 18.04.2018 entered into by them with the appellant herein, OPG Power Generation Pvt. Ltd. The agreement dated 18.04.2018 was a power supply agreement for a period of three years. The appellant, OPG Power Generation Pvt. Ltd., was the supplier of the electricity and the respondent herein Shree Karthik Papers Ltd., was the consumer.

3. In the agreement, the tariff had been set out for one year. Monthly



bills had been raised computing the month from 28th to 27th of the succeeding month. The respondent had to effect payment within a period of 7 days from the date of the bill raised.

4. It had been contended that the bill for the month 28.08.2018 till 27.09.2018 was raised on 01.10.2018. It was further contended that the appellant had stopped supply of power on and from 28.09.2018. The respondent had to procure power from TANGEDCO at a higher rate resulting in loss. Contending that this abrupt stoppage of power was a breach of the contract and in view of the fact that there was a clause in the agreement to refer the disputes to arbitration, the respondent had filed a claim petition before the arbitrator under Section 8(1) of the Act. The respondent had laid a claim for a sum of Rs.51,55,488/- towards excess power charges from 28.09.2018 till 23.03.2019 and also for interest on the increased amount deposited before TANGEDCO as on 08.10.2018 as damages and also sought interest at 12% p.a., on the said amounts from 09.10.2018 till date of realisation. The sole arbitrator passed an award on 31.01.2020 granting a sum of Rs.40,82,400/- as the amount incurred by the respondent towards excess power charges for the period from 28.09.2018 to



23.03.2019 and also for interest on the increased amount of deposit to TANGEDCO as damages. It was also held that the appellant was liable to pay interest at 12% p.a., from the respective dates for payment and not from 09.10.2018 and from 29.03.2019 which was the last date for payment. It was also held that the respondent was entitled for interest at 12% p.a., on the sum of Rs.9,68,490/- from 23.05.2019 which was the additional security deposit paid by the respondent to TANGEDCO.

5. Challenging this award, the appellant had filed O.P.No. 353 of 2020 under Section 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996 to set aside the arbitral award. By order dated 19.08.2020, the learned Single Judge of this Court had dismissed the said Original Petition, necessitating filing of the present Appeal.

6. It is the contention of the learned counsel for the appellant that the appellant had the right to revise the price under certain circumstances. Accordingly, after due information, it was communicated that there would

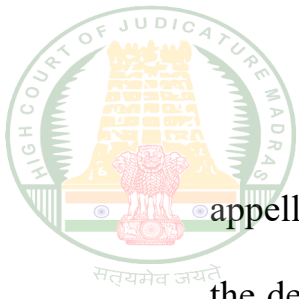


be increase in the price from the next billing cycle which was from the 28

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of that particular month till the 27 of the succeeding month. It had been further contended that the appellant was to supply and the respondent was to purchase 0.216 lakhs unit of electricity per day. The agreement also provided that if the respondent failed to pay the bill within 7 days from the issuance of the bill, the appellant was entitled to terminate the agreement or reduce or even stop the allotment and supply of electricity. If payments were made with delay, then interest at the rate of 3% per month should be paid. It was contended that the cost of imported coal which was the fuel used for generation of electricity increased owing to various factors. After intimating the respondent, the appellant increased the price in accordance with Clause 11.8 of the agreement. However, the respondent had raised a protest. With respect to the billing period 28.08.2018 to 27.09.2018, the appellant had raised the invoice dated 01.10.2018 at the existing tariff for a sum of Rs.35,26,360/-. It was contended that the respondent did not effect payment within the stipulated period. By a communication dated 25.10.2018, the appellant had called upon the respondent to remit the payment. Since the payment was not received, the appellant did not supply any power to the respondent for the subsequent billing period, 28.09.2018 to 27.10.2018. The



appellant also raised a debit note on 31.10.2018 for a sum of Rs.73,039/- for the delayed payment for the months of July to September 2018. There were exchange of correspondences between the parties. The appellant then issued a notice under the Insolvency and Bankruptcy Code 2016, on 07.12.2018. It was contended that the arbitration proceedings were initiated in response to the issuance of such notice.

