

IN THE COURT OF MS. SAVITA RAO
DISTRICT JUDGE (COMMERCIAL COURTS)-01
SOUTH DISTRICT: SAKET : NEW DELHI

OMP (Comm) No. : 11/2024

DLST010020582024



In the matter of:

M/s Planet Advertising Pvt. Ltd.
Through its Authorized Representative
At G-11, 2nd Floor, Hauz Khas Market,
New Delhi - 110016

..... Petitioner

Versus

New Delhi Municipal Council
Having its Office at :
Patika Kenra, Sansad Marg
New Delhi
Through its Chairman

..... Respondent

Date of Institution : 11.03.2024

Date of Arguments : 26.09.2025, 14.10.2025 &
27.10.2025

Date of Judgment : 27.10.2025

ORDER

1. This is petition under section 34 of Arbitration and Conciliation Act filed by petitioner who is engaged in the business of providing services related to 'display and advertising ' of products of various companies. Respondent had floated tender

for construction and maintenance of toilet block in NDMC areas. Petitioner was awarded the said contract. Subsequent thereto, petitioner applied for water and sewer connection on 24.9.2015 which was allowed upon deposit of requisite payments and security charges by the petitioner in the month of August 2016.

2. Petitioner received first bill in the month of April 2017 after eight months of the connection, in sum of Rs. 2,63,953/- with monthly consumption in sum of Rs. 33,000/- per month, which, as complained by petitioner, was highly exorbitant. Upon receipt of said water bill, petitioner filed formal complaint with the respondent for amendment in the water bill upon which petitioner was directed to deposit Rs. 70,610/- from August 2016 to March 2017 alongwith notice of disconnection of water connection by the respondent. Petitioner approached the billing department of respondent to make the said payment which was refused by the respondent. Thereafter, water meter was changed thrice at the complaint of the petitioner, however, there remained erratic fluctuation of the meter readings, while the demand from the respondent for payment of the bills alongwith late payment charges and the surcharges continued alongwith penalty.

3. Petitioner, as stated, was willing to deposit the amount as per the average water consumption without prejudice to its rights and contentions. As the dispute between the parties was not sorted out, based upon the arbitration clause in the contract between the parties, Ld. Arbitrator was appointed who adjudicated upon the claim filed by petitioner.

4. In reply, respondent submitted that petitioner had not made any complaint regarding the non receipt of water bill for the period of eight months. It was stated that petitioner had no

intentions to pay the water bill from the beginning. Further, the water bill was replaced and checked at the request of the petitioner which was found in order, which fact had also been informed to the petitioner by way of various letters requesting him to pay the outstanding dues. It was further submitted that the petitioner had accepted the bills from January 2018 to June 2018 pertaining to actual consumption, whereas disputed the rest of the bills without any basis. As submitted, petitioner failed to produce any evidence substantiating that the meter was faulty and the bills were raised as per actual consumption.

5. Ld. Arbitrator rejected the claim made by petitioner and declined to declare that the demand of water bill qua water connection of CA no. 8496773463 vide bill dated 09.09.2023, amounting to Rs. 25,86,496/- was null and void. Ld. Arbitrator also declined to injunct respondent from levying any penalty and surcharge as well as the other claims made by petitioner. Award passed by Ld. Arbitrator is accordingly under challenge before this court in the proceedings under section 34 of Arbitration and Conciliation Act.

6. Ld. Arbitrator noted that:

"A. The Claimant had made no endeavours to find out about the water bills for the first 8 month of the agreement and it was only after receipt of first bill that the claimant raised the grievance that the water meter installed was faulty but it had no document to show that it made any endeavour to know about the bills or complained about defective water meter. Further, on the request of the Claimant, the water meter was replaced all the three times by the Respondent. The Claimant was informed about the Water Test Report being Ok. Despite the fact that there were disputes , claimant continued to avail water consumption from the Respondent, despite the fact that the Concession Agreement permitted it to engage water services from else where.

B. There was no basis for claimant to accept the bill from January 2018 to June 2018 as pertaining to actual consumption while disputing the rest of the bills without any basis.

C. Further, there was no reasonable basis of applying the formula of average consumption as sought to be stated by the claimant in absence of any material or precedent of following the manner in which they sought the bills regenerated" .

