

(2011) 07 JH CK 0252
In the Jharkhand High Court
Case No : Civil Revision No. 2 of 2011

Ramjee Power Construction Ltd.

APPELLANT

Vs

Jharkhand State Electricity Board

RESPONDENT

Date of Decision : 11-07-2011

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 33, 34, 34(3), 9
Civil Procedure Code, 1908 (CPC) — Section 115
Limitation Act, 1963 — Section 29(2), 5

Citation : (2011) 4 JCR 185

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mrs. Poonam Srivastav, J.—By the Court.--The instant civil revision arises out of a proceedings u/s 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act").

2. Three awards dated 25.11.2007, 14.2.2008 and 29.3.2009 are said to have been received by the parties on one and the same date. The application for setting aside the arbitral awards was filed on 4th November, 2010. The revisionist submits that these applications were filed at a very belated stage i.e. after a lapse of 107 days; 1005 days and 610 days respectively. These applications were registered as Miscellaneous Case No. 71 of 2010. An order was passed by Sub-Judge-I, Ranchi on 20.12.2010 in the aforesaid miscellaneous case condoning the delay in challenging the awards by the Jharkhand State Electricity Board (for short "J.S.E.B.") u/s 34 of the Act. The Sub Judge was of the opinion that since the award relates to Government money and involves an amount of more than Rs. 2.22 crores, a complete hearing is essential and, on this consideration, delay was condoned.

3. Aggrieved by the aforesaid condonation of delay, the instant revision is preferred by the revisionist, one of the parties before the arbitral Tribunal.

Sub-Clause (3) of Section 34 of the Act provides period of limitation of three months for challenging the award and the limitation is to be calculated from the date the arbitral award was received. Proviso to sub-section (3) grants liberty to the party to apply for condonation of delay in case the application u/s 34 of the Act is preferred after a lapse of three months, the Court is entitled to entertain the application within a further period of 30 days but not thereafter.

4. The submission of Mr. Pandey Neeraj Rai, learned counsel appearing on behalf of the revisionist, is that the first award was dated 25th November, 2007; second dated 14th February, 2008 and third award dated 29th March, 2009. All the three awards were challenged in the year 2011 and, therefore, the application was moved much beyond time and the Court below committed an error while entertaining the application u/s 34 of the Act and extending the benefit of condonation of delay, whereas the Court itself was divested of the jurisdiction after a lapse of three months or extended period of further thirty days.

5. The J.S.E.B. had given an explanation for condonation of delay that the officers of the Board had entered into a criminal conspiracy and this conspiracy came to light, only when the progress of APDRP work under package "D" was reviewed. Consequent on the aforesaid discovery, a first information report was lodged against the erring officers of the Board with Vigilance Department. It was, therefore, emphasised that huge amount of public money is involved and if it is left unchallenged only on account of a conspiracy hatched by certain erring officers of the Board, it is a huge loss to the State Exchequer. It is also averred that the proceedings before the arbitrator is still continuing till date and such award which is challenged cannot be said to be barred by limitation. While disputing the arguments of the revisionist, the submission is that J.S.E.B. received notice from the sole arbitrator for further hearing on 14.11.2010 and proceeded with the same matter for which the preliminary and subsequent two awards are under challenge in the instant proceeding. Objection u/s 9 of the Act is still pending before the sole Arbitrator. In the circumstances, the contention of the opposite party is that there is no delay whatsoever.

6. The revisionist has vehemently opposed the explanation and the submissions made on behalf of the opposite party and while criticising the order passed by the Sub-Judge-I, Ranchi in the miscellaneous case while granting liberty and condoning the delay, had submitted that different yard-stick cannot be used for the State visa-vis a private contesting party i.e. the revisionist who is a contesting party before the Arbitrator. Reliance has been place on certain Apex Court decisions : Union of India (UOI) Vs. Tecco Trichy Engineers and Contractors, . In the said case. Railway was one of the party before the arbitrator. The award was challenged after a lapse of 27 days. The Supreme Court was of the view that the starting point of limitation in regard to challenge of an award and for purpose of Section 34 (3) of the Act is the date of service of notice on the Chief Engineer and would be the starting point of limitation to challenge the award in the Court. In another case, Union of India Vs. M/s Popular

Construction Co., , it was held that Section 5 of the Limitation Act, 1963 was not applicable to the proceedings u/s 34 of the Act for setting aside arbitral award. The proviso to Section 34 (3) of the Act lays down an embargo that at no cost, the period of limitation could be extended after expiry of thirty days subsequent to the lapse of three months as period of limitation, this amounts to an express exclusion within the meaning of Section 29 (2) of the Limitation Act. This exclusion could not be inferred from history, scheme and objectives of the 1996 Arbitration Act because the main objective is to restrict judicial intervention in arbitral matters as far as possible. The next decision relied upon by the revisionist is Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission and others, AIR 2010 SC 2061. The last decision is State of Arunachal Pradesh Vs. Damani Construction, It was held that the date from which time would begin to run for the purposes of challenging the award in respect of such claims, it was held that the time begins to run on the date on which claims finally settled regardless of award as "final" or "interim".

