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ORDER SHEET
AP-COM/39/2024
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

UMC TECHNOLOGIES P LTD
VS
ASSISTANT DIRECTOR OF POSTAL SERVICES, (RECRUITMENT)

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 3rd April, 2025.

Appearance:
Mr. Rishabh Karnani, Adv.
Mr. Sanjay Kr. Baid, Adv.
…for the petitioner

Mr. Swatarup Banerjee, Adv.
Mr. Pradyat Saha, Adv.
…for the respondent

The Court:

1. This is an application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the said Act).

2. Mr. Karnani, learned advocate, for the claimant/petitioner prays for setting aside of the award on the following grounds:

    (a) Even before the pleadings were complete, the Council rejected the claim, inter alia, holding that the supplier unit had failed to execute the job as per the contract and failed to produce satisfactory documents as per the payment terms. The balance 10% could not be

allowed as the petitioner also failed to produce any job satisfaction certificate.

(b) The Micro, Small and Medium Enterprises Development Act (hereinafter referred to as the MSME Act) provided that where the mediation initiated under Sub-Section (3) was not successful and stood terminated without any settlement, the Council would either itself take up the dispute for arbitration or refer it to any institutional centre providing alternative dispute resolution services for such arbitration. From that stage, the provision of the Arbitration and Conciliation Act, 1996 shall be applicable for adjudication of the dispute between the parties. The Council ought to have allowed the claimant to adduce evidence in support of the contention that although the job was completed with the publication of the results and those results were handed over to the respondent, neither the job completion certificate had been issued nor the balance 10% payment had been released. Non issuance of the job certificate was also an issue to be decided by the council.

3. Mr. Karnani submits that by a letter dated August 29, 2016, the claimant had handed over to the respondent, the entire dossier containing original OMR sheet, admit card, data sheet, attendance sheet of all the selected candidates in 438 individual folders as per the terms and conditions of the agreement dated March 30, 2015. Likewise, by a letter dated August 31, 2016, the claimant handed over 34 CDs containing original data. The respondent acknowledged receipt of those folders and CDs. Upon

submission of the above documents and CDs etc. the obligation on the part of the supplier unit was complete. The result of the examination, which was handed over to the respondent, was also published. Upon publication of the result, 10% of the amount became payable. The periodic bills which were raised by the petitioner were paid and by October 7, 2016, 90% of the amount had been paid. The balance of Rs.18,10,611/- being the 10% of the amount payable, was withheld by the respondent.

4. Relying on Sections 15 and 16 of the MSME Act, Mr. Karnani submitted that it was the bounden duty of the buyer unit to pay off the dues. The litigations and the CBI enquiry would not be an impediment towards payment of the amount to the supply unit, inasmuch as, the supply unit's obligation under the contract was complete upon handing over the results with relevant documents to the buyer unit. The MSME Council, was required to adjudicate such dispute. The correctness of the stand taken by the respondent in withholding 10% of the payment even after receiving the result and all documents accompanying such result, upon completion of the entire process of the examination by the service provider, was an arbitrable issue. Moreover, in the litigations following the publication of the result and in the enquiry which arose therefrom by the Central Bureau of Investigation, the service provider was not implicated/impleaded. The result of the enquiry by the CBI is not known to the service provider. What transpired between the buyer unit and third parties before the Court did not affect the claim of the 10% of the amount payable under the contract. In any event, the entire issue ought to have been adjudicated on the basis of evidence.

5. Mr. Swatarup Banerjee, learned advocate for the respondent, submits that the petitioner failed to carry out the recruitment process in a free and fair manner. Such failure was a breach. Thus, 10% of the amount was not payable on account of unsatisfactory performance. Mere conduct of the entire recruitment process upon handing over the final results would not discharge the service provider from the obligations under the contract, but the service provider was required to perform its obligation diligently, honestly with integrity and to perfection. Only upon the buyer unit being satisfied that the work had been done to the satisfaction of the buyer unit, could the entire balance payment be released. Moreover, after the court cases were filed, another agency was engaged to perform some of the remaining functions. According to Mr. Banerjee, the petitioner failed to prove that the service was provided in terms of the contract.
6. The petitioner is registered under the MSME Act. Petitioner claimed money for the service provided. Facilitation failed. The role of the council at the stage of facilitation was like a mediator and at that stage weighing of evidence was not necessary.
7. However, the law provides that once mediation fails, the Council shall either itself take up the dispute in arbitration or refer the same to an institutional centre, providing alternative dispute resolution services. The proceedings would then continue under the Arbitration and Conciliation Act, 1996. The provisions of the said Act has been made applicable. The Council at that stage, is required to allow the parties to adduce evidence in support of their claims. The Council itself records that the claimant had alleged that

although the Job Completion Certificate for 2015 had been given, but the Job Completion Certificate for 2016, was withheld. However, the Council failed to note that non-supply of the Job Completion Certificate for 2016 was a dispute, which ought to have been decided. Instead, the Council rejected the claim on the ground that there was no Job Completion Certificate. Moreover, no arguments had been put forth by the respondent on that date. The respondent had only asked for an opportunity to file a reply to the rejoinder filed by the claimant/petitioner. An opportunity should have been given to the petitioner to satisfy the Council with regard to the legitimacy, validity and the correctness of the claim for the balance 10%. Also, while rejecting the claim, the Council ought to have come to a specific finding on evidence that the petitioner/claimant was responsible for the discrepancy in the results, by not having conducted the examination in a free and fair manner and in terms of the agreement.

8. Although Mr. Banerjee has vehemently opposed the application by submitting that the Council had applied its mind and found that the claimant had been unable to prove that the job had been satisfactorily done, this Court is of the view that the order of the Council appears to be passed with a closed mind and is not supported by any evidence at all. Opportunity to both the parties to lead evidence ought to have been given. Although the scope for interference by a Court under Section 34 of the Arbitration and Conciliation Act, 1996 is very limited and review on the merits of the findings cannot be made, but an arbitral award is vulnerable if it is perverse or unreasoned, being not supported by evidence.

9. In paragraph 11 of ***Bharat Coking Coal Ltd. v. L.K.Ahuja,*** reported in ***(2001) 4 SCC 86*** it has been observed as under:

> "**11.** There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside."

10. In ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI,*** reported in ***(2019) 15 SCC 131***, the Hon'ble Apex Court has set out the scope of challenge under Section 34 of the 1996 Act in further details in the following words:-

> **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], 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."

11. In the decision of ***PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust,*** reported in ***(2023) 15 SCC 781, the Hon'ble Apex Court held 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 paras 31 and 32 from the judgment of this Court in Associate Builders v. DDA, (2015) 3 SCC 49, 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: (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 CCE & Sales v. Gopi Nath & Sons, 1992 Supp (2) SCC 312, it was held:

‘**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’.”

12. Under such circumstances, this Court is of the view that the award impugned before this Court is perverse. Principles of natural justice have been violated. Violation of principles of natural justice, includes not allowing evidence to be adduced.

13. Under such circumstances, the award is set aside. The parties are at liberty to act in accordance with law.

14. AP-COM/39/2024 is disposed of.

(SHAMPA SARKAR, J.)

B.Pal/S.Kumar