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SUPREME COURT ON CHALLENGING ARBITRAL AWARDS

A. Introduction

Supreme Court (SC), in *Atlanta Limited v. Union of India*,¹ held on 18th January 2022, that an arbitral award cannot be challenged on the ground that the appointed arbitrator had failed to appreciate the facts adequately.

B. Brief Facts

1. Atlanta Limited. (“**Atlanta**”) entered into an agreement with the Union of India (“**UOI**”) for the construction of a runway at Naval Air Station, Arakkonam, Tamil Nadu.
2. Atlanta claimed that work could not commence as per stipulated timelines due to issues with waterlogging on account of rains. Atlanta later sought three extensions of time that were accepted and granted by UOI. By the end of the third extension, Atlanta had completed 72% of the work.
3. Following this, UOI had proposed to have the runway inaugurated by the then President of India. Therefore, the site became a restricted area with security protocols in place. As a result, the staff and labourers of Atlanta were not issued permits to the site to complete the pending work. UOI then cancelled the agreement with immediate effect.
4. Atlanta invoked the arbitration clause in the agreement and a sole arbitrator was appointed. The arbitrator granted a sum to Atlanta including interest (the “**Award**”) towards idle hire charges and the value of the tools and machineries. UOI was also ordered to pay future interest @ 18 % p.a. On a counterclaim by UOI, a sum was awarded to UOI as well.
5. UOI, dissatisfied with this, filed petition under Sections 30² and 33³ of the erstwhile Arbitration Act, 1940 (the “**Act**”),⁴ which was dismissed. A decree was then passed in terms of the Award, with Atlanta being entitled to 12% interest.
6. Then, UOI challenged the decree by way of an appeal, which was set aside by the Division Bench of the Madras High Court (HC), to the extent of the sum granted for idle hire charges and value of tools and machineries. Atlanta then appealed against this decree.

C. Order

1. The issues before the SC were the reasonableness of the extended times, termination of contract by UOI, and the Award favouring Atlanta.
2. SC examined the scope of interference permitted by courts with regards to arbitral awards under the

¹ MANU/SC/0059/2022.

² *Grounds for setting aside award.*

³ *Arbitration agreement or award to be contested by application.*

⁴ Later replaced by the Arbitration & Conciliation Act, 1996.

Arbitration Act and referenced the 2009 SC case in *Kwality Manufacturing* case,⁵ holding: “*At the outset, it should be noted that the scope of interference by courts in regard to arbitral Awards is limited. A court considering an application under Section 30 or 33 of the Act, does not sit in appeal over the findings and decision of the arbitrator. Nor can it reassess or reappreciate evidence or examine the sufficiency or otherwise of the evidence. The award of the arbitrator is final and the only grounds on which it can be challenged are those mentioned in Sections 30 and 33 of the Act.*”⁶

3. SC relied on its 1994 *Puri Construction Co.* judgment,⁷ and held that an arbitral award cannot be challenged on the ground that an arbitrator has drawn their own conclusion or failed to appreciate the facts.⁸
4. Further, on the validity of UOI’s cancellation of the contract, it noted that Atlanta was entitled to extension of time to complete the pending works. It held that given that the arbitrator had comprehensively detailed their reasons for the Award passed, the HC ought not to have substituted that conclusion with its own view, especially given its limited jurisdiction under the Act.

D. Conclusion

SC held that under Sections 30 and 33 of the Act, the appellate court cannot reexamine the evidence or determine its sufficiency. Under the present Arbitration and Conciliation Act, 1996, Section 34⁹ details the grounds on which an arbitral award may be set aside by a court.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

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⁵ *Kwality Manufacturing Corporation vs. Central Warehousing Corporation* (23.02.2009 - SC): MANU/SC/0435/2009.

⁶ Para 10 of the Order.

⁷ *State of Rajasthan vs. Puri Construction Co. Ltd. and Ors.* (16.09.1994 - SC): MANU/SC/0865/1994.

⁸ Para 12 of the order.

⁹ *Application for setting aside arbitral award.*