IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Commercial Appellate Jurisdiction)

Commercial Appeal No. 15 of 2020

M/s Bharat Petroleum Corporation Limited, A Corporation incorporated in India and having its registered office at Bharat Bhawan, 4 & 6, Curribhoy Road, Ballard Estate, Mumbai 400001 through its Territory Manager-Retail, Ranchi Neeraj K Jaria, aged about 42 years, S/o Dinesh Kumar Jaria, R/o C-6002, Green View Heights, P.O. Kantatoli, P.S. Sadar, District Ranchi **… … Applicant/Appellant**

Versus

1. Anant Kumar Singh, s/o Chandreshwar Prasad Singh, r/o Village Khorahar, PO Deochanda, PS Barhi, District Hazaribag
2. Balgovind Prasad, s/o Late Nando Mahto, r/o Vill Nagat Barsot PO and PS Barhi, District Hazaribag

… … Opposite Parties/ Respondents

CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellant : Mr. P.P.N. Roy, Senior Advocate
Mr. Chandrajit Mukherjee, Advocate
Ms. Pragati Prasad, Advocate

For the Respondents : Mr. Ajit Kumar, Senior Advocate
: Mr. Kumar Sundaram, Advocate

J U D G M E N T

C.A.V. On 4th October 2023 *Pronounced on 8th January 2024*

Per, Anubha Rawat Choudhary, J.

Heard the learned counsels for the parties.

2. This appeal is directed against the judgment dated 25th February 2020 passed by the learned Presiding Officer, Commercial Court, Ranchi in Commercial Case No. 01 of 2020 dismissing the petition filed on behalf of the appellant under section 34 of the ***Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996')*** challenging the award dated 11th March 2018 passed by the learned Arbitrator. A prayer has also been made to set aside the award dated 11th March 2018 passed by the learned Arbitrator.

3. The learned Arbitrator passed an award dated 11th March 2018 directing the appellant to restore the dealership within 3 months from the date of the award failing which respondent No. 1 would be entitled to damages @ Rs 40,000/- per month from the date of cancellation of the

dealership till the date of restoration of the dealership. Learned Arbitrator further directed that respondent No. 1 would also be entitled to a sum of Rs.2,50,000/- as cost of arbitration which was to be paid within 2 months from the date of the award with interest @12% per annum failing which, it would carry interest @ 18% per annum from the date of award till date of payment.

4. Background of the case

a. The appellant issued an advertisement for the appointment of retail outlet (commonly known as petrol pump) dealers for several locations in Jharkhand on 27th June 2010 guided by the Brochure for Selection of Petrol/Diesel Retail Outlet Dealers dated 15.09.2008. The terms and conditions were also mentioned in the advertisement.

b. The Respondent No. 1 applied for the location Barsot, Hazaribagh vide application dated 27th July 2010. Since the applicants had to offer "own land" or provide a "firm offer" from the landowner for purchase/lease of the site, respondent No. 1 mentioned in Para 12 (ka) of the application that Lauki Prasad and Jagdish Prasad were owners of the land being offered and further stated that his relationship with landowners was that of lessee. Along with his application, Respondent No. 1 submitted an affidavit sworn by Lauki Prasad and Jagdish Prasad wherein they had stated that they were owners of the land and if Respondent No. 1 was selected as dealer of retail outlet, they would give the land on lease to him for a period of 30 years. The interview was held on 3rd September 2010 in which respondent No. 1 stood first. Another applicant, namely, Motilal Choudhary filed a complaint by letters dated 14th September 2010 and 25th September 2010 stating that the Selection Committee had given marks to respondent No. 1 in violation of the Selection Brochure. Subsequently, the Letter of Intent (LOI) was issued to the respondent No. 1 on 13th August 2011.

c. Lauki Prasad, Balgovind Prasad, Jagdish Prasad, and Babuni Prasad all belonging to a common ancestor executed a registered lease deed no. 347 of 2012 dated 3rd March 2012 for the land involved in this case in favour of respondent no.1 and the appellant took possession

of the land. The subject land was partly bought by Lauki Prasad by registered sale deed being no. 3056 of 2012 and partly by Jagdish Prasad by registered sale deed being no. 3055 of 2012. Both sale deeds were executed by Balgovind Prasad father of Jagdish Prasad and uncle of Lauki Prasad on 17th December 2012.

d. Dispensing Pump and Selling License (DPSL) was granted in favour of respondent No. 1 on 30th March 2013 and a retail outlet was commissioned.

e. Based on the earlier complaint made by Motilal Choudhary dated 14th September 2010 and 25th September 2010 alleging that respondent No. 1 had submitted false information in his application dated 27th July 2010 and also the affidavit of Lauki Prasad and Jagdish Prasad dated 24th July 2010 submitted along with the application contained a false statement with regards to the ownership of the subject land, a show cause notice dated 24th August 2015 was issued to the respondent No. 1 by the appellant.

f. Respondent No. 1 filed a writ petition being W.P. No. 4878 of 2015 challenging the show cause notice dated 24th August 2015 which was dismissed by order dated 9th October 2015. Subsequently, respondent No. 1 filed a reply to the show cause notice by letter dated 19th October 2015. After considering his reply, the appellant terminated the DPSL/dealership agreement by order dated 9th April 2016 which was challenged before this Court in a writ petition being W.P. (C) No. 1905 of 2016 and this Court vide order dated 14th June 2017 appointed Hon'ble Mr. Justice Lok Nath Prasad (Retd.) as Arbitrator.