7. Ld. Counsel for respondent submitted that:

(a) A Concession Agreement dated 05.05.2015 was executed between the Petitioner and Respondent for a period of 10 years for Public Toilet Utilities (PTUs) with advertisement rights.

(b) Water connection (No. 43896) was installed on 09.05.2016 in the name of the Petitioner and bills were raised based on actual consumption. At the repeated requests of the Petitioner, the water meters were replaced on 01.04.2017 and again on 25.10.2017, and both meters were tested and found within permissible limits as per IS 779:1994 standards. It is unfathomable and unimaginable to contend as to on what basis the petitioner is accepting bill from January 2018 to June 2018 as pertaining to actual consumption and whereas, disputing the rest of the bills without any basis. It is worthy to note that it does not lie in the petitioner's mouth to dispute a particular billing period showing higher consumption and accepting one showing lesser consumption.

(c) Repeated notices/demand letters were issued to the Petitioner (e.g., Letters dated 12.01.2018 & 28.12.2021) demanding outstanding dues amounting to Rs. 5,56,203/-, (Rupees Five Lacs Fifty-Six Thousand Two Hundred and Three Only) but the Petitioner willfully defaulted in making the payments till date.

(d) The allegation of the Petitioner regarding the meter being faulty is an afterthought and devoid of any documentary

proof. The Respondent has conducted tests on the replaced meters, and the reports categorically state the functionality of the meters within permissible variance limits of +2% (IS 779:1994).

(e) The Petitioner cannot blow hot and cold at the same time, by accepting water bills for certain periods and disputing others calculated by the same meter. That the Petitioner's non-payment of legitimate dues despite repeated reminders and opportunity for amicable settlement demonstrates their lack of bona fide intentions. The petitioner's mala fide intention is writ at large when he failed to pay legitimate dues for the period he has not disputed, till date.

(f) Ld. Sole Arbitrator has passed a reasoned award after due consideration of the documents, evidence, and arguments advanced by both parties. Levy of interest, surcharge, and penalties by the Respondent is well within its statutory rights and in accordance with the NDMC Act, 1994.

8. Per contra, Ld. counsel for petitioner submitted that petitioner lodged a complaint for faulty meter on 16.03.2017. On the Petitioner's representation, respondent issued an internal administrative communication dated 21.04.2017 acknowledging an error in the bill and reducing the consolidated bill to Rs. 70,610/- for the period August 2016-March 2017. The water meter was changed in the month of April 2017 and again the meter was changed in the month of October 2017. Thereafter, for six months from January 2018 to June 2018. the bill averaged to Rs. 4,000/-p.m. approx. Again, the water bills from July 2018 to January 2019 shot up exorbitantly. The complaint was immediately lodged about the faulty meter vide letter dated 15.10.2018, however, no action had been taken by the

respondent. Further, from February 2019 till April 2021, the bills were raised as per the consumption of water averaging Rs. 1833 p.m.

9. It was further submitted by Ld. counsel for petitioner that the test report filed by the respondent was false and fabricated as the said water testing report is ‘manual hand written report’ having the reference of the year 2021 and the original test report had never been produced by the respondent. As further submitted, on 13.09.2023, Ld. Sole Arbitrator, directed the respondent to produce the original record, however the respondent failed to produce the original documents including the alleged test report.

10. Ld. counsel for petitioner further submitted that:

(a) Ld. Sole Arbitrator failed to appreciate that the respondent had never refuted the notice dated 21.04.2017 or its content, referred by the petitioner in its letters dated 04.06.2019, 06.06.2019 and 11.07.2019.

(b) Ld. Sole Arbitrator wrongly came to the conclusion that the letter dated 27.06.2017 was duly sent by the respondent without any postal receipt or any acknowledgment of the petitioner. The Ld. Arbitrator has wrongly compared the letters dated 27.06.2017 and 25.01.2018 as both the letters are on the different address.

(c) Ld. Arbitrator wrongly came to the conclusion that the test report dated 27.05.2019 is not a fabricated document, as the respondent failed to produce the original documents on record despite the specific order dated 13.09.2023.

(d) L.d. Arbitrator failed to appreciate that the claimant has placed on record the chart showing the consumption of water of public conveniences within the said area under the same contract where the average monthly water bills were of Rs. 3,000.

(e) Ld. Arbitrator failed to appreciate that the respondent cannot charge penalty and sur-charge for continuous period of eight years.

