



The bench comprising of Justice N.V.Ramana and Justice V.Ramasubramanian of Hon'ble Supreme Court of India in the judgment dated December 18, 2019, in the matter of *M/S Dyan Technologies Private Limited .v. M/S Crompton Greaves Limited.*<sup>[1]</sup> observed that “*the award passed by the Arbitrator is unintelligible, ambiguous, muddled and without reasons hence, cannot be sustained.*”

#### FACTS

A contract was entered between DCM Shriram Aqua Foods Limited (*hereinafter referred to as 'DCM'*) and M/s. Crompton Greaves Limited (*hereinafter referred to as Respondent Company*) to set up aquaculture, namely, DCM. Respondent Company invited bids for carrying out works like construction of ponds, channels, drains and associated works. M/s Dyna Technologies Pvt. Ltd. (*hereinafter referred to as the Appellant Company*) was successful bidder, gave its proposal, estimate, and quotation for carrying out the said work. Further, on 15<sup>th</sup> November, 1994 Respondent Company issued work order, listing out the terms and conditions of the contract. Thereafter, on 5<sup>th</sup> January 1995, after commencement of work, the Respondent Company ordered the employees of the Appellant Company to close the work. The Appellant Company claimed compensation for such premature termination of the contract without giving any prior notice and ultimately the dispute was referred to the Arbitral Tribunal consisting of three Arbitrators. The Appellant Company/claimant made the following claims

- (1) losses suffered by the claimant due to idle charges;
- (2) losses suffered due to unproductivity of the men and machinery;
- (3) loss of profit due to premature termination of contract;
- (4) collective interest on the above claims; and
- (5) other costs incurred.

The aforementioned claims are listed in the statement of claims totalling to INR.53,83,980.45/-(Fifty Three Lakh Eighty Three Thousand Five Hundred Eighty only)

As far as the Award was concerned, the only objection raised was with regard to the claim no. 2. as mentioned above. Aggrieved by the Award of the Tribunal,

an original petition was filed

before the learned single judge of the High Court of Judicature at Madras under

Section 34 of Arbitration and Conciliation Act, 1996.

When learned single judge upheld the award passed by

Tribunal, the respondent filed an appeal before the Divisional Bench, Madras. The Divisional

Bench of Madras partly allowed the appeal and set aside the Award of tribunal relating

to Claim No.2.

Unsatisfied by the decision of High Court as well, the Appellant preferred an appeal before the Apex Court.

#### ISSUES

The Hon'ble Apex Court considered the following Questions of Law and Fact:

1. Whether the High Court has jurisdiction to entertain the application under Section 34 of Arbitration and Conciliation Act?
2. Whether the award passed by Arbitration Tribunal was right in granting compensation when the same has not been specified in the contract?

#### SUBMISSIONS

The learned counsel further submitted that the award by the learned Arbitrator was unreasonable, perverse and without adhering to the settled principle of law. Section 31 of the Arbitration and Conciliation Act, 1996 clearly

states that "*the arbitral award should be reason based*". The learned counsel further submits that the only contention of counsel for the respondent was that there was no specific provision under the contract granting compensation for loss incurred due to unproductive use of

machinery and that the Arbitral Tribunal has exceeded its jurisdiction by awarding the compensation. Learned counsel also submits that the purpose of Section

73 of Contract Act confers that the right which is for public interest, if any

clause, which takes away any right unilaterally of a party is violative of the

Contract Act.[2]

On the other hand, the learned

counsel for the Respondent Company contended that Arbitral Tribunal has no right to proceed beyond the terms

of the contract to award compensation. In the present scenario, the terms of the

contract clearly state that compensation is not payable if the contract is

concluded due to the termination of the project. In the face of such express prohibition, the Arbitral Tribunal has exceeded its jurisdiction and committed apparent error by

directing the payment of compensation without displaying any reasons.

Learned

counsel for the Respondent Company further submits that Section 34(2) of the Arbitration

and Conciliation Act clearly envisages

that an award can be set aside if the award deals with a dispute not contemplated by or not falling within the arena of arbitration act. With a specific

exclusion/prohibition in the contract, it is not allowed for the Tribunal to travel beyond the terms of the contract. The same has been considered by the Division Bench of the High Court in the impugned judgment and has been rightly

set aside by convincing reasons.

JUDGMENT

While deciding the present case the

court considered the following precedents:

In Raipur Development Authority v. Chokhamal Contractors, [3] the

constitutional bench held that the arbitrator or umpire

shall have to give reasons also where the court has directed in any order such

as the one made under Section 20 or Section

21 or Section

34 of the Act that

reasons should be given or where the statute which governs an arbitration requires him to do so.”

In Som Datt Builders

Ltd. v. State of Kerala [4], a Division Bench indicated

that the mandate under Section

31(3) of the

Arbitration Act, is to have reasoning which is intelligible and adequate and which can, in appropriate cases, be even implied by the courts from a fair reading of the award.

By examination of

award it is noted that the inadequate reasoning and incomprehensive decision leads

to unintelligible, muddled, ambiguous impact. Hence, cannot be sustained in the

eyes of the law. The Hon’ble Supreme

Court rightly observed that the award passed by the Tribunal is not in accordance

with Section 31 of the Act, hence the same needs to be set aside.

Further, it is held that compensation is payable on hire charges and expenses incurred.

Observation

The reasoned award ensures the nature and quality of righteousness that is being dispensed by the arbitrator:

- The use of

reasoned awards ameliorates the quality of the decision.

- Reasoned awards provide a more comprehensive and satisfactory explanation regarding the award passed by Arbitrator.
  - Reasoned awards amplify the credibility of the entire process of arbitration in the eyes of law.
- Conclusion
- The Hon'ble High Court, keeping in mind the law laid down by the Supreme Court in the various judgments and having regard to the facts of the case, was of the opinion that the award passed by the tribunal must contain proper and adequate reasoning. If the reasoning of the award is improper, it would further divulge a defect in the decision-making process. In case of the lack of reasoning, the efficacy has been provided under Section 34(4) of the Act to antidote defects. When there is unreasonableness in the award passed by the Tribunal then the same can be challenged under Section 34 of the Act. If the award passed by the tribunal is based on the ground of unintelligible and ambiguous factors, then the same would be equivalent to no reason award. Therefore, under Section 34, the Court has to determine the soundness of an award based on the distinctiveness by providing the reasons in an elaborated manner to avoid complexities involved.

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• [1] Civil appeal no. 2153/2010

• [2] <https://indiankanoon.org/doc/1625889/>

• [3] AIR 1990 SC 1426

• [4] (2009) 4 ARB LR 13 SC

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