7. The allegation that the appellant had increased the price of the supply of power was denied. It had been further contended that the appellant had put the respondent on notice that if the amount raised in the bill were paid, then there would not be stoppage of supply of power. The appellant claimed that they acted in accordance with the rights granted under the agreement.

8. The learned arbitrator after examining the rival contentions had held that it was a fact that the respondent had purchased power at higher rate from TANGEDCO. It was also held that the appellant had stopped supply of power even before the expiry of the 7 days time granted to effect payment of



the bill amount raised. The learned arbitrator therefore, on consideration of all the facts and circumstances granted an award as stated above.

9. The learned Single Judge held that the cessation of supply of power by the appellant on 28.09.2018 was not justified and that this itself was a breach of the agreement. It was also found that there was no explanation for the subsequent period wherein there had been enhancement of the tariff. It was held that the appellant did not have a vested right to increase the tariff. It was finally held that no ground had been made to interfere with the award and the petition was therefore dismissed.

10. Heard Mr.P.Vinod Kumar, learned counsel for M/s. J.Sagar Associates for the appellant and Mr.M.Krishnappan, learned Senior Counsel for Ms. R.Swarnalatha, learned counsel for the respondent.

11. The point which arises for consideration are:

(i) whether grant of damages on account of non supply of electricity was justified when it was held by the arbitrator that the appellant was entitled to stop supply of electricity on the ground of non payment of the invoices by the respondent.

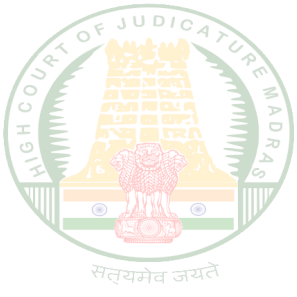


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12. The Appellant, OPG Power Generation Pvt. Ltd., and the respondent Shree Karthik Papers Ltd., had entered into a power sharing agreement by which the appellant agreed to supply power to the respondent on the terms as provided in the said agreement. In the agreement, it had been provided that the appellant, who was termed as the 'generator' had offered to the respondent, who was termed as 'member consumer' a portion of power generated from the power plant of the appellant from the delivery point and from the date of enhancement of supply. In the said agreement, the Billing Period had been defined as follows:-

“”Billing period” means the period for which commercial invoice will be raised by the GENERATOR for allotment of the contracted capacity and is the period between any two successive Meter Reading Dates. The first Billing Period shall commence with the date of commencement of supply of power and end with the immediately following Meter Reading Date.”

13. Due date had been defined as follows:-



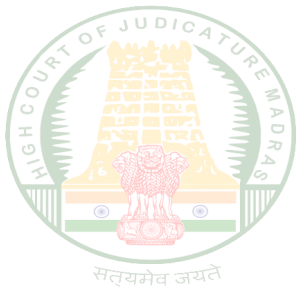
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“”due date” means within Seven days from the Billing Date including the Billing Date, in the case of a commercial invoice, and seven days from the date specified in a Supplementary invoice, as the case may be.”

14. It had been covenanted that after the date of commencement of supply, the contracted capacity would be 0.216 lakh units per day. It was further provided that during any billing period, the appellant shall allot power to the respondent which may be equal to or less than the contracted supply. It had been further provided as follows:-

“Further, any failure by the Generator to not supply / allot power to the Member Consumer due to any fault or negligence of the Member Consumer or this representatives and Officials (including the provision of incorrect or late documentation) will not constitute as a default of any provisions of this Agreement by the Generator and will not entitle the member Consumer for any compensation/damages nor entitle the Member Consumer to terminate this Agreement.”



