



**Mere wrong Application of Law – No more a ground for challenging an Arbitration Award**

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Arbitration is a private dispute resolution mechanism created by way of contract between the parties. But still to avoid any gross injustice, the mechanism provides for supervisory courts, that have powers to set aside the arbitration award on certain limited grounds and they are not permitted to sit in appeal over an arbitration award. One of the most important and globally recognized ground for setting aside an arbitration award is violation of Public Policy. But in an endeavor to strictly scrutinize the arbitration awards, the Supreme Court of India by way its Judgments in ONGC Vs SAW Pipes<sup>1</sup> and ONGC Vs Western Geo International Limited<sup>2</sup> enhanced the scope of interference by the courts. Those Judgments converted the mechanism of restricted Challenge to the arbitration award, to a regular civil appeal by allowing the Courts to interfere if there is any legal error in the award. The above said SAW pipes Judgment made it mandatory that if the Arbitration award is not passed strictly as per the terms of the contract, the award can be set aside. It further expanded the narrow view of Renusagar case<sup>3</sup> and held that the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Hence in addition to the grounds mentioned in Renusagar case, the court in SAW pipes added (a) Fundamental Policy of Indian Law (b) the interest of India (c) Justice and morality and (e) if it is patently illegal as additional grounds for setting aside of an award.

The above said view of ONGC Vs SAW pipes have been consistently followed by the Supreme Court till Saangyong Engineering & Construction Co Limited Vs NHA case<sup>4</sup> delivered on 8<sup>th</sup> May 2019. In Mc Dermott case<sup>5</sup> observed the impact

<sup>1</sup> ONGC LIMITED Vs SAW Pipes Limited (2003) 5 SCC 705

<sup>2</sup> ONGC Limited Vs Western Geo International Limited (2014) 9 SCC 263

<sup>3</sup> Renusagar Power Co Ltd Vs General Electric Co 1994 Supp (1) SCC 644

<sup>4</sup> Ssangyong Engineering & Construction Co Limited Vs National High ways Authority of India (2019) SCC online 677

<sup>5</sup> Mc Dermott International Inc Vs Burn Standard Co Limited (2006)4 SCC 445

of the above said ONGC Vs SAW pipes and held that the patent illegality should go into the root of the matter. In Centrotrade case<sup>6</sup> the Supreme Court held that the patent illegality should be unfair and unreasonable to shock the conscience of the court. In P.R.Shah case<sup>7</sup> Supreme Court asserted that a Court cannot sit in appeal over the award of an Arbitral Tribunal by reassessing and re-appreciating evidence. In ONGC Ltd., Vs Western Geo International Ltd., case Supreme Court of India added three other and distinct and fundamental juristic principles which must be understood as part and parcel of fundamental policy of Indian Law including judicial approach, natural justice including application of mind and perversity or irrationality tested on the touch stone of Wednesbury Principle of reasonableness.

The above Judgments expanded the scope of court interference in the arbitration awards. To reduce the above said interference by courts, based on the 246<sup>th</sup> Law Commission Report, S.34 was amended by introducing Explanations 1 and 2 to Section 34(2)(b)(ii) and Section 34(2A). The above said Explanation No.1 reduced the scope of Public Policy to fraud and corruption, contravention to public policy of India & conflict with the basic notions of morality and justice. Explanation 2 made it clear that contravention with public policy of Indian law shall not entail a review on the merits of the dispute. The other new Section (2-A) which is applicable only to Domestic awards, introduced an additional ground to set aside an award, that is “Patent illegality appearing on the face of the Award”. But it further clarified that an award cannot be set aside merely on the ground of erroneous application of law. Hence, after 23<sup>rd</sup> October 2015, ground to set aside on the ground of “mere erroneous application of law” is not applicable.

In Ssayong Engineering case, Supreme Court of India settled the law by analyzing the judgment of Associated Builders<sup>8</sup> and held that the ground of “mere error in application of law” is not available after 2015, Amending Act. It also held that

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<sup>6</sup> Centrotrade Minerals & Metals Inc Vs Hindustan Copper Ltd (2006)11SCC245

<sup>7</sup> P.R.Shah Shares & Stock Brokers (P) Ltd., Vs B.H.H. Securities (P) Ltd.,

<sup>8</sup> Associate Builders Vs DDA (2015) 3 SCC 49

the award can be interfered on the ground of error in application of law only if it affects the Public Policy of India. It further held that as per Section (2-A) there must be a patent illegality on the face of the award, which refers to the illegality that goes to the root of the matter but which does not amount to mere erroneous question of 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 back door when it comes to setting aside of an award on the ground of patent illegality. Hence, law is well settled that the court cannot set aside the award either on the ground of erroneous application of law or fact, if it does not affect the public policy of India.