

Fundamental policy of Indian law includes drastic serious policy matters; inadmissible evidence not a ground covered under the public policy exception (Bombay High Court)

Update by Editor

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Nobel Resources Ltd. v. Dharni Sampda Private Ltd.

Court: Bombay High Court | **Case Number:** Notice No. 928 of 2017 in Execution Application No. 25 of 2017 | **Citation:** 2019 SCC OnLine Bom 4415 | **Bench:** R I Chagla J | **Date:** 18 November 2019

Nobel applied for enforcement of a SIAC award, which the respondent Dharni Sampda resisted on the ground that the award contravenes the public policy of India. This argument revolved around the testimony of one Mr. Anurag Bhatnagar (“**Bhatnagar**”). He was an ex-employee of Nobel, but his name figured in the list of witnesses filed by Dharni. Later, he presented Nobel’s witness and gave a testimony in favour of Nobel’s position.

Broadly, Dharni Sampda argued: –

- (a) Bhatnagar became a witness for Nobel because he was intimidated and threatened with criminal prosecution. His cross-examination (by Dharni’s counsel) was an empty formality.
- (b) The arbitrator had earlier said he would but did not decide the admissibility of Bhatnagar’s testimony.
- (c) Admission of tainted evidence given under intimidation is so unfair and unreasonable that it shocks the conscience and is liable to be set aside under Section 48 of the Arbitration and Conciliation Act, 1996 (“**ACA**”).

All arguments were rejected by Chagla, J. and enforcement allowed. He first held that the objection was nothing but a challenge to the admissibility of the evidence and then gave the following reasons for rejecting the objection: –

- (a) Inadmissibility of evidence is merely a challenge to the procedural defects, which is not grounds to refuse enforcement under Section 48 of the ACA. Moreover, Section 48 does not permit a “second look” at the award or reappraisal of evidence during enforcement—[Citing to *Shri Lal Mahal Ltd. Progetto Grano SpA*, (2014) 2 SCC 433]. The arbitral tribunal is the sole judge of the weight, materiality and credibility of the evidence.
- (b) The objection on public policy grounds must be such that the foreign award offends the core values of a member’s national policy, which it cannot be expected to compromise [citing *City 1 Mauritius Holdings Unitech Ltd.* 239 (2017) DLT 649].
- (c) Public policy includes drastic serious national policy matters such as trading in elephant tusks from India and the sale of peacock meat from India. Mere improper admission of evidence is no violation of public policy.
- (d) The arbitrator’s finding on inadmissibility—“there is nothing in those assertions” of Bhatnagar being threatened—would be a finding of fact after appreciation of evidence, which cannot be reopened at an enforcement stage.
- (e) Nonetheless, dealing with the allegation that the matter shocked the conscience, the court found that the allegation of intimidation, tutoring, etcetera was an afterthought.
- (f) Objections as to violation of natural justice and bias of the arbitrator were also rejected.