15. It had been further provided as follows:-

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“3.8. If the member consumer defaults in making payments by the Due Date of any of the invoice(s) raised by the Generator and/or falls to consume the Contracted Capacity in any Billing Period, whether in part or in full, then the GENERATOR may at its sole option and discretion, without any intimation to the Member Consumer, with immediate effect:

(a) Transfer or cause the Escrow Agent to transfer the Equiry Shares (in part or in full, as determined by the Generator in accordance with the Electricity Rules, 2005) held by the Member Consumer to any person, and /or

(b) Terminate this Agreement, and/or

(c) Reduce the allotment and supply of the Contracted capacity, or cease the allotment and supply of the contracted capacity to the Member Consumer, and / or

(d) Invoke the Letter of Credit and the Additional Letter of credit.”

16. There were separate covenants referring to billing and payment.

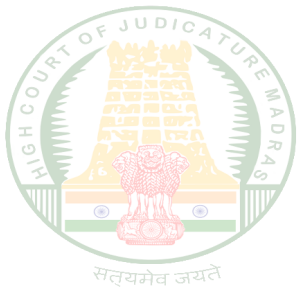
It was agreed as follows:-



“a. In the last day of every Billing Period, the Commercial Invoice for that Billing Period for the entire Contracted Capacity.”

17. With respect to the delay in effecting payment, the parties had agreed as follows:-

“The Member Consumer shall make payments on or before the Due Date of any invoice(s) issued by the GENERATOR either by Demand Draft payable at Chennai or by RTGS. All charges associated with any payment are to be borne by the Member Consumer. The account details for the payment shall be specified to the Member Consumer by the GENERATOR (“Designated Account”). The Member Consumer shall notify the Generator of its payment of any invoice(s) into the Designated Account on the same day of payment. In the event of delay in payment of any invoice by the Member Consumer beyond its Due Date, the Member Consumer shall be liable to pay to the GENERATOR interest at the rate of 3% p er month on the amount of outstanding payment on a day to day basis from the Due Date to the day of



payment.”

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18. If there were any disputes, the following conditions had been agreed upon:-

“4.6.1 If the Member Consumer does not dispute in writing a invoice raised by the GENERATOR within (seven) days of receiving it, such invoice, issue a notice (“Bill Dispute Notice”) to the GENERATOR setting out:

(i) the details of the disputed amount with calculation and basis for the dispute

(ii) its estimate of what the correct amount should be; and

(iii) all written material in support of its claim.”

19. The respondent had also undertaken as follows:-

“To make payments against all invoices, to the GENERATOR on or before the Due date.”

20. It was further agreed that the agreement shall be in force till



31.03.2021. It had been finally covenanted by the parties as follows:-

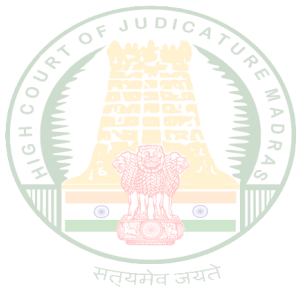
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“No variation, waiver or modification of any of the terms of this Agreement shall be valid unless reduced to writing and signed by both the parties.”

21. On 19.09.2018, just about 5 months from the date of entering into the aforementioned agreement, the appellant had forwarded an E-mail to the respondent giving the revised tariff dated 28.09.2018. This was replied to by the respondent by E-mail dated 24.09.2019. They had a raised protest that this increase in the price was not acceptable to them. It was further pointed out that in the agreement, it had been stated that for any statutory charge, the fuel surcharge must be borne by TANGEDCO, and would be shared in equal proportion by both of them. A request was made not to increase the power charges and maintain the power tariff at Rs.5.75/ per unit.

22. A further mail was forwarded by the appellant to the respondent on 24.09.2018 which is extracted in entirety.

“Dear Sir,



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In line with our discussion, we once again repeat that the schedule provided by you for the period beginning 28th September, will be allotted only at the price mentioned in our email dated 19th September 2018.

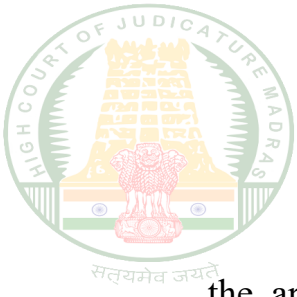
We request that you provide a confirmation mail on or before 4.30 p.m on 25th September 2018. Please note that if no response is received by this time, it will be treated as irrevocable acceptance of our email dated 19th September, 2018.

