# Standard for setting aside award; Grounds under section 34 to set aside an award are not attracted if the tribunal's finding is plausible, neither perverse nor contrary to evidence (Supreme Court)

*Update by Nishant Gupta*

Published on 22 October 2019

**The State of Jharkhand and others v. M/s HSS Integrated SDN and another**

**Court**: Supreme Court| **Citation**: Non reportable |**Bench**: Arun Mishra and M.R. Shah, JJ | **Date**: 18 October 2019

HSS Integrated and VKS Infra tech Management Pvt. Ltd. ("**HSS**") entered into a consultancy agreement with the State of Jharkhand relating to construction of road. Dispute arose and the State terminated the contract. HSS commenced arbitration contending the termination was illegal. It claimed Rs. 5,17,88,418 for work already executed, loss of profit, overhead charges, and other consequential items. The State counterclaimed for reimbursement for certain costs.

The three-member arbitral tribunal unanimously found the termination illegal. Individual claims were addressed and an award was made on 15 February 2015 for Rs. 2, 10, 87, 304. The counterclaim was altogether rejected.

The State filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 ("**ACA**") to set the award aside on the ground that findings in the award were perverse, the tribunal failed to take into account the contractual clauses, and the award was contrary to public policy. The High Court's Commercial Court Bench rejected the application. Appeal filed by the State under section 37 of the ACA was also dismissed by the appellate court on 30 January 2019 (Aniruddha Bose and Ratnaker Bhengra, JJ.).

A special leave petition was now filed by the State. The Supreme Court[1] dismissed the petition on the following ground and reasoning:-

1. In *NHAI* v. *Progressive MVR*, (2018) 14 SCC 688, after considering several decisions, the Supreme Court held that grounds set out under Section 34 of the ACA will not apply if the view taken by the arbitrator is a plausible view. Those grounds will not apply also when two reasonable views are possible, and the tribunal takes one view than the other.[2]
2. In *Maharashtra State Eletricity Distrubution Co. Ltd.* v. *Datar Switchgear Ltd.*, (2018) 3 SCC 133 the Supreme Court has held that an arbitral tribunal is the master of evidence and their findings of facts arrived on the basis of the evidence on record cannot be scrutinized as if in appeal.

---

[1] Editor's note: Notice was issued on 03 July 2019. Adjournment was sought and granted twice observing on the second occasion (on 06.09.2019) that no further adjournment shall be granted. The case was decided on 18 October 2019.

[2] Editor's note: In Progressive the court noted that when an arbitral tribunal takes a plausible view, given the parameters of judicial review under Section 34 of the ACA, normally the court would not interfere, even if another view was possible. However, the court was mainly concerned with conflicting awards by different tribunals involving interpretation of identical provisions in separate agreements. The court gave its own interpretation to achieve finality. It held that the plausible-view principle may lead to very anomalous situation. The view taken by a particular tribunal in favour of the contractor would be upheld in one case, and in another the view taken in favour of NHAI


© National Forum for Research in Arbitration Law. All rights reserved.

3. In proceedings under Sections 34 and 37 of the ACA, the award can be interfered with where the finding is perverse and/or contrary to the evidence and/or the same is against the public policy. [Citing to "*Associate Builders DDA* (2015) 3 SCC 49 etc."]
4. The tribunal found in this case that the contract was terminated without following the provisions of the contract. This finding was neither perverse nor contrary to the evidence on record.
5. The tribunal gave cogent reasons while allowing/partly allowing the respective claims. So, there is a proper application of mind by the tribunal.
6. Once the termination was held bad and the claims allowed (some partly), the counterclaim was liable to be rejected.



www.nfral.in
© National Forum for Research in Arbitration Law. All rights reserved.