(f) The impugned award ignores vital evidence and is contrary to the fundamental policy of Indian law, which is in conflict with the most basic notion of morality and justice and is patently illegal on the face of it.

(g) " NDMC's internal communication dated 21.04.2017 expressly recorded that the initial bill was issued in error and reduced the consolidated amount to Rs. 70,610/- for Aug. 2016-Mar. 2017. This contemporaneous admission by a public authority performing its administrative function is highly probative and required the Tribunal to give it decisive weight unless NDMC satisfactorily explained and rebutted it on evidence. The Arbitrator's failure to give reasoned findings for rejecting the admission constitutes a valid ground for setting aside the impugned award and is a legal error warranting interference under Section 34. Ld. counsel for petitioner further submitted that impugned award disregards the evidences put forth by the petitioner, accepting the Respondent's contradictory claims of test reports despite prior admissions of faults, meter changes in April and October 2017, and subsequent erratic bills. Further, non-submission of original reports and filing of fabricated and backdated hand drawn records were overlooked by the concerned tribunal. This perverse interpretation of evidence,

including unchallenged affidavits, constitutes patent illegality by modifying contract terms and exceeding the Arbitrator's mandate under Section 28(3) of the Act. Impugned award disregards contractual obligations and leads to unjust enrichment by violating public policy. The Arbitrator's failure to address documented faults and admissions, attacks the root of fairness in contractual dealings, warranting setting aside of the award to prevent frustration of arbitration's purpose.

Reliance was placed upon **Associate Builders v. Delhi Development Authority (2015) 3 SCC 49**, **Oil & Natural Gas Corporation Ltd. v. SAW Pipes Ltd. (2003) 5 SCC 705** and **Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt. Ltd. (2024) 6 SCC 357**, wherein interalia it was observed that :

" An award conflicts with public policy if it is perverse, irrational, or contravenes basic justice, including when it ignores material evidence or admissions" .

(h) The Award disregards the evidences put forth by the petitioner, accepting the Respondent's contradictory claims of test reports despite prior admissions of faults, meter changes in April and October 2017, and subsequent erratic bills. Further, non-submission of original reports and filing of fabricated and backdated hand drawn records were overlooked by the concerned tribunal. This perverse interpretation of evidence, including unchallenged affidavits, constitutes patent illegality by modifying contract terms and exceeding the Arbitrator's mandate under Section 28(3) of the Act.

11. Observation of Ld. Arbitrator seems correct that claimant made no endeavour to find out about the water bills for the first eight months of the agreement, nevertheless, similar

corresponding duty was also casted upon the respondent to generate and raise the bills in time. For failure of respondent itself to raise the bills in time, the default cannot be read only against the petitioner.

12. Petitioner in unequivocal terms referred to the reduced water bill in sum of Rs. 70,610/- which had been received in the form of disconnection notice. In reply to the petition, it was mentioned that :

" Vide letter cum notice dated 21.4.2017 issued by respondent, it was categorically stated that current bill for billing cycle March 2017, a total amount of Rs. 70,610/- as outstanding dues against the claimant including arrears from billing cycle August 2016 to March 2017. It was also indicated therein, that the non payment of water charges attracts levies of surcharge calculated @ Rs. 1.5% proportionate to the number of days of delay beside disconnection of water connection. It was also stated therein that this surcharge to the number of days of delay shall continue on each defaulted/delayed payment. This notice further requested the petitioner to deposit the aforesaid dues within ten days of the receipt of the communication failing which water supply shall be disconnected without any further notice and arrears of water dues shall be recovered as an arrears of tax as per section 102 of the NDMC Act 1994".

13. Initial demand for eight months was raised in sum of Rs. 2,63,953/- which had been reduced to Rs.70,610/- vide letter dated 21.4.2017. This fact also finds mention in the subsequent letters issued by the petitioner . Petitioner had approached the respondent for deposit of the said amount of Rs. 70,610/-, which fact also finds mention in the letters issued by petitioner with

further mention that billing department of respondent did not accept the cheque. Ld. Counsel for respondent submitted that petitioner had been continuously stating about the exorbitant bills being raised by the respondent and about the faulty meters but had not deposited even the admitted amount of bills or the amount even as per the own calculation of the petitioner. Said contention of Ld. Counsel for respondent is seemingly answered in the letters issued by the petitioner whereby it had reiterated many times that billing department of the respondent did not accept the cheque.