The supply and allotment of power from your captive power plant from 28th September 2018 will only be done on the above basis.

We look forward to your long term support and cooperation.

GPG Sales Team.”

23. An electronic communication was then sent by the respondent to the appellant wherein they had again protested the increase in the power tariff.



24. A careful perusal of the correspondences above would show that the appellant sought to increase the price. It had been provided in the agreement that such increase could be resorted to only with prior notice issued to the respondent. It is the case of the respondent that the appellant had however escalated the tariff without any reason and without granting opportunity to the respondent to raise a protest. The agreement also necessitated reasons to be given for stoppage of supply of power. It had also been agreed between the parties that the billing cycle would be from the 28th of a month to the 27th of the succeeding month. The respondent was also given 7 days to effect payment.

25. The appellant then issued a communication on 19.09.2018 increasing the tariff with effect from 28.09.2018 from Rs.5.75 per unit to Rs.6.15 per unit. The respondent replied that in the agreement, it had been provided that if there was any increase in tariff by TANGEDCO or by any statutory authority the same could be shared equally by both the respondent and the appellant. They also pointed out that there was no increase in the tariff by TANGEDCO and therefore, requested the appellant to maintain the



tariff at Rs.5.75 per unit. The appellant in their reply to this communication practically threatened the respondent by stating that they would supply power only at the increased price. The respondent were also directed to issue a reply confirmation. It was also stated that the supply and allotment from 28.09.2018 would only be done on the escalated price. A further communication was issued by the respondent specifically stating that there was no provision in the contract for the increase in the price. The respondent then issued a further letter on 08.10.2018 stating that they would be forced to pay additional interest to the bank and would financially suffer owing to the refusal to supply power during the contract period. Further the deposit maintained with TANGEDCO would be increased which would cause substantial loss to them. The respondent enclosed a debit note quantifying the loss and requested settlement of the same.

26. It is thus seen that on and from that date, a dispute had arisen between the parties. The appellant had escalated the tariff rate and the respondent had protested and had raised a demand for the damages incurred owing to procuring power from TANGEDCO and in suffering increase in the security deposit demanded by the TANGEDCO.



27. It was under those circumstances that the respondent had filed a claim before the arbitrator complaining that the appellant had abruptly stopped supplying electricity with effect from 28.09.2018, consequent to which the respondent herein had to procure power from TANGEDCO at a higher rate. The respondent claimed a sum of Rs.51,55,488/-. In the statement of defence, the appellant had claimed that they had intimated their proposal to increase the price per unit in exercise of their right under Clause 11.8 of the power supply agreement.

28. Clause 11.8 provided as follows:-

“11.8 In the event of change in Law and/or change in price of fuel for the power plant or change in transmission or wheeling losses and charges, the GENERATOR shall have right to revise terms of this Agreement especially relating to Price, mode, method, billing and Contribution towards energy.”

29. It is seen from the above that when there was a change in law or change in price of fuel or change in transmission, the appellant shall have the right to revise the terms of the agreement relating to price and on other



aspects.

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30. The learned Arbitrator in his award had specifically noted that there was no communication about increase in the landed cost of coal warranting upward reversion of tariff. The Arbitrator had also noted that the contract permits stoppage of supply due to non payment. But however, he observed that the dispute had arisen only because the appellant had unilaterally raised the tariff on 19.09.2018. It had been further observed that the claim for increase in the landed cost of coal was only an after thought. It was further observed that the appellant had not produced any document to show that there was an increase in the cost of generation of coal. The arbitrator finally held that the appellant had committed breach of the Power Supply Agreement and that the respondent would therefore be entitled to claim damages / compensation. It was also held that the appellant had not produced any material justifying increase in tariff. It was further held that the appellant cannot unilaterally increase the tariff from Rs.5.75 to Rs.6.15 per unit. The Arbitrator then examined the quantity of the power purchased from TANGEDCO which was to a sum of Rs.6,53,529/- and further included the power purchased in the months from September 2018 till March 2019.