7. Learned counsel for the opposite party, while replying the arguments on behalf of the revisionist, has laid heavy emphasis on the findings recorded by the learned Sub-Judge, Ranchi, while entertaining the application u/s 34 of the Act that Section 33 of the Arbitration Act provides for correction and interpretation of award or additional award whereby, if within 30 days from the receipt of arbitral award, correction and interpretation is applied for, then it amounts to fresh proceedings, still pending before the arbitrator and, therefore, the period of limitation will not commence. The opposite party has also placed reliance on Tecco Trichy Engineers and Contractors (supra) cited on behalf of the revisionist. In the said case, delay was condoned and it was held that the General Manager of the Railway had only referred the matter for arbitration as required under the contract but he cannot be said to be fully aware of the question involved before the Arbitrator nor the factual aspects in detail and, therefore, in such a circumstance, the period of limitation was condoned by the Apex Court. Reliance has also been placed on another case of Hon'ble Supreme Court in State of Bihar and others Vs. Subhash Singh, . In the said case, the Court while condoning the delay had imposed special cost on the erring officers because the Court was of the view that in transaction of the Government business, none would own personal responsibility and decisions are leisurely taken at various levels. It is not uncommon that delay would be deliberately caused to confer advantage to the opposite litigant, more so when stakes involved are high or persons are well connected/influential or due to obvious considerations.

8. The next citation relied upon by the opposite party's counsel is State of Haryana Vs. Chandra Mani and others, . This is again on the same principles that the Apex Court was conscious of the fact that the Government officials have scant regard for the Government property especially when private parties are able to somehow motivate the officers of the department. The Apex Court was conscious of the fact that it is notorious and common knowledge that delay, in more than 60 per cent of the cases are barred by limitation only on account of

erring officers, therefore, the Court generally adopts a liberal approach in condonation of delay.

9. Thus after hearing the respective parties at length and going through various citations and the rival claims of the parties, the sole contention in the instant case is whether the Sub-Judge-I, Ranchi; has adopted a correct approach and condoned the delay while exercising jurisdiction u/s 34 of the Act. Also whether the Court exercised jurisdiction beyond the provision of Section 34 (3) of the Act, since the application u/s 34 of the Act is not only barred by a few days or few months but by more than a year. Therefore, the time limit prescribed u/s 34 of the Act to challenge the award is no doubt absolute and unextendable by the Court u/s 5 of the Limitation Act. No doubt, the provisions of the Act is well intentioned for a speedy disposal of the arbitration proceeding and, in any event, such laxity is not allowed. It would result in frustrating the very purpose of the Act, but all the same, I cannot lose sight of the fact that in the instant case, the officers of the J.S.E.B. have adopted a delaying tactics in approval of the agenda and various proceedings, obviously for specific reasons not well intentioned. In the instant case, it is one of those exceptional cases where the department has also initiated criminal prosecution against the officers and, in case the application is rejected on technical ground, it will have a far reaching effect on the public exchequer defeating principles of justice. Unfortunately the delay caused no doubt extends to years, not only months, but since the Sub-Judge, Ranchi has entertained the application and exercised his discretion and has recorded the following findings :

In my opinion, this award is related to Govt, money and also award is allowed to Rs. 2.22.03.001/-. full hearing is necessary. In this case also, Hon'ble supreme Court in Union of India (UOI) Vs. Tecco Trichy Engineers and Contractors, , opined their views under Arbitration and Conciliation Act, 1996 provision is made u/s 34 about limitation. In the interest of justice and just cause of interest of State in condonation of delay to file this Misc. Case No. 71/10 by the State is exempted and this Misc. case is admitted and fix for hearing on objection made by State Govt, on 13.1.2011.

10. In these circumstances, I am not inclined to interfere in the order passed by Sub-Judge-I, Ranchi in Miscellaneous Case No. 71 of 2010 in exercise of discretion and the findings recorded. Exercise of discretion is an unfetter power and can be interfered only if the discretion is based on consideration other than judicial ones. In the instant case, the sole consideration is involvement of Government funds and officers of the department acted with mal-intentions.

11. The instant civil revision has been filed u/s 115 of the Code of Civil Procedure. I am of the opinion that the Courts below while condoning the delay, has not committed any jurisdictional error and, therefore, in my opinion, the award which has been challenged before the Court below is liable to be examined on merit after giving opportunity to the parties to contest their claim instead of rejecting the application merely for technical reasons.

12. In the facts and circumstances, the view adopted by the Sub-Judge because huge amount of public money is involved and following the principles laid down by the Apex Court in its various decisions, the order impugned calls for no intervention by this Court. The civil revision is dismissed. However, no order as to costs.