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**(1996) 11 PAT CK 0026**  
**In the Patna High Court**  
**Case No : Misc. Appeal No. 48 of 1989**

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|-----------------------------------------------------|------------|
| Bihar State Tourism Development Corporation Limited | APPELLANT  |
| Vs                                                  |            |
| Ram Padarath Sharma                                 | RESPONDENT |

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**Date of Decision :** 07-11-1996

**Acts Referred:**

Arbitration Act, 1940 — Section 14(2), 30, 39, 8

**Citation :** AIR 1998 Patna 72 : (1996) 2 PLJR 942

**Hon'ble Judges :** Narbadeshwar Pandey, J

**Bench :** Single Bench

**Advocate :** Y.V. Giri and M.N. Parbat, for the Appellant; Shreenath Singh and Lalit Kishore, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Narbadeshwar Pandey, J.—This appeal u/s 39(1) of the Arbitration Act, 1940 (in short "the Act") is against an award of the sole arbitrator dated 17-7-1987 as also the order and decree of the Subordinate Judge dated 2-1-1988, whereby, the award was made absolute.

2. Before proceeding to adjudicate the points at issue, it would be advisable to notice some of the relevant facts of this case. The respondent Ram Padarath Shanna entered into an agreement with the appellant, namely, Managing Director, Bihar State Tourism Development Corporation, for operating aerial ropeway chairlift project at Rajgir in the district of Nalanda. The respondent was to function as a commission agent of the appellant. As per Clause 9 of the agreement, in the event of closure of the chairlift for seven days or more for want of repairs or for any other valid reason, parties were at liberty to extend the period of agreement. Clause 12 of the agreement provides for settlement of dispute through arbitrator.

Clause 12 : "That in the event of any dispute arising out of the agreement between the parties, the decision of the Arbitrator shall be final. The arbitration

fee, if any, will be equally borne by both the parties."

3. Unfortunately after functioning few days, the Foreman in charge of the ropeway, noticed some major defects, therefore, informed the Managing Director of the Corporation through different letters, requesting him to take steps for repair. The Managing Director also having taken decision for thorough overhauling and major repairs of the ropeway, invited tenders for supply of various parts. But on the report of the Superintending Engineer, the function of the ropeway was stopped by the Corporation with effect from 8-3-1982. But before the repair could take place, the Managing Director asked the respondent that cost of repair will have to be paid by him. If such a condition was acceptable then the agreement would continue otherwise it shall be deemed to have been cancelled with effect from the date on which the Corporation closed the ropeway. But in spite of the efforts of the parties, the dispute could not be solved. Therefore, the respondent, had no option but to file an application u/s 8(2) of the Arbitration Act before the Subordinate Judge for appointment of an arbitrator in terms of Clause 12 of the agreement. The appellant no doubt, filed rejoinder, opposing the prayer made on behalf of the respondent, but the learned Subordinate Judge after considering relevant materials by order dated 7-6-1984 directed both the parties to give names of some of the responsible persons for appointment as arbitrator.

4. The appellant being aggrieved by the aforesaid order, filed Misc. Appeal No. 216 of 1984, but during the pendency of the appeal itself, the court below by order dated 4-8-1984 appointed Sri D. P. Sinha, a retired Judge of this Court as arbitrator. The appeal was ultimately heard and dismissed by a Division Bench on 27th September, 1985, affirming the order dated 7-6-1984 as well as the order, whereby, Sri D. P. Sinha was appointed as arbitrator. In that view of the matter, there cannot be further scope for either party to question the jurisdiction of the Subordinate Judge to appoint Sri D. P. Sinha as an arbitrator in terms of the provisions of Section 8(2) of the Act.

5. Mr. Giri, Sr. Counsel appearing for the appellant contended that admittedly the agreement which commenced from 20-10-1981 was only for a period of one year. As per Clause 12 of the agreement any dispute arising out of the agreement between the parties was required to be referred to the arbitrator. The agreement between the parties was terminated on 12-10-1993, therefore, no order could have been passed by the court below on 7-6-1984 for appointment of an arbitrator. In my view, no such objection should be entertained at the instance of the parties to the dispute, since while dismissing the previous appeal, this Court had already affirmed the order of the Court below regarding appointment of Justice D. P. Sinha as arbitrator. That apart, such objections if any, could have been raised before the court below, where the award was filed. But having failed so, the appellant is not entitled in law to raise such a question at this stage.

6. He next contended that the copy of the award was neither served by the

arbitrator or the court nor any notice was issued intimating the appellant about filing of the award. Therefore, the award as well as the decree passed by the court below becomes illegal for want of compliance of the statutory requirement of Section 14 (1) and (2) of the Act.

7. Mr. Shreenath Singh, Sr. Counsel appearing on behalf of the respondent contended that a bare reference to the order-sheet of the court, it would reveal that the award in question was filed on 31-8-1987. It would further reveal from the order dated 15-9-1987 that the learned Advocates appearing for the parties were shown the orders dated 31-8-1987 and 15-9-1987 whereby the case was adjourned to 21-9-1987 for disposal, but no objection was filed by the appellant, as required u/s 30 of the Act. However, on 21-11-1987 a petition for time was filed on behalf of the appellant, therefore, the case was adjourned to 5-12-1987. On that day also instead of filing any objection, another petition for time was filed. The court below accepted the request and adjourned the case to 2-1-1988. Ultimately, on that day having found that no objection whatsoever was filed against the award, the court below accepted the award and made the same a decree of the court.

