

(2016) 02 DEL CK 0203
In the Delhi High Court
Case No : FAO (OS) 476/2015

Prakash Atlanta JV

APPELLANT

Vs

National Highways Authority of India

RESPONDENT

Date of Decision : 08-02-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 33, Section 34
Civil Procedure Code, 1908 (CPC) — Section 152, Section 31
Limitation Act, 1963 — Section 5

Citation : (2016) 227 DLT 691 : (2016) 4 RAJ 428

Hon'ble Judges : Pradeep Nandrajog and Mukta Gupta, JJ.

Bench : Division Bench

Advocate : Amit Sibal, Sr. Advocate instructed by Chirag, Vivek Raja and Bhaskar Das, Advocates, for the Appellant; Pradeep K. Bakshi and Prachi V. Sharma, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—1. The Arbitral Tribunal published an award on August 05, 2014. It was received by the respondent on a date not known because neither counsel could throw light thereon, but certainly towards the end of August 2014, because both parties filed applications under Section 33 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "the Act") somewhere towards the end of the month, because the Section envisages clerical, typographic, computation errors and errors of the kind being made; probably because humans are prone to commit unintentional errors. Further, because humans are prone to errors of language, the provision envisages a correction thereof, inasmuch as parties may request the Arbitral Tribunal to give an interpretation of a specific point or part of the award.

2. On September 13, 2014, the Arbitral Tribunal disposed of the request of both sides under Section 33 of the Act. The order reads as under:-

"1. We have heard the learned advocates of both the parties with reference to

their application under Section 33 of Arbitration and Conciliation Act, 1996.

2. So far as the clerical errors pointed out in the claimants application Annexure "A" are concerned, they are ordered to be carried out but so far as the claimants request to change the figure of Rs. 08 crore to Rs. 18,12,43,061 is concerned, the same is rejected. The figure of Rs. 6.95 crore is concerned, the same is an arithmetical error and same should be revised to Rs. 7.95 crore.

3. Consequently, the award will now be Rs. 9.0 crore. This change will be effected in the award.

4. So far as the NHA request to clarify the basis for the award is concerned, we see no need to do so. The request is therefore rejected.

5. The fees of the arbitration tribunal will be paid by both sides equally within two weeks.

6. Corrected copy of the award will be circulated within two weeks.

7. This dispose off the request of both sides made under Section 33 of the Arbitration and Conciliation Act, 1996."

3. On February 4, 2015, the respondent filed objections to the award dated August 05, 2014, as corrected vide order dated September 13, 2014, taking the stand that pursuant to the order dated September 13, 2014 the amended award was received by it on November 07, 2014, and thus the period of limitation of three months within which objections could be filed, would expire on February 07, 2015. The appellant took the stand that for purpose of computing limitation, the date when the order dated September 13, 2014 was passed would be the date wherefrom limitation would commence.

4. The topic of discussion before the learned Single Judge therefore became sub-Section (3) of Section 34 of the Act. Since in a debate, the topic on which the debate has to take place needs to be noted, we straightaway reproduce Sub-Section (3) of Section 34 of the Act. It reads as under:-

"34. (1).....

(2).....

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal :

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."

5. Since we have to decide who has won the debate, and unlike debates outside

Courts, where the Judges have to simply give marks and she who obtains more marks is declared the winner, we have to give reasons as to why a party is declared the winner, we have to note the rival viewpoints projected, for and against the motion.

6. The argument of the appellant is that the language of Sub-Section(3) of Section 34 of the Act is plain and clear, and since it is the duty of an interpreter to arrive at the legal meaning of the enactment, the principle : The legal meaning normally corresponds to the grammatical meaning, had to be applied. The Sub-Section consists of two disjunctive parts, evidenced by the use of the word "or" in the Sub-Section. The first part would relate to a situation where an award was not followed by a request made under Section 33 of the Act and the second part would relate to a situation where an award was followed by a request made under Section 33 of the Act. If the first part was applicable, the three months had to reckon with reference to the date when the objector had received the award. If the second part was applicable, the three months had to reckon with reference to the date when the request under Section 33 of the Act had been disposed of by the Arbitral Tribunal. In the instant case the admitted position is that the request made under Section 33 of the Act was disposed of in the presence of the parties on September 13, 2014 and copy of the order given to the parties on the same date. Post corrections being made, the corrected award given to the respondent on November 07, 2014.

7. The argument of the respondent was that Section 33 of the Act was akin to Section 152 of the Code of Civil Procedure, and that the rule of literal interpretation had to give way to the rule of purposive interpretation. The rule of purposive interpretation, as per the respondent would flow from the rationale of Sub-Section (3) of Section 34 of the Act, being that, unless a party understands the award it cannot formulate its grievance and therefore unless a reference made under Section 33 of the Act is not disposed of, a party cannot understand the award and therefore cannot formulate her grievance.