5. It has been submitted by the learned counsel for the appellant that respondent No. 1 made a false statement in his initial application dated 27th July 2010 and the affidavit of Lauki Prasad and Jagdish Prasad dated 24th July 2010 which was filed along with the application of the respondent No. 1 was also false. It has been submitted that on the date of application i.e. 27th July 2010 Lauki Prasad and Jagdish Prasad were not owners of the land involved in this case which was evident from three sale deeds being nos. 3053, 3056 and 3055 of 17th December 2012 vide which they bought land in Khata No. 187/1 from Balgovind Prasad. Furthermore, special

power of attorney dated 29th December 2009 shows that Lauki Prasad and Jagdish Prasad were not the owners of said land but were only special power of attorney holders in respect of said land. Moreover, respondent No. 1 falsely stated that his relationship with Lauki Prasad and Jagdish Prasad was that of lessee whereas as on date of application there was no lease deed existing between them. The lease deed with respondent No. 1 as lessee was executed only on 3rd March 2012 i.e. more than 2 years after the date of application. Further Lauki Prasad was the son of Late Ram Singhasan Prasad and not Balgovind Prasad and Balgovind Prasad was alive on the date of application.

6. Learned Arbitrator at Paragraph Nos. 22, 26 and 33 of the award dated 11th March 2018 has held that though wrong information was given in the application and affidavit submitted along with the application but the wrong information given were not very serious and were made inadvertently. It is submitted that such observation is contrary to the law laid down by the Hon'ble Supreme Court in ***Shiv Kant Yadav Vs Indian Oil Corporation Limited*** reported in ***(2007) 4 SCC 410*** wherein it was held that where there was requirement to disclose true facts under an undertaking and the applicant has made wrong/incorrect statement then allotment can be canceled even though there is no *mens rea* or the omission is unintended.

7. It is submitted that the learned Arbitrator in paragraph No. 26 observed that power of attorney for the said land was granted by Balgovind Prasad in favour of Lauki Prasad and Jagdish Prasad and that the power of attorney holders are also regarded as owners of land in advertisement. It is submitted that such finding is not sustainable as power of attorney holders are not regarded as owners as per the advertisement. Thus, the power of attorney dated 29th December 2009 submitted with letter dated 19th October 2015 could not be accepted as per the terms and conditions of advertisement. Further, there was no mention of power of attorney in the application filed by respondent No. 1 or in the affidavit sworn by Lauki Prasad and Jagdish Prasad. It was filed along with reply dated 19th October 2015 and as per the advertisement, no additional document could be filed. It is submitted that power of attorney dated 29th December 2009 seems to

be an afterthought and its genuineness is doubtful considering that it includes a para which states that power of attorney holders will negotiate with oil companies or any other necessary parties for opening of a petrol pump. It is submitted that the advertisement for appointment of retail outlet dealers came only on June 2010 and thus genuineness of power of attorney is doubtful.

8. It has been submitted that the learned Arbitrator at paragraph No. 24 of the award observed that clause 19 of the Selection Brochure provides that the aggrieved person may send his complaint to the oil company and that on receipt of the complaint Letter of Intent will not be issued, rather after scrutiny and disposal of complaint Letter of Intent will be issued. The learned Arbitrator concluded that since the Letter of Intent was issued on 13th August 2011 it means that complaints made by the complainant Motilal Choudhary on 14th September 2010 and 25th September 2010 were duly investigated. It is submitted that there is nothing on record to show that the said complaint was investigated as no show cause was issued to respondent No. 1 before 24th August 2015 based on said complaint. Mere delay in the investigation into the complaint does not absolve respondent No. 1 from his liability for having made a false statement in his application. It is submitted that as per the Selection Brochure if any information furnished by the applicant is found to be false at any point of time before or after appointment as a dealer, the allotment will be canceled forthwith and the dealership terminated, in case commissioned. The advertisement dated 27th June 2010 also provides that if any statement made in the application or the documents attached by the applicant at any stage is found to be incorrect or false the application is liable to be rejected without assigning any reason and in case the applicant has been appointed as dealer, the dealership is liable to be terminated. Following the above terms and conditions of the Selection Brochure and advertisement, the dealership of respondent No. 1 was terminated as he had submitted false information and such order of termination did not call for any interference by the learned arbitrator.

9. Based on the above, it is submitted by the learned counsel for the appellant that the award dated 11th March 2018 is vitiated by patent

illegality as it failed to take into account vital evidence and records finding that are perverse which no fair-minded or reasonable person would arrive at. It is submitted that in the judgment of ***Ssangyong Engineering and Construction Co. Ltd. Vs. NHAI*** reported in ***(2019) 15 SCC 131,*** it has been held that *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.

10. Further, the learned Arbitrator has not given any reason/calculation for awarding damages @ Rs. 40,000/- per month from the date of termination of the dealership till the date of restoration. As such, it contravenes Section 31(3) of the Act of 1996, and thus award is vitiated by patent illegality. In ***Ssangyong Engineering (supra),*** it has been held that if an arbitrator gives no reason for an award and contravenes Section 31(3) of the Act of 1996 Act that would certainly amount to a patent illegality on the face of the award.

11. It is submitted that the said dealership agreement dated 30th March 2013 is determinable in nature given contains clause 12 which is extracted hereunder:

> "This Licence may be terminated without assigning any reason whatsoever by either party giving to the other not less than ninety days' notice in writing to expire at any time of its intention to terminate it and upon the expiration of any such notice this Licence shall stand cancelled and revoked. The requisite period of notice may be reduced or waived by mutual consent."

12. It is submitted that the above clause makes the agreement 'determinable in nature' and thus as per Section 14 (d) of the Specific Relief Act, 1963 such an agreement cannot be specifically enforced. This legal position has been upheld by the Hon'ble Supreme Court in ***Indian Oil Corporation Ltd. Vs. Amritsar Gas Service & Ors.*** reported in ***(1991) 1 SCC 533*** and has been reiterated in ***E. Vankatakrishna Vs. Indian Oil Corporation & Ors.*** reported in ***(2000) 7 SCC 764***. In these cases, it was held that the Arbitrator has no jurisdiction to restore agreements that are determinable in nature.

13. It is submitted that the learned Arbitrator while dealing with the aforementioned issue in paragraphs Nos. 31 and 32 of the award observed that ***Amritsar Gas (supra)*** will not apply as in the instant case the

termination was for violation of clause 21 of the Selection Brochure and not for violation of dealership agreement. It is submitted that such a conclusion is wholly misconceived. It is the dealership agreement that has been terminated and due to clause 12 extracted above said agreement is 'determinable in nature' and thus Arbitrator has no power/jurisdiction to order restoration. It is submitted that the reason for termination be it for violation of dealership agreement or terms and conditions of advertisement/selection brochure is immaterial so far as the applicability of the ratio of ***Amritsar Gas (supra)*** is concerned. The arbitral award disregards the binding precedent of superior Courts.

