

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

JUSTICE YAHYA AFRIDI, CJ
JUSTICE MUHAMMAD SHAFI SIDDIQUI
JUSTICE MIANGUL HASSAN AURANGZEB

CPLA No.813-L of 2024

(Against judgment dated 04.03.2024 of the Lahore High Court, Lahore passed in C.R. No.79723 of 2022)

Pakistan Railways through Chief Controller of Purchase, Pakistan Railways, Lahore

...Petitioner

Versus

CRRC Ziyang Co. Limited, Lahore

...Respondent

For the Petitioner: Mr. Jawad Mahmood Pasha, ASC along with Amin Gondal and Asim Tasneem, DCPs (*all via video link (Lahore)*).

For the Respondent: Syed Tassadaq Mustafa Naqvi, AHC.

Date of Hearing: 29.04.2025

ORDER

MIANGUL HASSAN AURANGZEB, J.- Through the instant petition the petitioner, Pakistan Railways, through Chief Controller of Purchase, Pakistan Railways, Lahore, assails the judgment dated 04.03.2024 passed by the Lahore High Court, whereby civil revision petition No.79723 of 2022 filed by the respondent, CRRC Ziyang Co. Limited, against the order dated 23.11.2022 passed by the court of Civil Judge, Gujranwala was allowed by setting aside the said order dated 23.11.2022 and remanding the case to the trial court for a decision afresh on the basis of the available record. Vide the said order dated 23.11.2022, the civil court had framed issues for deciding the respondent's objections filed under *inter alia* Section 30 of the Arbitration Act, 1940 ("**the 1940 Act**") to the arbitration award dated 02.07.2021.

2. The record shows that disputes between the petitioner and the respondent arising from and related to a contract executed on 01.11.2017 were referred to arbitration by a two-member arbitral tribunal, which rendered the award on 02.07.2021. On 07.07.2021, the arbitrators filed the award before the civil court. On 01.09.2021, the petitioner filed objections to the said award. The petitioner had prayed for the award to be set aside and the disputes to be remitted back to the arbitrators. On 23.11.2022, the civil court framed the following issues:-

- i. *Whether the award pronounced by the learned arbitrators is required to be made a rule of the Court? OPA*
- ii. *Whether the learned arbitrators misconducted in the proceedings as well as in the pronouncement of award as alleged in the objection petition, if so its effect? OPR*
- iii. *Whether the award is liable to be set aside on the grounds as alleged in objection petition? OPR*
- iv. *Relief."*

3. The civil court also required the parties to submit the list of witnesses for the production of evidence within a period of seven days. It was also ordered that the recording of evidence was to be carried out in accordance with the amended provisions of the Code of Civil Procedure, 1908 ("**CPC**").

4. The civil court's order dated 23.11.2022 was assailed by the respondent in civil revision petition No.79723 of 2022 before the Lahore High Court, which vide impugned judgment dated 04.03.2024 allowed the said petition by setting aside the said order dated 23.11.2022 and remanding the case to the civil court for a decision afresh on the basis of the available record. The said judgment dated 04.03.2024 has been assailed before us in the instant petition.

5. Learned counsel for the petitioner submitted that the petitioner had alleged misconduct against the arbitrators; that

misconduct of arbitrators was a mixed question of law and fact which could only be decided by framing issues and recording evidence of witnesses; that it was the duty of the civil court to have framed issues to thrash out the complicated questions of fact; that if the civil court were to make the award a rule of court without giving an opportunity to the petitioner to lead evidence, it would prejudice the petitioner's case; and that by virtue of Section 41 of the 1940 Act, the provisions of CPC were applicable to the proceedings after the award is filed in the court. Learned counsel for the petitioner prayed for the impugned judgment to be set aside.

6. On the other hand, learned counsel for respondent No.1 submitted that the material on the record was sufficient for the civil court to decide the petitioner's objections to the award dated 02.07.2021; that a court once seized with the arbitral award cannot engage itself in a roving inquiry to discover infirmities in the award or to re-appraise the evidence; that the arbitrators are judges of all questions of law and fact and it is their responsibility to examine the evidence; that the exercise of recording evidence would unnecessarily protract the matter; and that the High Court committed no illegality in requiring the civil court to decide the petitioner's objections to the award by taking into consideration the material on the record.

7. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

8. The process of making an arbitration award a rule of court follows a structured procedure in Pakistan under the 1940 Act. After an award is filed before a court of competent jurisdiction, the

court issues notice to the parties informing them that the award has been filed. This notice serves a critical purpose – enabling the parties to file objections within a period of thirty days of the service of notice of the filing of the award prescribed in Article 158 of the First Schedule to the Limitation Act, 1908. Courts, while deciding applications for passing decrees in terms of awards or while deciding objections to awards, generally exercise limited jurisdiction and do not act as appellate bodies over arbitration awards. Their intervention is to be limited to the specific grounds provided in Section 30 of the 1940 Act. Reference in this regard may be made to the following case law:-

(i) In the case of Messrs. Joint Ventures Kocks K.G./RIST Vs. Federation of Pakistan (PLD 1996 SC 108), this court highlighted the prohibition against acting as a court of appeal in arbitral matters. It clarified that courts cannot engage in a denovo evaluation of evidence recorded by the arbitrator to unearth potential errors. Any error or infirmity that justifies setting aside the award must be apparent on the face of the award itself. Where the reasons given by the arbitrator are challenged as perverse or unreasonable, such perversity must be demonstrable from the materials referred to in the award.

(ii) In the case of Pakistan Steel Mills Corporation Vs. Mustafa Sons (Pvt.) Ltd. (PLD 2003 SC 301), this court observed that even an erroneous interpretation of a contractual clause is not a valid ground for interference, provided the decision falls within the jurisdiction of the arbitrator. It was also clarified that arbitrators are not required to give specific findings on each issue, nor are they bound to furnish reasons unless expressly required. If the award is otherwise within the bounds of the reference and the findings are not absurd or legally untenable, a different view of the facts by the court cannot justify annulment of the award.

(iii) In the case of Mian Corporation Vs. Lever Brothers of Pakistan Ltd. (PLD 2006 SC 169), this court reaffirmed that

an arbitrator performs a quasi-judicial role, and his decision is entitled to judicial respect unless misconduct is both specifically alleged and conclusively established before the court. This court underscored that a mere difference of opinion regarding evaluation of facts is not a valid basis to annul the award, particularly when the arbitrator has comprehensively examined a dispute. It was further clarified that the court does not exercise appellate jurisdiction over arbitral awards and must refrain from re-assessing or re-evaluating the evidence in an effort to identify errors. Provided that the arbitrator has remained within the scope of the reference and no apparent legal defect or jurisdictional error exists, the award is to be maintained.

(iv) In the case of Federation of Pakistan Vs. Joint Ventures Kocks K.G./RIST (PLD 2011 SC 506), this court held that courts are not to act as appellate bodies by reappraising or reevaluating the evidence considered by the arbitrator. This court underscored that judicial interference is justified only where a patent error of law or miscarriage of justice is evident on the face of the award, and that courts must not “fish for latent errors” in the arbitration proceedings or the award or engage in a deeper inquiry into the fact-finding process carried out by the arbitrator.

(v) In the case of Gerry’s International Vs. Aeroflot Russian Airlines (2018 SCMR 662), this court undertook a thorough exposition of the principles that govern scrutiny of arbitral awards under the 1940 Act. It was emphasized that an arbitrator, being the final judge of both law and fact, exercises quasi-judicial authority that cannot be lightly interfered with. This court cautioned that courts are not appellate forums in arbitration matters, and any review must be strictly confined to cases involving patent illegality, fraud, misconduct, or jurisdictional excess. This court also articulated thirty guiding principles to delineate the boundaries of judicial interference.

9. The purpose of referring to the above-mentioned case law is to underscore the jurisprudential principle that arbitration is an autonomous and final forum, and that judicial interference is

permissible only in narrow and clearly defined circumstances envisaged by Section 30 of the 1940 Act i.e., jurisdictional error, proven misconduct, or a patent legal mistake visible on the face of the record. These cases reinforce the need for judicial restraint, a value that is central to the 1940 Act and its goal of ensuring inexpensive and expeditious justice.