8. The learned Single Judge has accepted the argument of the respondent and has held that the limitation would commence from November 07, 2014, when the corrected award was received by the respondent.

9. Having noted the rival arguments projected by the two debaters, we need to pen a word on what should guide, and therefore the duty of an interpreter, to arrive at a legal meaning of a statute.

10. It is the duty of an interpreter to arrive at the legal meaning of an enactment according to the rules, principles, presumptions and canons which govern statutory interpretation. The legal meaning normally corresponds to the grammatical meaning. For if this was not so, the legislative system would collapse. But where the verbal formula, in its application to the facts of a particular case brings out an ambiguity, the legal meaning would come under a cloud of a doubt. There may be rare instances of the verbal formula not being

ambiguous, but there may arise a doubt, as to the legal meaning because the relevant factors drawn from the criteria laid down by law, as guides to the legislative intention, tend in different direction.

11. The distinction between literal and legal meaning therefore lies at the heart of the problem of statutory interpretation, as has been observed by Francis Bennion in the *Treatise Bennion on Statutory Interpretation*, at page 441 of the 5th Edition. It happens, when a conflict arises with the fact that the clear literal meaning does not remedy the mischief that the legislator intended to deal with. In the words of Lord Hoffmann, in the celebrated decision reported as *Moynan v. Secretary of State for Work and Pensions*, (2003) 4 All ER 162 *Moynan vs. Secretary of State for Work and Pensions* :-

"...the well-known distinction between the meaning of a word, which depends upon convention known to the ordinary speaker of English or ascertainable from a dictionary, and the meaning which the author of an utterance appears to have intended to convey by using the word in a sentence. The latter depends not only upon the conventional meanings of the words used but also upon syntax, context and background. The meaning of an English word is not a question of law because it does not have any legal significance. It is the meaning to be ascribed to the intention of the notional legislator in using that word which is a statement of law."

12. Four guiding principles emerge if one reads the *Treatise on the subject of Interpretation of Statutes*. They have been succinctly stated by Bennion at page 443, as under:-

"(1) The grammatical meaning of an enactment is its linguistic meaning taken in isolation from legal considerations, that is the meaning it bears when, as a piece of English prose, it is construed according to the rules and usages of grammar, syntax and punctuation, and the accepted linguistic canons of construction.

(2) The grammatical meaning of an enactment is clear when, apart from legal considerations, there is no real doubt as to its meaning. An enactment may be grammatically clear in relation to all possible facts, or only in relation to certain facts and not others.

(3) Even though the grammatical meaning of an enactment is clear, it may not be possible to predict with certainty how it will apply to particular facts. This arises where the enactment uses a broad term, or confers authority on some person to exercise judgment or discretion in relation to those facts. In such a case the enactment cannot for that reason justly be called grammatically ambiguous, and to do so is an error.

(4) An enactment is grammatically ambiguous where, except as mentioned in (3), it is grammatically capable of more than one meaning."

13. Guided by the tools we need to use to craft our reasoning and declare who has won the debate, we find merit in the argument of learned Senior Counsel for the appellant that Sub-Section (3) of Section 34 of the Act is in two distinct

parts, evidenced by the use of the word "or". The word "or" in a sentence is a good guide to conclude that the intention of the author of the sentence was to make it disjunctive, in two parts, unless for good reasons one would hold to the contrary i.e. that the word "or" means "and". Reproducing Sub-Section (3) of Section 34 of the Act by placing the numerals (1) and (2) at the appropriate place, the two disjunctive limbs of Sub-Section would be : An application for setting aside may not be made after three months have elapsed (1) from the date on which the party making that application had received the arbitral award or,(2) if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal.

14. Dealing with the subject of limitation, the legislative provision contemplates two situations. Situation one, is when an award is not followed by a request under Section 33 of the Act. Situation two, is when an award is followed by a request made to the Arbitral Tribunal to either interpret the award or to correct errors of computation, clerical or typographical errors or errors of the kind. Linked to the first situation is the date wherefrom limitation would run for filing an application under Section 34 of the Act to set aside the award, being the date on which the arbitral award has been received. Linked to the second situation is the date wherefrom limitation would run for filing an application under Section 34 of the Act to set aside an award, being the date when the request has been disposed of by the Arbitral Tribunal. We find no grammatical ambiguity. We do not find the legislative enactment grammatically capable of more than one meaning.

15. The argument of the respondent, accepted by the learned Single Judge, is that unless a party understands the award, it cannot formulate its grievance and therefore it is the award which results after a reference made to the Arbitral Tribunal, under Section 33 of the Act, is decided, which is capable of being challenged and therefore commencement of limitation would be from the date of knowledge of the corrected award.

16. There is an inherent fallacy in this argument. If the legislator has provided for two different dates wherefrom limitation would commence, contemplating a situation of an award not being followed by a request under Section 33 of the Act and a situation of an award being followed by a request under Section 33 of the Act, no argument can be advanced to merge the two dates.