14. Thus, the order of restoration passed by the learned Arbitrator in effect means that the appellant has been directed to perform a contract that is not specifically enforceable under the Specific Relief Act, 1963. Such an award is in conflict with the public policy of India as it is in contravention of the fundamental policy of Indian Law. Section 28 (1) of the Arbitration Act provides that where the place of arbitration is situated in India the arbitral tribunal shall decide the dispute in accordance with the substantive law for the time being in force in India and Section 28 (3) of the Arbitration Act provides that arbitral tribunal, shall, in all cases, take into account the terms of the contract. 25. It is submitted that the Learned Presiding Officer, Commercial Court, Ranchi in his order dated 25th February 2020 has wrongly refused to interfere with the award of the learned Arbitrator.

15. The findings of the learned court below is as under:-

> "**20.** On perusal of the Award, I find that the learned arbitrator has framed as many as VI issues in order to determine the dispute between the parties. Out of these issues Issue No. II is Whether the claimant made a misrepresentation in his application for grant of dealership of petrol and high-speed diesel in village Barsot as advertised by the Petroleum Company so far their position for providing land on lease?
>
> Issue No. III is Whether the petroleum Company was fully aware of the fact that the owners of the land actually willing to execute the deed for a period of 30 years for running petrol pump, that too, at the instance of the claimant and virtually there was no reason for the Petroleum Company to allot the dealership only on account of some wrong information given in the application?
>
> **21.** Both the issues are related to the threshold of the objections raised by the applicants and while deciding these issues the learned Arbitrator on the basis of materials adduced before him held that there was no misrepresentation regarding ownership of land made

by the claimant which make him ineligible for grant of dealership. So far the owners of land to be provided, all the owners are willing from the very beginning and also executed a lease for 30 years for running the petrol pump and the petroleum company was fully aware and conscious of the fact that actually owners are in favour of the claimant and whatever wrong information was given that was not very serious and made inadvertently.

22. In view of the various authoritative pronouncements discussed above it is clear that this court is not sitting in appeal against the award passed by the Arbitral Tribunal and the court is not required to re-appreciate or re-evaluate the evidence led before the arbitrator.

23. A perusal of record and the Award reveals that Hon'ble Mr. Justice Loknath Prasad was appointed as Arbitrator for adjudication of dispute between the parties. The record clearly shows that learned Arbitrator has duly dealt with the matter. It appears that pursuant to the notice both the parties appeared before the Arbitral tribunal and after the hearing and hearing final arguments award dated 11th March 2018 was passed. After dealing the matter in detail, the learned Arbitrators have arrived at finding that applicant herein are liable to restore the dealership to the claimant and if it is not restored then the claimants are entitled for damages for the loss suffered at least @ Rs. 40,000/- per month from the date of termination i.e. from 9th April 2016 till the date of restoration.

24. The objection that the award is bad and illegal, it was contrary to the terms and condition and against the public policy are not sustainable. Nothing has been explained for such objection. The perusal of the record as well as the award, nowhere show that it is contrary to the terms and conditions of the agreement.

25. The learned Arbitrator has dealt with the matter in detail after giving cogent reasons and has arrived at conclusion that petitioners herein are liable to restore the dealership to the claimant and if it is not restored then the claimants are entitled for damages for the loss suffered at least @ Rs. 40,000/- per month from the date of termination i.e. from 9th April 2016 till the date of restoration. The award nowhere reflects that it is against public policy or that, there is any bias or arbitrator has decided the dispute beyond his jurisdiction etc.

26. Even though, the petitioners have taken several grounds for setting aside the award but the basic ground taken by the objectors is that the impugned Award has been passed without any reasonable and sufficient ground and against the principles of natural justice and gross mistake has been committed by the learned Arbitrator which is against the law and against the documentary evidence and in violation of the public policy.

27. A perusal of Award clearly shows that the learned Arbitrator has duly dealt with the matter and thereafter the detailed well reasoned Award has been passed. He has dealt with each and every aspect of the matter. The findings arrived at by the learned Arbitrators are supported by cogent reasons and detailed proceedings. After considering the record and testimonies of witnesses etc. the Award has been passed.

> **28.** In these circumstances, this court is of the view that the impugned Award passed by learned Arbitrator is well reasoned award. This court is not required to appreciate, re-evaluate the findings before the learned Arbitrator. The learned Arbitrator has duly explained for arriving at its decision.
>
> **29.** Therefore, in view of the above said discussion and after considering the contentions of learned counsel for parties and in view of the various authoritative pronouncements discussed above and as this court is not sitting in appeal against the impugned Award passed by the sole Arbitrator and the court is not required to re-appreciate or re-evaluate the evidence lead before the learned Arbitrator, the objector has failed to show how the passing of the impugned award is also against public policy. There is nothing from the award to show that there was no evidence to support the findings of the arbitrator which calls for interference as such the findings of arbitrator which have been objected are upheld.
>
> **30.** In view of the foregoing reasons this court hold that the objector/applicant has failed to make out any case for any interference with the impugned award dated 11th March 2018 passed by the learned Arbitrator, Hon'ble Mr. Justice Loknath Prasad in W.P.(C) 1905 of 2016 under Section 34 of the Arbitration and Conciliation Act.
>
> **31.** Accordingly, objections are overruled and petition is dismissed. In the facts and circumstances of the case the Parties shall bear their own cost."