14. Be that as it may, Ld. Arbitrator has not discussed this vital and important aspect. Petitioner was informed about the water test reports being 'OK' as also noted by Ld. Arbitrator and also that the water meter was replaced three times upon the request of the petitioner/claimant. Ld. Arbitrator noted that there was no basis for the claimant to accept the bills only from January 2018 to June 2018 as pertaining to actual consumption while disputing the rest of the bills.

15. In the arbitral proceedings, petitioner/claimant had placed on record, the water bill details. Pattern of consumption reflected the meter monthly readings ranging from 20 – 30 to maximum being 221. Surprisingly as and when the meter was replaced, the consumption for the next month (s) was drastically reduced and after sometime/months, again became erratic. While the consumption from December 2021 onwards does not reflect any pattern of erratic or exorbitant consumption and prior thereto, during the period of covid, consumption pattern obviously reflects the lesser consumption, therefore, consumption during this period seemingly has not been relied upon by either of the

parties for assessment of the correct calculation of consumption or pattern of consumption.

16. Ld. counsel for petitioner submitted that even after the first breach of payment obligation by the petitioner, the connection was not disconnected by the respondent despite the fact that there was a clear noting "in case of non-payment, the water connection would be disconnected without any notice". As submitted, respondent had been writing letters/demand notices to the petitioner, but had never disconnected the water supply as the same allowed them a leverage to gain unlawfully and created scope for undue enrichment.

17. Ld. Arbitrator himself had noted the submission of respondent that water connection with regard to premises in dispute was probably not disconnected as it was in public interest and would have caused great inconvenience in case there was no water at the site being PTU at Sarojini Nagar.

18. Ld. Counsel for respondent submitted that respondent had followed due diligence and had repeatedly verified the functionality of the subject water meters upon the request of the petitioner and the petitioner had failed to produce any credible evidence to prove that the meters were faulty. Ld. Counsel for petitioner reiterated that despite specific directions of Ld. Arbitrator original record of test reports was never brought on record and no evidence was led by respondent to show that the meters were not faulty.

19. Water Meter admittedly had been installed at the public toilet used by public and there was no private usage. Petitioner had no control over the consumption of water by the public. Therefore, there was no reason for miraculous reduction in the

consumption, upon every replacement of the meter. In such eventuality, it was more the answerability of the respondent to explain for the erratic consumption pattern/meter reading reflected in the bills, if it was not for the faulty meters or for some inherent flaw in recording of incorrect reading. The calculation for the average consumption, as submitted by the petitioner, pertaining to period of January 2018 to June 2018 ranging between 26 to 50 corresponds to the consumption pattern even after July 2021 when the meter had been replaced for the third time.

20. Petitioner had also relied upon the water bill details of Netaji Nagar which also reflected average consumption of 15-60 units for a month. It was submitted by Ld. Counsel for petitioner that there was no complaint for any other place where the public toilets were being operated by the petitioner, nor the inflated bills were being raised. It was submitted that only at this place that the meter readings were incorrect and irregular due to which the petitioner was facing problems and instead of sorting out and finding solution to the same, respondent continued levying only the penalty and late charges, while the petitioner is not liable to pay any surcharge, interest or penalty to respondent.

21. During the course of the proceedings before this court, petitioner was directed to deposit sum of Rs. 5 lacs in form of FDR in name of respondent without prejudice to the rights and contentions of both the parties. Respondent was directed, not to levy any further penalty and surcharge on water connection with further directions to petitioner to make the further monthly payment as per actual consumption. Petitioner was also directed to file on record the consumption chart reflecting the

consumption pattern for the undisputed period particularly from April 2023 onwards. Petitioner filed on record affidavit regarding the water consumption pattern post April 2023 alongwith monthly consumption chart and water bills for the relevant duration. Consumption pattern for the period w.e.f. March 2023 till September 2025 reflect the monthly readings minimum being 7 and maximum being 63 and the monthly charges ranging from 989 to maximum being 9205 with average consumption per month approximately in sum of Rs. 3265/-. The consumption pattern, post disputed period, also does not correspond to the demands made by respondent .

