

(2018) 01 DEL CK 0007

In the Delhi High Court

Case No : 90 of 2017

DEPARTMENT OF TELECOMMUNICATIONS

APPELLANT

Vs

TATA TELESERVICES LIMITED

RESPONDENT

Date of Decision : 12-01-2018

Acts Referred:

[Arbitration and Conciliation Act, 1996](#), [Section 34](#), [Section 34\(3\)](#), [Section 34\(6\)](#) - Application for setting aside arbitral award - Application for setting aside arbitral award - A

Citation : (2018) 01 DEL CK 0007

Hon'ble Judges : Vibhu Bakhru

Bench : Single Bench

Advocate : Vinod Diwakar

Final Decision : Dismissed

Judgement

REVIEW PET.18/2018 & IA No.301/2018

1. The present petition has been filed by the petitioner seeking review of a judgment dated 11.05.2017 passed by this Court rejecting the petitioner's application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter "the Act") for setting aside the Arbitral Award dated 13.10.2016.

2. A plain reading of the petition indicates that the petitioner is seeking to virtually re-agitate the issues once again. According to the petitioner, this Court has erred in appreciating the facts while passing the order dated 11.05.2017. Plainly, this does not afford the petitioner any ground to review the judgement.

3. It is also seen that the present petition was filed on 20.12.2017 and the same is highly belated. The application seeking condonation of delay filed along with the review petition makes interesting reading. The reasons provided for the inordinate delay in filing the review petition are briefly indicated hereafter: 3.1 It is claimed that after the pronouncement of order dated 11.05.2017, the

complete case file was prepared and "brought to the notice of the Administrator on 26.05.2017 and to that effect the file was submitted to the JS&LA for giving its opinion over the said judgment on 31.05.2017".

3.2 It is stated that "on 06.06.2017, JS&LA sent the file to Law Secretary, Ministry of Law and Justice to CAS to examine the file. That on 12.07.2017 CAS (ASG Supreme Court) with his observation marked the file to ASG High Court for his opinion". Thus, it took two months for the file to travel to the ASG for his opinion.

3.3 It is further stated that on 23.08.2017 - which is about a month and half later - the learned ASG gave his opinion not to file an appeal.

3.3 It is claimed that "on 28.08.2017, the above stated matter was brought to the notice of the Administrator and decided to go for appeal against the said impugned order".

3.4 It is claimed that thereafter on 27.09.2017 - that is, after a month after the Administrator had decided to appeal against the order dated 11.05.2017 - "the file for the case was again sent to the Law Secretary, Ministry of Law and Justice to CAS to examine the file and simultaneously to the JS&LA of the department. And the file was discussed in detail for the course of action to be taken in regard to the impugned judgment dated 11.05.2017 on 09.10.2017".

3.5 It is claimed that, thereafter, "on 10.10.2017, JS&LA of the Department communicated her suggestion that in the interest of the department, the views of the Government Counsel who appeared in the matter may be obtained for filing review petition".

3.6. It is claimed that thereafter the legal opinion of the counsel was sought on 12.10.2017, and on 24.10.2017, the counsel opined that there were sufficient grounds for filing a review petition.

3.7 The matter was thereafter once "sent to JS&LA of the Department again for the examination and consideration as per the legal opinion obtained".

3.8. The file was finally marked to the counsel for preparation and filing the review petition on 01.11.2017. The present review petition was filed more than a month and a half later and was moved before this Court today.

4. In view of the above, the petitioner claims that the delay "is neither deliberate nor intentional but due to the administrative and procedural reasons". Plainly, the said contention is unacceptable. The facts as stated above clearly indicate that there was no sense of urgency in proceeding with the matter. The specified period for filing the review petition had expired twice over by the time the matter was marked for the opinion of the learned ASG. It took more than two months to mark the file to the counsel to file the review petition after the Administrator had decided to file an appeal. And, it took more than a month and a half thereafter for the review petition to be drafted and filed.

5. The Supreme Court in the case of Post Master General and Ors. v. Living India Media Ltd.& Anr : (2012) 3 SCC 563 had observed as under:- "29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

6. In view of the above, this Court is not persuaded to accept that there are any valid grounds for condoning the delay. Merely, because the applicant has taken its own time to deliberate the issue is no ground for condoning such an inordinate delay. It is also relevant to mention that the Act provides a inflexible period for filing an application to challenge an arbitral award. In terms of Section 34(3) of the Act, an application for setting aside an arbitral award cannot be made after a period of three months after receipt of the arbitral award. The said time is extendable for a further period of 30 days, provided the party satisfies the Court that it was prevented from filing the application for sufficient cause. This Court has taken a view that while considering the question whether to condone delay in re-filing an application for setting aside an arbitral award, due regard must be given to the legislative intent of restricting the period of limitation for filing an application under section 34 of the Act. Thus, an inordinate delay in re-filing the application cannot be condoned.

7. The object is clearly to reduce the time within which resolution of disputes by arbitration attain finality. This intent is also reflected by enactment of Section 34(6) of the Act, which requires an application under section 34 to be disposed of within a period of one year. In the present case, the delay in filing the review petition exceeds the maximum time available to the petitioner to file an application under Section 34 of the Act. Thus, this Court is of the view that condoning such inordinate delay would effectively frustrate the legislative intention of restricting the time frame within which the resolution of disputes by arbitration must attain finality.

8. In view of the above, the present petition is dismissed on account of delay as well as on merits.