

Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India (NHAI) 2019 SCC OnLine SC 677

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The recent decision of the apex court of Ssangyong Engineering & Construction Co. Ltd. v. NHAI, has led to three notable developments: (1) it clarifies the scope of the “public policy” ground for setting aside an award as amended by the Arbitration and Conciliation (Amendment) Act 2015, (2) affirms the prospective applicability of the act and (3) adopts a peculiar approach towards recognition of minority decisions.

FACTS

The dispute arose out of a contract concerning the construction of a four-lane bypass on a National Highway in the State of Madhya Pradesh, that was entered into by the parties. Under the terms of the contract, the appellant, Ssangyong Engineering, was to be compensated for inflation in prices of the materials that were required for the project. The agreed method of compensation for inflated prices was the Wholesale Price Index (“WPI”) following 1993 – 1994 as the base year. However, by way of a circular, the National Highways Authority of India (“NHAI”) changed the WPI to follow 2004 – 2005 as the base year for calculating the inflated cost to the dismay of Ssangyong. Hence, leading to the said dispute. .

After the issue was not resolved, the dispute was referred to a three member arbitral tribunal. The majority award upheld the revision of WPI as being within the terms of the contract. The minority decision opined otherwise, and held that the revision was out of the scope the said contract. Due to this, Ssangyong challenged the award as being against public policy before Delhi High Court and upon the dismissal of the same, the matter was brought in front of the apex court by way of an appeal.

LEGAL FINDINGS

The Supreme Court ruled on various issues that were discussed during the proceedings of the matter. The Court held that an award would be against justice and morality when it shocks the conscience of the court. However, the same would be determined on a case to case basis.

The apex court interpreted and discussed the principles stipulated under the New York convention. Under Para 54 of the judgement, the apex court has discussed the necessity of providing the party with the appropriate opportunity to review the evidence against them and the material is taken behind the back of a party, such an instance would lead to arising of grounds under section 34(2)(a)(iii) of the Arbitration and Conciliation (Amendment) Act, 2015. In this case, the SC applied the principles under the New York convention of due process to set aside an award on grounds that one of the parties was not given proper chance of hearing. The court held that if the award suffers from patent illegality, such an award has to be set aside.

However, this ground may be invoked if (a) no reasons are given for an award, (b) the view taken by an arbitrator is an impossible view while construing a contract, (c) an arbitrator decides questions beyond a contract or his terms of reference, and (d) if a perverse finding is arrived at based on no evidence, or overlooking vital evidence, or based on documents taken as evidence without notice of the parties.