22. Ld. Counsel for respondent submitted that scope of interference u/s 34 of Arbitration and Conciliation Act is limited. Mere erroneous application of law or wrong appreciation of evidence by itself is not a ground to set aside an award unless it is perverse or patently illegal. Reliance was placed upon '**OPG Power Generation PVT. Ltd. V. Enexio Power Cooling Solutions India Pvt. Ltd. & Anr'. (2024 INSC 711)**' wherein it was held that :

"The expression "in contravention with the fundamental policy of Indian law" by use of the word 'fundamental' before the phrase 'policy of Indian law' makes the expression narrower in its application than the phrase " in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country."

23. Ld. Counsel for petitioner referred to **Sanyong Engineering & Construction Co. Ltd. Vs. National Highways Authority of India (2019) 15 SCC 131** and **Delhi Metro Rail Corporation Ltd. Vs. Delhi Airport Metro Express Pvt. Ltd. (2024) 6 SCC 357** to make the submissions that :

" Award ignoring vital evidence or contractual terms are patently illegal and void, especially post 2015 Amendment. In Delhi Metro Rail Corporation Ltd. (supra), award was set aside for perverse findings not based on possible view of evidence, mirroring the present case where meter fault evidence was overlooked".

24. Ld. counsel for petitioner further submitted that:

(a) Ld. Arbitrator disregarded crucial evidence, including the Petitioner's complaints dated 16.03.2017 and 15.10.2018, Respondent's admissions of errors, affidavits detailing faults and billing inconsistencies, and procedural orders reflecting ongoing disputes, leading to perverse conclusions that bills were accurate despite documented irregularities like exorbitant jumps in July 2018 contrasted with normal bills later.

(b) It is a settled principle of law as per State of Rajasthan v. Puri Construction Co. Ltd. (1994) 6 SCC 485, the awards disregarding material evidence are perverse and liable to be set aside.

(c) Hon'ble Supreme Court concluded in OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd., (2025) 2 SCC 417 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.

(d) The impugned award, seen in the light interalia of the other grounds raised in this petition and the facts of the case, is clearly contrary to the fundamental policy of Indian Law. And because in light of the other grounds raised in the petition, the impugned award Is liable to be set aside u/s 34 (2) (b) (ii) and section 34 (2-A) of the Act.

(e) The impugned award ignores vital evidence on record, including but not limited to relevant documentary evidence and has held that the noting placed on record by the respondent on the letter

which were subsequently placed before Ld. Arbitrator appears to be genuine. It is submitted that the respondent has neither produced the original record nor filed an affidavit of the concerned officer.

25. It is correct that scope of jurisdiction under section 34 of the Arbitration Act is limited and is not open for appellate analysis. The court cannot sit in appeal while adjudicating a challenge to an Award. In terms of well settled law, the arbitral awards should not be interfered with, in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter. Nevertheless, the Award can be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court. 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. In **Ssangyong Engineering & Construction Co. Ltd. Vs. National Highways Authority of India (2019) 15 SCC 131 (supra)**, following was also noted that :

“ 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 and secondly, that such award is against the basic notions of justice or morality. 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 (Supra), as understood in Associate Builders (supra), and paragrpahs 28 and 29 in particular, is now done away with. In so far as domestic awards made in India are concerned, an additional ground is now available under sub-section (2A), 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 India 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.

Secondly, it is also made clear that re-appreciation 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.

To elucidate, para 42.1 of Associate Builders (supra), namely a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Paragraph 42.2 of Associate Builders (supra), however, would remain that 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.

The change made in section 28 (3) by the Amendment Act really follows what is stated in paragraphs 42.3 in Associate Builders (supra), 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 take or 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 him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under section 34 (2A)" .

26. As findings of Ld. Arbitrator have been found sans reasons, ignoring the vital evidence leading to the patent illegality which goes to root of the matter, same cannot be sustained. The illegality in the award is also not severable, therefore, none of the portions of the award can be modified as per the ratio of judgment in **GAYATRI BALASAMY Vs. M/S. ISG NOVASOFT TECHNOLOGIES LIMITED, Civil Appeal @ S.L.P.(C) Nos.15336-15337 of 2021**. Hence, the award passed by Ld. Arbitrator is set aside. Objection petition u/s 34 of Arbitration and Conciliation Act stands allowed. Parties are at liberty to take legal recourse pertaining to redressal of their respective claims, as available in law. File be consigned to record room.

**Announced in the Open Court
on 27.10.2025**

**(SAVITA RAO)
District Judge (Commercial)-01
South District: Saket: New Delhi**