17. Now, if a party has received an award and there are errors of computation, clerical, typographical or of the kind brought to the notice of the Arbitral Tribunal, the reasoning of the award is made known to the parties in the award itself. The errors would only result in such corrections being made which do not impact the reasoning in the award and thus the argument that unless the award is corrected a party cannot form an opinion concerning the merits of the award has no legs to stand on any reason.

18. That apart, formation of an opinion in the two situations contemplated or

capacity to form an opinion in the two situations contemplated is an irrelevant consideration to reckon the date wherefrom limitation would commence, because the legislator has clearly indicated two trigger of dates for the two situations.

19. The learned Single Judge has made a reference to Sub-Section (5) to Sub-Section (7) of Section 33 of the Act, to reason : Therefore, once there is an additional award, it is therefore a separate award and hence there is no merger of the award already passed for some claims with the additional award. The later additional award is given by law a status of an additional award. This position is to be differentiated from when there is correction to the award in the nature of Section 33 of the Act qua an arithmetical or clerical error etc, and in which situation, the original award passed merges in the corrected award and hence limitation will necessarily and only start by applying the doctrine of merger from receiving the corrected copy of the corrected/amended award.

20. We therefore note Section 33 of the Act. It reads as under:-

"33. Correction and interpretation of award; additional award-

(1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties-

(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral

award under sub- section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section."

21. The learned Single Judge has reasoned that notwithstanding a situation contemplated by a request made to correct any computation errors, clerical or typographical errors or errors of a similar kind and a request made to make an additional award by pointing to the Arbitral Tribunal that certain claims presented have been omitted from the arbitral award; and the latter making a reference to an additional arbitral award but the former not, the doctrine of merger would necessitate limitation commencing from the date when the additional award or the corrected/amended award is made.

22. The error by the learned Single Judge is to overlook the principle of law, that if legislative intention is clear, other provisions of the same enactment have not to be looked into, unless a conflict arises. The rule of harmonious construction would then come into play and the two provisions have to be harmoniously read. Meaning thereby, the territory occupied by the two has to be delineated with precision.

23. But the learned Single Judge has not brought out any conflict. On the contrary, we find no conflict. Para (a) of Sub-Section (1) of Section 33 contemplates a request made to an Arbitral Tribunal concerning computation, clerical, typographical and other errors of the kind in an award. Para (b) of the said Sub-Section contemplates a request made to the Arbitral Tribunal to give an interpretation of a specific point or part of the award. Sub-Section (2) vests the Arbitral Tribunal the jurisdiction to consider the request made under Sub-Section (1) and to make the correction or give interpretation, which as per Sub-Section (2) "Shall form part of the arbitral award." Thus, the legislator has not contemplated any supplementary award to be made. The legislator has provided for the said decision to be forming part of the arbitral award. Sub-Section (3) confers a suo moto power on the Arbitral Tribunal to correct an error of the kind contemplated by clause (a) of Sub-Section (1) to be made. Sub-Section (4) and (5) deal with a situation where an award has omitted to consider claims presented and empowers the Arbitral Tribunal to make an additional award. Since a time limit is prescribed under Sub-Section (4) and (5) to deal with a request made under Sub-Section (1), Sub-Section (6) empowers the Arbitral Tribunal to extend the time limit prescribed. Sub-Section (7) simply imports the requirement of Section 31 which are applicable to an award to an order correcting or interpreting an arbitral award or making an additional arbitral award. We fail to understand as to in what manner interpretation of Sub-Section (3) of Section 34 of the Act, which has a bearing on the date from which limitation would run to file an application under Sub-Section (1) of Section 34 of the Act, can possibly come into conflict with the provisions of Section 33 of the Act.

24. It is not unknown to law that for different kinds of cause of action accruing, a

different date wherefrom limitation commences.

25. Conscious of the fact that if after an award is published a request has been made under Section 33 of the Act, a party should be entitled to the benefit of limitation not running against it with reference to the date of the award, the legislator has stipulated the trigger date as the one when the request under Section 33 of the Act is disposed of. This additionally shows the consciousness of the legislator to provide two trigger of dates.

26. The appeal is accordingly allowed. Impugned order dated August 07, 2015 is set aside. Objections filed by the respondent to the award dated August 05, 2014 are declared to be barred by limitation.

27. Notwithstanding the respondent not having filed any application seeking delay to be condoned in filing objections to the award, we have independently considered whether on account of wrong advise given by a counsel, the delay in filing the objections could be condoned. Unfortunately for the respondent the delay cannot be condoned because of the proviso to Sub-Section (3) of Section 34 of the Act, as per which, the delay of only upto 30 days can be condoned and the law declared by the Supreme Court in the decision reported as , (2001) 8 SCC 470 Union of India vs. M/s. Popular Construction Co. has held that Section 5 of the Limitation Act, 1963 is not applicable to the said Act.

28. No costs.