Findings of this Court

16. Before proceeding with the merits of the case, it would be important to refer to the scope of interference in the arbitral award under sections 34 and 37 of the aforesaid Act of 1996. The award has been pronounced after 23.10.2015 i.e. after coming into force of the 2015 Amendment Act in the aforesaid Act of 1996 and accordingly, this case is governed by the 2015 amendment in section 34 of the Act of 1996 as paragraph 19 of the judgment passed by the Hon'ble Supreme Court in the case reported in ***(2019) 15 SCC 311 [Ssangyong Engineering and Construction Company Limited versus National Highway Authority of India***]

17. Since the appellant has argued that the award is in conflict with the fundamental policy of Indian Law it would be useful to refer to the development of law in this regard till coming into force of amendment in section 34 in the Act of 1996 vide 2015 amendment. Section 34 (2-A) as introduced vide 2015 amendment is quoted as under: -

> *"**34. Application for setting aside arbitral award – (1) – (2)***
> *(2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations may also be set aside by the*

> *court if the court finds that the award is vitiated by patent illegality appearing on the face of the award:*
> *Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence"*

18. In the case of **"Associate *Builders v. DDA"*** reported in ***(2015) 3 SCC 49,*** it has been held in para 17 that it will be seen that none of the grounds contained in sub-section (2)(*a*) of Section 34 deal with the merits of the decision rendered by an arbitral award. It is only when we come to the award being in conflict with the public policy of India that the merits of an arbitral award are to be looked into under certain specified circumstances. The Hon'ble Supreme Court considered the entire development of law with regards to the ***'public Policy'*** doctrine and considered the judgment passed in the case of ***Renusagar Power Co. Ltd.* v. *General Electric Co.*** passed in the context of the Foreign Awards (Recognition and Enforcement) Act, 1961 wherein in construing the expression "public policy" in the context of a foreign award, it was held that an award contrary to

(*i*) The fundamental policy of Indian law,

(*ii*) The interest of India,

(*iii*) Justice or morality,

would be set aside on the ground that it would be contrary to the public policy of India. It was also held therein that a contravention of the provisions of the Foreign Exchange Regulation Act would be contrary to the public policy of India in that the statute is enacted for the national economic interest to ensure that the nation does not lose foreign exchange which is essential for the economic survival of the nation and that equally, disregarding orders passed by the superior courts in India could also be a contravention of the fundamental policy of Indian law. However, the point of recovery of compound interest on interest was held to be contrary to statute only and accordingly it was held to be not contravening any fundamental policy of Indian law.

19. The *Hon'ble* Supreme Court in paragraphs 19 and 20 of the judgement passed in the case of ***Associate Builders*** (Supra) also considered

the interpretation of the expression "the public policy of India" in ***ONGC Ltd. v. Saw Pipes Ltd. reported in (2003) 5 SCC 705*** which was consistently followed and recorded in the findings of the said judgment by quoting para 31 and 74 as under: -

> "31. Therefore, in our view, the phrase 'public policy of India' used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term 'public policy' in Renusagar case it is required to be held that the award could be set aside if it is patently illegal. The result would be—award could be set aside if it is contrary to:
>
> (a) fundamental policy of Indian law; or
>
> (b) the interest of India; or
>
> (c) justice or morality, or
>
> (d) in addition, if it is patently illegal.
>
> Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void.

20. The Hon'ble Supreme Court in para 21 to 26 of the judgement passed in the case of ***Associate Builders*** *(Supra)* considered few other judgements dealing with the interpretation of the expression "the public policy of India" as under :-

> ***"21.*** *In Hindustan Zinc Ltd. v. Friends Coal Carbonisation, this Court held:*
>
> *"14. The High Court did not have the benefit of the principles laid down in Saw Pipes, and had proceeded on the assumption that award cannot be interfered with even if it was contrary to the terms of the contract. It went to the extent of holding that contract terms cannot even be looked into for examining the correctness of the award. This Court in Saw Pipes has made it clear that it is open to the court to consider whether the award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India."*
>
> ***22.*** *In McDermott International Inc. v. Burn Standard Co. Ltd., this Court held:*
>
> *"58. In Renusagar Power Co. Ltd. v. General Electric Co. this Court laid down that the arbitral award can be set aside if it is contrary to (a) fundamental policy of Indian law; (b) the interests of India;*

or (c) justice or morality. A narrower meaning to the expression 'public policy' was given therein by confining judicial review of the arbitral award only on the aforementioned three grounds. An apparent shift can, however, be noticed from the decision of this Court in ONGC Ltd. v. Saw Pipes Ltd. (for short 'ONGC'). This Court therein referred to an earlier decision of this Court in Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly wherein the applicability of the expression 'public policy' on the touchstone of Section 23 of the Contract Act, 1872 and Article 14 of the Constitution of India came to be considered. This Court therein was dealing with unequal bargaining power of the workmen and the employer and came to the conclusion that any term of the agreement which is patently arbitrary and/or otherwise arrived at because of the unequal bargaining power would not only be ultra vires Article 14 of the Constitution of India but also hit by Section 23 of the Contract Act, 1872. In ONGC this Court, apart from the three grounds stated in Renusagar, added another ground thereto for exercise of the court's jurisdiction in setting aside the award if it is patently arbitrary.

59. Such patent illegality, however, must go to the root of the matter. The public policy violation, indisputably, should be so unfair and unreasonable as to shock the conscience of the court. Where the arbitrator, however, has gone contrary to or beyond the expressed law of the contract or granted relief in the matter not in dispute would come within the purview of Section 34 of the Act. However, we would consider the applicability of the aforementioned principles while noticing the merits of the matter.

60. What would constitute public policy is a matter dependent upon the nature of transaction and nature of statute. For the said purpose, the pleadings of the parties and the materials brought on record would be relevant to enable the court to judge what is in public good or public interest, and what would otherwise be injurious to the public good at the relevant point, as contradistinguished from the policy of a particular Government. (See State of Rajasthan v. Basant Nahata.)"

23. *In Centrotrade Minerals & Metals Inc. v. Hindustan Copper Ltd., Sinha, J., held:*

"103. Such patent illegality, however, must go to the root of the matter. The public policy, indisputably, should be unfair and unreasonable so as to shock the conscience of the court. Where the arbitrator, however, has gone contrary to or beyond the expressed law of the contract or granted relief in the matter not in dispute would come within the purview of Section 34 of the Act.