31. The learned counsel for the appellant argued that the Tribunal had stated that there was justification in increase in the tariff. However, this observation must be viewed from a wider context. It was only an observation as the Arbitrator had examined Clause 11.8 and stated that there could be increase in the power tariff only when there was consequential increase in the fuel price. It was also observed that there were no material produced to justify increase in the tariff. It was observed that the appellant gave, alternate reasons for the increase in the power tariff.

32. The learned Single Judge in the order now under appeal had held that cessation of supply of power was a breach committed by the appellant. It was also found that even if there could be a right to enhance the tariff, the same could be done only after due communication to the respondent.

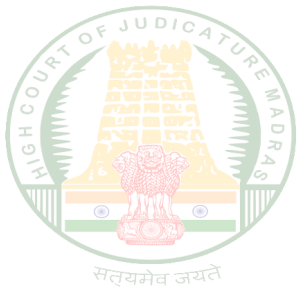
33. The learned counsel for the appellant had placed reliance on the following Judgments:-

(1) *Timbola Irmaos Ltd., Vs. Jorge Anibal Matos, (1977) 3 SCC 474*, wherein paragraph Nos. 19 and 20 are as follows:-



“19. Coming now to the second question, we find that the findings of fact recorded by the Judicial Commissioner are unexceptionable. Firstly, it was found that, although, under the contract, the defendants-respondents could load iron ore, at any time during 24 hours, which included the night, yet, the defendants were prevented from doing so owing to the failure of the plaintiff to provide either sufficient lighting or enough winches to enable due performance of the contract. Secondly, it was admitted that the appellant never opened a Letter of Credit with the named bank by 27th January, 1954, as promised by it. Thirdly, the delay in loading was held to be due to the fault of the company. The Judicial Commissioner rightly concluded that the company had not discharged its own part of the contract so that it could not claim demurrage or damages. Indeed, it was found that the company did not have to pay any demurrage at all to the shippers for delayed departure.

20. learned Counsel for the appellant relied strongly on the following terms in the contract of 23rd January, 1954:



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Demurrage (if any) in loading payable by Seller at the rate of US \$ 800.00 per running day fraction of day pro rata. Buyers to pay despatch money at half the demurrage rate for all time saved in loading. Payment either way in Portuguese Indian rupee currency at the rate of exchange of Rs. 476/- for US \$100.00" The contention was that this created an absolute liability to pay for delay in loading irrespective of whether the company had to pay the shippers any demurrage. It was urged that the liability was upon the seller irrespective of whether such payment had to be made to the shipping company or not. We think that the demurrage could not be claimed when the delay in loading was due to the default of the respondents themselves. It is apparent that the basis upon which the agreement to pay demurrage rested was that the appellant will afford proper facilities for loading. When the appellant itself had committed breaches of its obligations, it is difficult to see how the respondents could be made responsible for the delay in loading. We think that the Judicial Commissioner had rightly disallowed this part of the claim."

34. The facts in the instant case are distinguishable on the ground that



the defendants therein were prevented from loading iron ore owing to the failure of the plaintiff to provide sufficient lighting or enough winches to enable due performance of the contract.

35. In the instant case, the breach first commenced with the cessation of supply of power, placing reliance on clause 11.8 of the agreement which clause was not directly attracted as an alternate reason was given that the respondent had not paid the bills within the time.

36. The observation in the Judgment that “*when the appellant itself had committed breaches of its obligations, it is difficult to see how the respondents could be made responsible*” would be applicable to the appellants in this case owing to their initial breach of cessation of supply of power.

