



1

AA-23-2026

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 30th OF SEPTEMBER, 2026

ARBITRATION APPEAL No. 23 of 2026

CNR No.: MPHC010035952026

M/S LAXMAN SHARMA

Versus

UNION OF INDIA AND OTHERS

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Appearance:

Shri Falgun Yadav, learned counsel for the appellant.

Shri Suyash Mohan Guru, learned Dy. Solicitor General of India and

Shri Shrikrishna Sharma, learned counsel for the respondent-Union of India.
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ORDER

This arbitration appeal is filed by the appellant under Section 37 of the Arbitration and Conciliation Act, 1996 being aggrieved of the order dated 03/09/2025 passed by learned the 23rd District Judge, Jabalpur in MJC AV No.117/2018 whereby application filed by the Union of India under Section 34 of the Arbitration and Conciliation Act, 1996 has been allowed on the ground that the impugned award passed by learned Arbitrator is against the public policy.

2. Learned counsel for the appellant submits that brief facts of the case are that NIT was issued by the Central Public Works Department for construction of Kendriya Vidyalaya vide payment authorisation order dated 22/07/2014. In compliance of the said authorisation and approval and after



2

AA-23-2026

the tender floated by the respondent/department, the appellant deposited an amount of Rs.20,00,000/- with the concerned authorities. The land *ad measuring* 1.963 hectares, comprised in Khasra No.118 was duly allotted for the construction of the Kendriya Vidyalaya by the Collector, Jabalpur vide order dated 29/03/2014. Thereafter CPWD uploaded an e-tender on its official website on 29/04/2015 inviting bids for construction of the Kendriya Vidyalaya on the aforesaid land.

3. Appellant submitted his tender for the said work on 14/05/2015 with the respondent/department on their online e-tender platform. Appellant was declared to be a successful bidder and work was allotted for an estimated cost of Rs.9,64,66,285/-. The appellant deposited the earnest money and also furnished a performance guarantee.

4. The stipulated date for commencement of the construction work was 10/08/2015 with a contractual completion period of twelve months i.e. upto 31/07/2016.

5. Executive Engineer vide letter No.15(49) dated 08/07/2015 formally awarded the construction work to the successful bidder. Thereafter a joint inspection was carried out on the site and it was found that High Court of Madhya Pradesh in W.P. No.618/2008 vide order dated 11/04/2011 had directed the parties to maintain status-quo with respect to possession of the disputed land and under such facts and circumstances, dispute arose between the appellant and the respondents which was referred to the Arbitrator. It is an admitted fact that no ground of violation of public policy was taken by the Union of India before the learned Arbitrator.



6. It is submitted that the plea of violation of award being vitiated on account of public policy is no more *res integra*. This High Court while deciding Arbitration Appeal No.14/2009 (Steel Authority of India Limited Vs. M/s R. Haranadha Reddy A Partnership Firm) vide order dated 20/01/2026 made a reference to the judgment of Hon'ble Supreme Court in the case of B.M. Patel & Co. Vs. ONGC, (2008) 8 SCC 251 and has held that the award in contravention of terms of agreement is impermissible. It has also referred to judgment of Hon'ble Supreme Court in the case of ONGC Vs. Saw Pipes Ltd., (2003) 5 SCC 705 wherein the Hon'ble Supreme Court considered the expression "public policy of India" and held that it should be given a wider and not a narrow meaning.

7. After hearing learned counsel for the parties and going through the record, it is evident that when tender was floated by the authorities of the respondent-Union of India, then at that point of time, the High Court's order dated 11.04.2011 passed in W.P. No.618/2018 was already in operation. The chronology of events reveals that it was the Union of India and its instrumentalities, which decided to issue NIT in the year 2014 and, thereafter, asked the petitioner to deposit certain amounts. Thereafter, it has also come on record that the land was duly allotted by the Collector, Jabalpur, for construction of Kendriya Vidyalaya in March, 2014, when CPWD uploaded an e-tender on its official website on 29.04.2015. Thereafter, on 08.07.2015, the Executive Engineer formerly awarded the construction work to the successful bidder. On a joint inspection, it was found that the High Court of Madhya Pradesh had directed the parties to



maintain status quo. Thus, it is evident that none of the facets of gross negligence on the part of the authorities of the Central Government will fall within the ambit of violation of fundamental policy of India. In fact, the instrumentalities of the Central Government should not have ventured to float NIT, call offers and allot the work to a successful bidder, without ensuring the correct status of the project/land in the courts of law.

8. Thus, in the light of the judgment of the Hon'ble Supreme Court in the case of **ONGC Vs. Saw Pipes Ltd.** (supra), wherein it is held that:-

"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 Power Co. Ltd. v. General Electric Co.**, 1994 Supp (1) SCC 644, 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."

9. Thus, it is evident that the Union of India and others, who are instrumentalities of the Union of India have challenged the award on the ground of violation of fundamental policies of India, is not made out.

10. The Hon'ble Supreme Court in the case of **Associate Builders v. Delhi Development Authority**, (2015) 3 SCC 49, has been held that "public policy of India with their sub-head are:-

"I. Fundamental Policy of Indian Law : (i) Compliance with statutes and judicial precedents; (ii) Need for judicial approach; (iii) Natural justice compliance; (iv) Wednesbury reasonableness;

II. Interest of India;

III. Justice or Morality; and

IV. Patent Illegality: (i) Contravention of substantive law of India; (ii) Contravention of A&C Act, 1996; (iii) Contravention of the terms of the contract."



11. Thereafter an explanation has been added under Section 34(2)(b)(ii) which says that for the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if, -

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or Section 81; or

(ii) it is in contravention with the fundamental policy or Indian law;
or

(iii) it is in conflict with the most basic notions of morality or justice.

This explanation is added to the Act of 1996 through an amendment made effective with respect to 23/10/2015.

12. Even the explanation-2, when examined, does not point out that anything which was induced or affected by fraud or corruption or being in contravention with the fundamental policy of India or being in conflict with the most basic notions of morality or justice, can be said to be against the "public policy" and when tested, then for the fault of the respondent/department in not bringing this fact to the notice of the contractor that there was a stay by the High Court and that before floating the NIT and collecting different amounts under different heads of earnest money and security etc. and not verifying the status of the land on which they propose to construct, it cannot be said that the impugned award suffers from any vice of violation of public policy of India calling for interference by the Court of first instance i.e. the Court empowered to hear the matter under Section 34 of



7

AA-23-2026

the Arbitration and Conciliation Act, 1996, therefore, impugned order pass by learned 23rd District Judge, Jabalpur deserves to be set aside. In my opinion, the learned 23rd District Judge, Jabalpur, has failed to take into consideration as to what all is covered under the ambit of "public policy" and the fundamental policy of India and there being no finding that floating of NIT was induced or affected by fraud or corruption in the hands of the appellant herein, fault of the instrumentalities of the State will not be covered under the head of award passed by the Arbitrator being against the public policy.

13. Accordingly, this arbitration appeal is allowed. The impugned order dated 03/09/2025 passed by the learned 23rd District Judge, Jabalpur in MJC AV No.117/2018 is hereby set aside.

(VIVEK AGARWAL)
JUDGE

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