104. What would be a public policy would be a matter which would again depend upon the nature of transaction and the nature of statute. For the said purpose, the pleadings of the parties and the materials brought on record would be relevant so as to enable the court to judge the concept of what was a public good or public interest or what would otherwise be injurious to the public good at the relevant point as contradistinguished by the policy of a particular Government. (See State of Rajasthan v. Basant Nahata.)"

21. Paragraph 27 of the judgment passed in the case of ***Associate Builders(supra)*** held as under: -

> *"**27.** Coming to each of the heads contained in Saw Pipes judgment, we will first deal with the head "fundamental policy of Indian law". It has already been seen from Renusagar judgment that violation of the Foreign Exchange Act and disregarding orders of superior courts in India would be regarded as being contrary to the fundamental policy of Indian law. To this it could be added that the binding effect of the judgment of a superior court being disregarded would be equally violative of the fundamental policy of Indian law."*

22. In ***"Ssangyong Engg. & Construction Co. Ltd. (supra),*** the impact of 2015 amendment has been considered and explained in paragraphs 35 onwards after recording the background of the amendment in paragraphs 31 to 33 of the report. Paragraph 35 to 41 are quoted as under: -

> **"35.** It is important to notice that the ground for interference insofar as it concerns "interest of India" has since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". This again would be in line with paras 36 to 39 of Associate Builders, as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.
>
> **36.** Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paras 18 and 27 of Associate Builders, or secondly, that such award is against basic notions of justice or morality as understood in paras 36 to 39 of Associate Builders. Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that Western Geco, as understood in Associate Builders, and paras 28 and 29 in particular, is now done away with.
>
> **37.** Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.
>
> **38.** Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.
>
> **39.** To elucidate, para 42.1 of Associate Builders, namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of Associate Builders, however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the

> 1996 Act, that would certainly amount to a patent illegality on the face of the award.
>
> **40.** The change made in Section 28(3) by the Amendment Act really follows what is stated in paragraphs 42.3 to 45 in Associate Builders, namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).
>
> **41.** What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders, 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."

23. Upon perusal of the award, it is apparent that Balgovind Prasad as well as Lauki Prasad were made parties before the learned Arbitral Tribunal and they had filed statements more or less supporting the claimant. It was submitted by them that the land was leased out by them and their co-sharers in favour of the claimant and the claimant was in peaceful possession of the same and also improved the land leased out to him. The lease deed was executed on 3rd March 2012. It was stated that the land was leased out to the claimant for carrying out the business of a petrol pump or any other business. The further case was that Balgovind Prasad became the karta of the family and was dealing with the entire property and he along with other co-sharers entered into a formal lease deed on 3rd March 2012 with the claimant. It was also their case that Balgovind Prasad had executed power of attorney in favour of his son Jagdish Prasad and nephew Lauki Prasad who were fully authorized to lease/mortgage/sell the land in question. It was their further case that on the request of the claimant, they and their co-sharers entered into a lease deed dated 25th March 2013 with the appellant, and the appellant was utilizing the land by running the petrol pump. It was their case that there was no dispute whatsoever concerning the land in question and accordingly they submitted

before the learned Arbitrator that they were supporting the claim of the claimant which appeared to be genuine.

24. With the aforesaid background, the learned arbitrator framed the following issues: -

> **"I.** Is the claim petition as framed by the claimant maintainable?
>
> **II.** Whether the claimant made misrepresentation in his application for grant of dealership of petrol and high speed diesel in village Barsot as advertised by the petroleum company so far their position for providing the land on lease?
>
> **III.** Whether the Petroleum Company was fully aware of the fact that the owners of the land actually willing to execute the deed for a period of 30 years for running the petrol pump, that too, at the instance of the claimant and virtually there was no reason for the Petroleum Company to allot the dealership only on account of some wrong information given in the application?
>
> **IV.** Whether the claimant is entitled for restoration of dealership as awarded earlier in village Barsot?
>
> **V.** Whether due to cancellation of the claimant's retail dealership at Barsot the claimant sustained huge loss and he is entitled for the reimbursement of the loss from the Petroleum Company?
>
> **VI.** To what relief/reliefs, if any, the claimant is entitled?"

25. The learned arbitrator also recorded that it was the case of the claimant that though in the application for allotment of dealership he, by mistake mentioned that Jagdish Prasad and Lauki Prasad were the owners of the land and they had executed the lease deed in their name for establishment of the petrol pump but admittedly it was the ancestral land of Jagdish Prasad and Lauki Prasad and as per genology of the family of the owners of the land and it was Balgovind Prasad who became the *karta* of the family and the rent schedule was also in the name of Balgovind Prasad. The said power of attorney was executed by Balgovind Prasad in favour of his nephew Lauki Prasad and Jagdish Prasad his son authorising them to sell or execute lease on long term for the establishment of petrol pump etc., as early as in 2009, but, inadvertently and by oversight the claimant had not mentioned that they are the power of attorney holders, rather mentioned that they are owners of the land. It was submitted that the land was a joint coparcenary property, so Jagdish Prasad and Lauki Prasad also had right to the property and it was asserted that even the power of attorney holder has the same status as that of the owner of the land, as mentioned in the notice of advertisement.

26. In this background, the learned arbitrator recorded a finding that it was clear that though a wrong statement was made that Jagdish Prasad and Lauki Prasad were the owners of the land in fact they were holding special power of attorney from the *karta* of the family of the land owner, so it could not be said that any misrepresentation was made rather inadvertently such statement was made that they were the owners of the land. The learned arbitrator also recorded that from the Brochure for the selection of petrol/diesel retail outlet it was mentioned that a maximum 35% marks was fixed for providing land and infrastructure i.e. if the land is provided by the owner or through the owner then he will be preferred.

27. The learned arbitrator considered the materials on record and also the case of the respective parties including the fact that the actual owners of the land who were being represented by the private respondents before the learned arbitrator were supporting the case of the claimant and also the fact that the appellant on the same land was still running the petrol pump. The learned arbitrator recorded a finding that the statement made by Lauki Prasad and Jagdish Prasad was not false rather all the owners and even the *karta* of the family Balgovind Prasad had admitted before the appellant that they were willing to execute a long-term lease of 30 years and they had also executed a lease deed on 3rd March 2012 in favour of the claimant.