(2) ***Pulavarti Sitaramamurthy Vs. Bangaru Sobhanadri, (1950) 63***

LW 947 (Mad) with reference to the following passage:

“Unfortunately, the learned Sub-Judge considered the surrounding circumstances and



decided the case against the defendants largely because the price of gunnies had risen and the defendants would have profited by not delivering the bales. On this conclusion, he held the defendants liable for breach, as they had a motive to commit a breach, and awarded damages of Rs. 631-4-0 against them on the difference in price between the market rate on the delivery dates and the agreed contract rates. It is obvious that he erred in doing so. Motive, by itself, will not do in law, Civil or Criminal. Many a man who has a strong motive to commit a murder may not commit it, and cannot be convicted of murder merely because he had a motive to commit it. So too, a man having merely a motive to commit a breach of contract cannot be mulcted in damages if he is not proved to have committed a breach. The Court has first to concentrate on the law, and then only on the results of its findings on law .”

37. In the instant case, as consistently stated, the initial breach was on the part of the appellant, who could have deferred the increase in the tariff and could have increased the same after discussions with the respondent.

38. In the instant case, as repeatedly pointed out, the initial breach



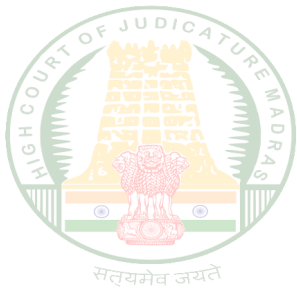
was only by the appellant and not by the respondent.

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(3) *Sikkim Subba Associates Vs. State of Sikkim, (2001) 5 SCC 629*

wherein paragraph No. 14, it had been held as follows:

“14. It is also, by now, well settled that an Arbitrator is not a conciliator and his duty is to decide the disputes submitted to him according to the legal rights of the parties and not according to what he may consider it to be fair and reasonable. Arbitrator was held not entitled to ignore the law or misapply it and cannot also act arbitrarily, irrationally, capriciously or independently of the contract (See 1999(9) SCC 283 : Rajasthan State Mines and Minerals Ltd. v. Eastern Engineering Enterprises & Anr.). If there are two equally possible or plausible views or interpretations, it was considered to be legitimate for the Arbitrator to accept one or the other of the available interpretations. It would be difficult for the Courts to either exhaustively define the word ‘misconduct’ or likewise enumerate the line of cases in which alone interference either could or could not be



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made. Courts of Law have a duty and obligation in order to maintain purity of standards and preserve full faith and credit as well as to inspire confidence in alternate dispute redressal method of Arbitration, when on the face of the Award it is shown to be based upon a proposition of law which is unsound or findings recorded which are absurd or so unreasonable and irrational that no reasonable or right thinking person or authority could have reasonably come to such a conclusion on the basis of the materials on record or the governing position of law to interfere. So far as the case before us is concerned, the reference to the Arbitrator is found to be a general reference to adjudicate upon the dispute relating to the alleged termination of the agreement by the State and not a specific reference on any particular question and consequently, if it is shown or substantiated to be erroneous on the face of it, the award must be set aside.”

39. In the instant case, the arbitrator and also the learned Judge examining the petition under Section 34 of the Act had only proceeded on the interpretation of Clause 11(8) and 11(4) of the agreement between the parties and both had held that there was no justification for the increase in



the price and that there was no justification for the cessation of supply of power. It is also to be noted that in the claim petition, the appellant had very specifically stated the reasons for the amounts claimed by them. The award of the Tribunal does not suffer for non consideration of relevant points.

(4) ***Kanchan Udyog Ltd., Vs. United Spirits Ltd., (2017) 8 SCC 237***

wherein paragraph No. 17 is as follows:

“17. Considering the principle of causation to award loss of anticipated profits by breach of agreement, it was held in the facts of the case, that it was not the result of the breach, but was a composition of various factors like lack of brand acceptance, financial crunch of the appellant and lack of adequate infrastructure by it. The claim for damages was therefore, remote as there was not even a speculated chance for making profit by the appellant. ”

40. In the instant case, the claim for damages was based on the increased tariff paid to TANGEDCO and the increased interest paid owing to the increase in the security deposit to TANGEDCO. The respondent had given the details of the loss incurred every month and therefore, it cannot be



stated that the claim for damages was remote. It was proximate and directly related to the cessation of supply of power by the appellant.