8. Sub-section (1) of Section 14 of the Act requires the arbitrator or umpire to give notice in writing to the parties of making and signing the award. Sub-section (2) requires the Court, after the filing of the award, to give notice to the parties of the filing of the award. It would be significant to note that a notice, which the Court is required to give under Sub-section (2) need not be in writing, it can also be oral. It is immaterial whether such a notice was tendered to the party. Notice under this provision does not necessarily mean a communication to the party. Because a notice to the lawyer of the party of filing the award amounts to a notice to the party. In the case of Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others, , the Apex Court dealing with almost identical question, has held thus (Para 8) :

"Sub-section (1) of Section 14 of the Arbitration Act, 1940 (Act X of 1940) requires the arbitrators or umpire to give notice in writing to the parties of the making and signing of the award. Sub-section (2) of that Section requires the Court, after the filing of the award, to give notice to the parties of the filing of the award. The difference in the provisions of the two Sub-sections with respect to the giving of notice is significant and indicates clearly that the notice which the Court is to give to the parties of the filing of the award need not be a notice in writing. The notice can be given orally. No question of the service of the notice in the formal way of delivering the notice or tendering it to the party can arise in the case of a notice given orally. The communication of the information that an award has been filed is sufficient compliance with the requirements of Sub-section (2) of Section 14 with respect to the giving of the notice to the parties concerned about the filing of the award. "Notice" does not necessarily mean "communication in writing".

9. I have already noticed that the award in this case was filed on 31-8-1987.

Therefore, on 15-9-1987 the Court fixed the case for disposal. It appears from the original order-sheet that both the orders were shown to Sri D. Prasad, learned Advocate for the appellant. There is no dispute that Sub-section (2) of Section 14 simply requires giving intimation of the filing of the award, either by service of notice or through a lawyer. In the case of Nilkantha Shidramappa Ningashetti Vs. Kashinath Somanna Ningashetti and Others, also the Supreme Court observed that intimation to the pleader of a party about filing of award shall be a notice to the party as required u/s 14(2). The relevant passage of the report can be noticed hereunder (para 8) :

"..... We are of opinion that the expression "give notice" in Sub-section (2) of Section 14, simply means giving intimation of the filing of the award, which certainly was given to the parties through their pleaders on February, 21, 1948. Notice to the pleader is notice to the party, in view of Rule 5, Order III, Civil Procedure Code, which provides that, any process served on the pleader of any party shall be presumed to be duly communicated and made known to the party whom the pleader represents and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person."

In view of the aforesaid authoritative pronouncements, there cannot be any dispute that notice to Sri Deodhari Prasad, Advocate, about filing of the award be deemed a notice to the defendants.

10. Mr. Singh, therefore, contended that admittedly no objection, as required u/s 30 of the Act, was ever filed within the prescribed period even from 15-9-1987, the day on which Sri Deodhari Prasad learned lawyer for the appellant had seen the order. Therefore, in absence of an objection for setting aside award, the appellant is estopped from raising all such objections at this stage. It is well settled when a party fails to file objection for setting aside the award as required under S 30, no appeal can be maintainable u/s 39 of the Act.

11. Mr. Giri, however, having faced with such a situation contended that although no objection, as required u/s 30 of the Act was filed, since in the application filed on 21-11-1987 for grant of time itself allegations were made against the arbitrator, therefore, it was proper for the Court to treat such a petition as objection u/s 30 of the Act and to record a finding whether the arbitrator had committed irregularity and misconducted himself, so as to declare the award invalid, but the Court below has completely ignored this aspect.

12. I have gone through the copy of the said petition, which is already on record. There appears no substance in the submission of Mr. Giri. It is well known an award cannot be set aside, except on one or more of the grounds as enumerated u/s 30 of the Act. Therefore, unless there is an allegation that the arbitrator has misconducted himself or the proceeding or that the award was improperly procured, no order setting aside the award can be passed. Section 33 provides that any party to the agreement desiring to challenge the validity of agreement

or award shall apply to the Court when the award is filed. In absence of all these formalities, therefore, no such question can be raised at this stage.

13. In the background of the facts, noticed above, a question may further arise whether the instant appeal u/s 39 of the Act is at all maintainable. Undisputedly by the impugned order the Court below has accepted the award in its true form and made the same a rule of the Court. Section 39(1) contemplates that an appeal shall lie from the following orders, passed in this Act, namely, (i) superseding an arbitration; (ii) on an award stated in the form of a special case; (iii) modifying or correcting an award; (iv) filing or refusing to file an arbitration agreement; (v) staying or refusing to stay legal proceedings where there is an arbitration agreement; and (vi) setting aside or refusing to set aside an award.

14. I have already noticed by the impugned order the Court below has accepted the award in its true form. The submission of Mr. Singh appears justified that in absence of an objection no grievance can be made that the Court has either set aside or refused to set aside the award. Therefore, unless the impugned order comes within the category of the orders as defined under Subsection (1) Clauses (i) to (vi), no appeal would be maintainable u/s 39 of the Act.

15. For the reasons, stated above, this appeal is hereby dismissed as devoid of any merit, but in the circumstances of the case, parties are left to bear their own costs.