28. Paragraph 26 of the award is quoted as under: -

> "26. Admittedly, a power of attorney was executed by the karta of the family, Balgovind Prasad, in whose name the entire lands of about 42 acres were recorded as tenant in Case No.35/1952-53 and Case No.26/1955-56 by the Revenue authority and, admittedly, Balgovind Prasad executed a power of attorney, being the karta of the family, in respect of Plot No. 2249; 2250; 2280 and 2264, in favour of Loki Prasad and Jagdish Prasad, i.e., his nephew and his son respectively, to execute sale deed, lease deed etc. because of his old age, as he was more than 80 years. The only mistake committed by the claimant is that he has mentioned the name of Jagdish Prasad and Loki Prasad as owners from whom he got a lease. The power of attorney holders are also recognised as owners of the land in the advertisement. Moreover, such statement is not at all false, rather all the owners and even karta of the family, Balgovind Prasad, admitted before the contesting respondent No. 1 to 3 that they are willing to execute a long term lease of 30 years and they had executed also a lease though subsequently on 03-03-2012, i.e., Exhibit-14, in favour of the claimant."

29. The learned arbitrator also considered rule 19 of the Brochure which provides that an aggrieved person may sent his complaint to the oil

company within 30 days but the complaint was received after 30 days. It has also been provided therein that on receipt of the complaint the Letter of Intent will not be issued rather it will be issued only after scrutinizing and disposal of the complaint. In this background, the learned arbitrator has recorded in paragraph No. 24 of the award that all the allegations were duly verified before the issuance of the Letter of Intent.

30. Paragraph No. 25 of the award is quoted as under: -

> "25. It is also on the record that though in the affidavit earlier filed in support of the application of the claimant it was mentioned that Loki Prasad is the son of Balgovind Prasad and it was also claimed in the affidavit, which is Exhibit-A, and filed by the contesting respondent No. 1 to 3, that Loki Prasad and Jagdish Prasad are the owners of the land bearing Plot No. 2249 and 2250 of village Barsot and they are willing to execute a lease for 30 years for establishment of a petrol pump in favour of Anant Kumar Singh and it was contended on behalf of the Petroleum Company, i.e., the contesting respondent, that the entire statement is false because Loki Prasad is not the son of Balgovind Prasad and Balgovind Prasad is still alive though it was mentioned that he was dead and further, Loki Prasad and Jagdish Prasad are simply power of attorney holders. On this point, it was submitted on behalf of the claimant that subsequently also affidavit was filed and it was clarified that by mistake and due to typing error there was some wrong information in the earlier affidavit and in the application of the claimant and it was clarified that Balgovind Prasad is not the father of Loki Prasad rather he is the father of Jagdish Prasad, and Loki Prasad is the son of Ram Singhasan Prasad, another son, of Nando Mahto. So, the matter was clarified and, admittedly, Nando Mahto was the owner of the entire land measuring about more than 42 acres of village Barsot and he got it through hukumnama and he was also recorded as a tenant in the khatiyan and, admittedly, he died in the year 1946 leaving behind his only son, Balgovind Prasad and another son, Ram Singhasan Prasad died on the same date when his father died leaving behind 2 sons, i.e. Loki Prasad and Babni Prasad."

31. The learned arbitrator also recorded in paragraph No. 29 of the award that clause 21 of the Selection Brochure did not apply which provided that the same would apply after the appointment of the dealership if any information is concealed or any wrong information is made and in the present case, all the allegations were made before commissioning of the dealership and the allegations so made were duly verified and complaints were not accepted. The learned arbitrator rejected the argument of the appellant and recorded a finding in paragraph No. 30 of the award that cancellation of the dealership of the claimant vide order dated 9th April 2016 by the appellant was apparently mala fide and wrong Paragraph 30 of the award is quoted as under: -

> "**30.** Thus, after considering every evidence and the circumstances as discussed above, it can be said beyond any doubt that the cancellation of dealership of the claimant vide order dated 9th April 2016 by the Petroleum Company is apparently mala fide and wrong and the Petroleum Company was fully aware of the fact that the owners of the land were actually willing to execute long term lease for running the petrol pump, that too, at the instance of the claimant and there was no misrepresentation or deliberate omission regarding the ownership of the land by the claimant, rather, inadvertently some wrong information was provided, i.e. Lauki Prasad and Jagdish Prasad were mentioned as owners of the land though at that time they were merely power of attorney holders from the *karta* of the family, i.e. Balgovind Prasad, and further, it is also clear that subsequently in the year 2012 and prior to offering of dealership to the claimant, all the owners executed long term lease in favour of the claimant and further, on 25th March 2013 owners executed long term lease of 30 years in favour of the Petroleum Company for establishment of dealership. Whatever may be, for the same allegation which Motilal Choudhury has levelled and duly enquired, again, the matter was taken up without any basis which appears to be motivated."

32. The learned arbitrator also considered clause 12 of the agreement and recorded that it provided that the license could be terminated without any reason whatsoever by either party giving to the other not less than 90 days' notice in writing and various other provisions were made in the license and under those provisions the license could be terminated. The learned Arbitrator recorded that however, in the instant case, not a single term of license was violated nor any such violation was pointed out to the claimant and the only clause for termination of the dealership was clause 21 of the Brochure and in the earlier paragraphs of the award it was already held that the dealership of the claimant was not liable to be terminated by referring to clause 21 of the Brochure. The learned arbitrator also rejected the arguments advanced by referring to the judgment passed by the Hon'ble Supreme Court in the case of ***Indian Oil Corporation Limited vs. Amritsar Gas Service (supra)*** by recording that there was no violation of any provision of the agreement for grant of license rather it was for violation of clause 21 of the Selection Brochure which did not apply. The learned arbitrator rejected the argument based on the judgment passed in the case of ***Amritsar Gas Service (supra)*** by distinguishing that in the present case there was no violation of the terms and conditions of the agreement rather the termination was on account of an alleged violation of clause 21 of the Selection Brochure and consequently passed the award *interalia* of

restoration of dealership. Paragraph Nos. 31 to 33 of the award are quoted as under; -