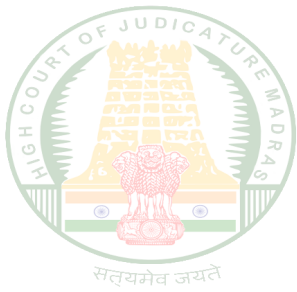
(5) ***PSA Sical Terminals Pvt. Ltd., Vs. Board of Trustees, V.O.C.***

Port Trust, (2023) 15 SCC 781 wherein paragraph Nos. 41 and 42 are as follows:

“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 paragraph 31 and 32 from the judgment of this Court in **Associate Builders Vs. DDA (2015) 2 SCC (Civ) 204**, which read thus:*

“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:



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(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.*

32. *A good working test of perversity is contained in two judgments. In **Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons** [1992 Supp (2) SCC 312], it was held: (SCC p. 317, para 7)*

“7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.”

*In **Kuldeep Singh v. Commr. of Police** [(1999) 2 SCC 10: 1999 SCC (L&S) 429], it was held: (SCC p. 14, para 10)*

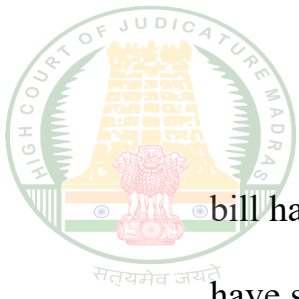


“10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.”

,

41. We are of the opinion that neither the award of the arbitrator nor the order of the learned Single Judge can be termed as perverse. The respondent had laid a claim for the additional loss incurred by them for having procured power from TANGEDCO since the appellant had cased to supply power.

42. Both the arbitrator and the learned Single Judge had examined who was first in breach of the agreement and had come to an uniform conclusion that it was the appellant, who had initially raised the tariff and later exercising right under Clause 11.8 had stopped supply. The appellant claimed later that they had stopped supply only because the respondent failed to pay the bill within the time period stipulated. But again, even if the



bill had not been paid within the time, the appellant could not and should not have stopped supply of power without following the guidelines under clause 11.4 of the agreement. These issues have been discussed by both the Arbitrator and by the learned Single Judge and we hold that both the award and the order can never be termed as perverse.

43. The learned Senior Counsel for the respondent had placed reliance on the Judgment of the Hon'ble Supreme Court reported in ***Civil Appeal No. 2153 of 2010 [M/s. Dyna Technologies Pvt. Ltd., Vs. M/s. Crompton Greaves Ltd.,]*** with specific reference to paragraph No. 26 which is as follows:-

“26. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the



arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated. ”

44. The scope of interference with an award is extremely narrow. If any error has been committed by the arbitrator unless they are found to be perverse, the award cannot be set aside. The award must be held to be contrary to the basic principles under which the agreement had been entered into and should suffer from patent illegality or perversity.

45. A careful perusal of the award and also the order of the learned Single Judge in the instant case does not give rise to any such ground to lead



us to such a conclusion.

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46. We hold that the order of the learned Single Judge and the award of the arbitrator require no interference. We therefore dismiss the Appeal with costs.

47. Accordingly, this Appeal stands dismissed with costs.

[C.V.K., J.] [K.B., J.]

06.03.2026

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

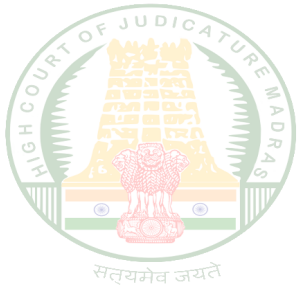
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Note: The respondent is at liberty to seek permission to withdraw the amount deposited by the appellant consequent to interim directions given by this Court at the time when the appeal came up for admission by filing a memo. On filing of such memo, the Registrar General may recall the deposit and pay the amount together with accrued interest directly to the respondent. In the memo, the Bank details of the respondent may also be given by the respondent.

C.V.KARTHIKEYAN, J.
AND
K.KUMARESH BABU, J.

vsg

Pre-Delivery Judgment made in



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