10. Bearing in mind the principle that arbitration is intended to provide a swift and final resolution of disputes with minimal court intervention, courts, while deciding objections to arbitration awards, ought to avoid framing issues and recording evidence unless absolutely necessary. The order for the framing of issues on an application under Section 30 of the 1940 Act must set out the necessity rather than inevitability for the framing of issues, which too have to be specific in nature. This court vide order dated 24.03.2014 passed in CPLA No.340-L/2011, titled “Chairman, WAPDA, etc. Vs. M/s. Syed Bhai Private Limited” upheld the judgment dated 07.12.2010 passed by the Lahore High Court in FAO No.32/1993 reported as Chairman, WAPDA Vs. M/s. Syed Bhais Private Limited (2011 CLC 841), wherein it was held that omission to frame issues on objections to an award under Section 30 of the 1940 Act was inconsequential.

11. Arbitration offers several time-related advantages compared to traditional court litigation. Arbitration typically takes less time because the process is more streamlined, with fewer procedural steps and less formality than court proceedings. The framing of issues and recording of evidence, however, undermines the core objectives of the 1940 Act, which are efficiency, finality, and minimal judicial intervention. It tends to convert the proceedings pursuant to an application under Section 17 of the 1940 Act to

make an award a rule of court or proceedings on objections under Section 30 of the said Act to the award, into a regular trial and this contradicts the 1940 Act's objective of limited judicial interference, finality and efficiency in arbitration. When such proceedings turn into full trials involving the framing of issues and recording of evidence, it causes significant delays and negates the time-saving advantage of arbitration. The process of the recording of evidence of witnesses after the framing of issues is the most lengthy and cumbersome exercise in a civil trial. Since arbitration, in essence is a time-saving device, the framing of issues followed by the recording of evidence while deciding objections to the award would tend to defeat the very object of resorting to dispute resolution by a domestic forum.

12. Courts are expected to pronounce judgment and decree in terms of the award, intervening only on narrow grounds such as misconduct or invalidity of the award, without re-opening factual issues through evidence recording.

13. It is now well settled that arbitrators are entitled to regulate their own procedure and are not governed by the strict procedure prescribed by the CPC and the rules regarding evidence contained in the *Qanun-e-Shahadat* Order, 1984. Arbitrators decide disputes based on evidence presented during arbitration proceedings. They are under no obligation to frame issues as provided in the CPC. Courts recording fresh evidence disregard the procedural safeguards in arbitration, such as the Arbitrator's exclusive jurisdiction to assess evidence and apply law. This may lead to inconsistent outcomes and procedural unfairness. If the court frames issues and records evidence after objections to an award are filed, parties may use this as an opportunity to relitigate the

entire dispute, leading to multiple proceedings on the same issues besides undermining both the legislative intent and the integrity of the arbitral process. This multiplicity undermines the Arbitrator's role in providing a one-time binding decision. The possibility of a trial after the award has been filed in court creates uncertainty about the finality and enforceability of awards. This discourages the parties from opting for arbitration, defeating the legislative intent to promote arbitration as a preferred mode of dispute resolution.

14. The framing of issues, recording of evidence and hearing arguments post the filing of the award in the court is bound to increase litigation costs for parties and add to the already heavy workload of courts. This again defeats the purpose of arbitration as an economical and efficient alternative dispute resolution mechanism. The recording of evidence and conducting a trial effectively converts the court into an appellate or fact-finding forum, which would be contrary to the statutory scheme envisaged by the 1940 Act.

15. In the case at hand, the sole reason given by the civil court for framing the aforementioned issues was that "*the contentions raised through the objections form a factual controversy,*" which could not be determined without the recording of evidence. Perusal of the issues framed by the civil court shows that they are generalized in nature – they lack specificity and the necessity for framing such issues cannot be discovered in the impugned order. Therefore, the High Court did not commit any illegality by setting aside the order dated 23.11.2022 and remanding the matter to the civil court with the direction to decide

the petitioner's objections to the award dated 02.07.2021 on the basis of the available record.

16. In view of the above, leave to appeal is declined and the petition is consequently dismissed. Since the award was rendered more than three and a half years ago it is expected that the civil court would decide the objections to the award expeditiously and preferably within two months from the date of receipt of this order.

17. Before parting with this judgment, we deem it appropriate to commend the valuable assistance rendered by Mr. Juned Ahmed, Research Officer, Supreme Court Research Center.

Islamabad, the
29th April, 2025
Approved for reporting
Sanaullah