> "**31.** In fact, when the licence for running the dealership was already granted and both the parties executed agreement for running the dealership, i.e., Exhibit 5, dated 30th March 2013, the terms & conditions of the licence has been clearly defined and clause 12 clearly says that the licence may be terminated without any reason whatsoever by either party giving to the other not less than 90 days' notice in writing and various other provisions were made in the licence and under those provisions the licence can be terminated. Here, in the instant case, not a single term of licence was violated nor it was pointed out by the claimant. So, now, as discussed above, only under clause-21 of the brochure the license or dealership of the claimant is not liable for termination.
>
> **32.** The learned lawyer for the respondent Nos. 1 to 3, during the course of argument, submitted that in any view of the matter, the provision of 'Specific Relief Act' will apply and the claimant is not entitled for restoration of the dealership, rather he is entitled for some damages and in support of this contention he relied upon the decision of the Hon'ble Supreme Court reported in ***Manu/SC/0513/1991***, i.e., ***Indian Oil Corporation Ltd. - appellant Vrs Amritsar Gas Service and Ors - respondents***. It was contended by the learned lawyer for the claimant that this authority of the Hon'ble Supreme Court is not applicable in the cited case because of violation of some provisions of the agreement for grant of dealership, termination order was made. Here, there is no violation of any provision of the agreement for grant of licence, rather for violation of clause 21 of the Selection Brochure cancellation was made and that provision will not apply. It was already held above that the cancellation order of dealership under clause 21 of the Selection Brochure is apparently illegal and mala fide. On the other hand, there is no violation of any provision of the agreement for grant of licence to the claimant. The learned lawyer for the claimant has also relied upon the decision of the Hon'ble Supreme Court reported in ***(2012) 2 SC cases (1) Allied Motors Limited appellant Vrs Bharat Petroleum Corporation Ltd. - respondent***, and in this case, it was held by the Hon'ble Court that on consideration of the totality of the fact and circumstances there has been a total violation of provision of law and principle of natural justice and as such, the cancellation order was set aside. Here also, for the reasons mentioned above and as cancellation order was made only for violation of clause 21 of the Selection Brochure and not any terms & conditions of the agreement for grant of license. So, the cancellation order can be set aside as it is illegal.
>
> **33.** On careful consideration of the entire facts and circumstances and the provision as mentioned in the brochure and the license agreement, it can be said that there was no such misrepresentation regarding the ownership of land made by the claimant which make him illegible for grant of dealership in village Barsot in the district of Hazaribagh. So far the owners of land to be provided, all the owners are willing from the very beginning and also executed lease of 30 years for running the petrol pump and the Petroleum Company was fully aware and conscious of the fact that actually owners are in favour of the claimant and whatever wrong information was given that was not very serious and made inadvertently. Accordingly, it is hereby decided that the Petroleum Company has rightly after full consideration and examination on

> the spot accepted the claim of the claimant and he was granted dealership for 15 years, at the first instance, to run petrol & high speed diesel retail pump. So, both these issues are hereby decided in favour of the claimant and against the Petroleum Company, and the cancellation order of the dealership made by the Petroleum Company on 9th April 2016 is liable for set aside."

33. So far as the award of damages is concerned, the learned arbitrator recorded the submission of the claimant that the claimant was mainly interested in the restoration of the dealership and had submitted that if the appellant would restore the dealership immediately after the order of the court he would not claim the damages, but if the dealership is not restored he was entitled to the damages. The learned arbitrator directed that if the dealership is not restored within three months from the date of the order or as per the order on this point by the High Court, the claimant would be entitled to damages @ Rs. 40,000/- per month from the date of termination of the dealership i.e. 9th April 2016 till the date of restoration.

34. The findings in connection with issue Nos. IV, V, I and VI have been recorded in paragraph Nos. 34 to 36 of the award as under: -

> "**34.** Issue No. IV: The claimant has also claimed and prayed for restoration of dealership in village Barsot which he was running earlier as per licence granted to him on 30th March 2013 and it was already held above that the licence of dealership of petrol & high speed diesel was rightly granted to the claimant after full enquiry and the cancellation order of the dealership awarded in favour of the claimant in village Barsot in the district of Hazaribagh on 9th April 2016 is hereby set aside and so the claimant is entitled for restoration of the dealership as awarded to him earlier.
>
> **35.** Issue No. V- The claimant has also prayed for award of damages as a loss for the commission regarding sale of petrol and high speed diesel and also lubricant. So far loss of commission is concerned, definitely, the claimant is entitled from the date of termination up to the date of restoration of the dealership, but the claimant has also claimed rent to be paid to the generator set, CC TV cameras, cost of invertor battery, salary of the staff, etc. and the claimant is not entitled for these claims as actually, after termination, the cost of these items including the staff are to be borne by the Petroleum Company, who is running the dealership. The contesting respondents simply said in their written statement that due to fault of the claimant his dealership was cancelled, so he is not entitled for any damages. However, during the course of argument, the claimant himself agreed that he is mainly interested for restoration of dealership and if the Petroleum Company will restore the dealership immediately after the order of the Hon'ble Court then he will not claim the damages, but if the dealership will not be restored then he is entitled for the damages and under the circumstances it is hereby ordered that if the dealership is restored as ordered, then the claimant will not claim the damages but if, somehow or other, it is not restored due to fault of respondent No. 1 to 3, then the claimant is, definitely, entitled for damages for the

> loss suffered at least @Rs.40,000.00 (Rupees Forty thousand) per month from the date of termination, i.e., 9th April 2016, till the date of restoration.
>
> **36.** Issue No. I & VI :- During the course of argument, no obvious defect regarding framing and maintainability of this proceeding was raised by the contesting respondent Nos. 1 to 3 nor do I find any defect and as such, this arbitral proceeding is maintainable."

35. The quantum of compensation has been fixed vide paragraph No. 37 of the award, which is quoted as under: -

> **"37.** As the cancellation order of the dealership was set aside under Issue No. II and III, so the claimant is entitled for restoration of the retail dealership of petrol and high speed diesel in village Barsot, as the licence was awarded to him by respondent Nos. 1 to 3 on 30th March 2013, within 3 months from the date of this order or as per the order on this point by the Hon'ble High Court failing which, if the respondent Nos. 1 to 3 will deliberately not restore the dealership as ordered above, then the claimant will be entitled for damages also @ Rs.40,000.00 (Rupees Forty thousand) per month from the date of cancellation of the dealership till the date of restoration. The claimant is also entitled for a sum of Rs. 2,50,000.00 (Rs. Two lakh Fifty Thousand) as cost of this arbitration which includes the fee of the Arbitrator and that of the learned lawyers etc. The respondent Nos. 1 to 3 have to pay the cost as awarded within 2 months from the date of this order with interest @ 12% per annum failing which, it will carry interest @ 18% p.a. from the date of the award to the date of payment, in view of the provision of clause 31, sub-clause 7 (B) of the Act of 1996."

36. This Court finds that the learned arbitrator has passed a well-reasoned award considering the case of the respective parties and also considering that the owners of the land had executed lease deed in favour of the appellant at the instance of the claimant who was granted dealership after participating in the selection process. The owners of the land supported the case of the claimant before the learned arbitrator and it was also not in dispute that the petrol pump was being run by the appellant themselves who was using the land infrastructure and even the employees of respondent no.1 for which payment was being made by the appellant. In such circumstances, the learned arbitrator has refused to grant damage to the claimant on account of rent to be paid to the generator set, CC TV cameras, cost of inverter battery, the salary of the staff etc. by recording that actually after termination the cost of these items including the staff was being borne by the appellant who was running the dealership. This fact has been duly recorded in paragraph 35 of the award.

37. This Court finds that the learned arbitrator has cited reasons for allowing certain parts of the claim of damage and disallowing remaining

parts of the claim of damage and accordingly, it cannot be said that the award of damages is non-speaking and violative of Section 31(3) of the Act of 1996.

38. This Court also finds that the learned arbitrator has taken a plausible view based on the materials on record and has distinguished the judgment passed in the case of *Amritsar Gas Service (supra)* holding that the termination order of the dealership was not passed on account of violation of any terms and conditions of the dealership agreement but on account of a complaint received by an unsuccessful participant of the selection process and the letter of intent was issued after considering the complaint. The learned arbitrator has considered the complaint on merits and has rejected the same by citing reasons by interalia holding that the two persons who had given the affidavit were the co-owners of the offered property being their ancestral property and a lease deed was formally entered at the instance of the claimant on which the petrol pump is running.

39. The fact remains that on the same property offered by the claimant, the dealership is being run by the appellant and the owners of the property are in support of the claimant and have stated that they entered into a lease with respect of the land at the instance of the claimant. This is also not denied that all the facilities at the petrol pump including the manpower employed by the claimant are being used by the appellant for running the petrol pump and the claimant has been ousted by issuing a termination letter based on the complaint made much before entering into dealership agreement by an unsuccessful participant in the selection process. It is also to be noted that the judgment passed in the case of ***Amritsar Gas Service (supra)*** as well as in the case of ***E. Venkatakrishna (supra)*** was passed under the Arbitration Act 1940. After the introduction of section 34(2-A) in the Act of 1996 there is no scope of interference even when award suffers from erroneous application of law. This Court is of the considered view that the award did not call for any interference under the Act of 1996 and does not suffer from any patent illegality on the face of the award. Even if it is assumed for the sake of argument that there was any error in connection with the appreciation of law on the point of

applicability of the provisions of the Specific Relief Act the same cannot be said to be an error apparent on the face of the award.

40. It is well-settled law that the scope of scrutiny of the award under section 34 of the Act of 1996 is limited to the grounds mentioned therein. There is no doubt that the scope of the appellate power to interfere with an award under section 37 of the Act of 1996 is all the more restricted particularly when the learned court below has upheld the award.

41. As explained above, it has been held by the Hon'ble Supreme Court that post-2015 amendment a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. As per section 34 (2-A) as introduced vide 2015 amendment, a domestic arbitral award may also be set aside if the Court finds that it is vitiated by patent illegality appearing on the face of the award and it has been provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or the public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality. It is also to be noted that the term violation of "the fundamental policy of Indian law" has its roots in the judgment passed in the case of ***Renusagar Power Co. Ltd.* v. *General Electric Co.*** passed in the context of the Foreign Awards (Recognition and Enforcement) Act, 1961 wherein in construing the expression "public policy" in the context of a foreign award it was held that a contravention of the provisions of the Foreign Exchange Regulation Act would be contrary to the public policy of India in that the statute is enacted for the national economic interest to ensure that the nation does not lose foreign exchange which is essential for the economic survival of the nation and that equally, disregarding orders passed by the superior courts in India could also be a contravention of the fundamental policy of Indian law. However, the point of recovery of compound interest on interest was held to be contrary to

statute only and accordingly, it was held to be not contravening any fundamental policy of Indian law. Thus, all instances of contravention of law of India committed by the arbitrator would not call for interference under section 34(2-A) of the Act of 1996. Moreover, the case of the appellant is that the learned arbitrator has ignored the judgment passed by the Hon'ble Supreme Court in the case of ***Amritsar Gas Service (supra)*** . However, this court finds that the learned arbitrator has considered the judgment passed in the case of ***Amritsar Gas Service (supra)*** distinguished the same, and has taken a plausible view. Otherwise also the award on the point of applicability of the judgment passed in the case of ***Amritsar Gas Service (supra)*** would call for a reappreciation of evidence and deliberations on the point of law in the given facts and circumstances of the case which is not permissible in law.

42. As a cumulative effect of the aforesaid findings, this court finds no merits in this appeal which is accordingly dismissed.

(Shree Chandrashekhar, ACJ.)

(Shree Chandrashekhar, ACJ.)

(Anubha Rawat Choudhary, J.)

Mukul