

(2019) 03 OHC CK 0054

In the Orissa High Court

Case No : ARBA NOS.28, 29 & 30 Of 2014

Superintending Engineer, Rengali Canal Circle & Another

APPELLANT

Vs

Gokulananda Jena

RESPONDENT

Date of Decision : 29-03-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 31(5), 33, 34, 34(3)
Limitation Act, 1963 — Section 5

Citation : (2019) 03 OHC CK 0054

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Advocate : S.N.Mishra, A.K.Mishra, T.Mishra

Final Decision : Dismissed

Judgement

Biswanath Rath, J

1. These Arbitration Appeals involve a challenge to the order dated 27.12.2013 passed by the learned District Judge, Angul involving all the three

proceedings initiated under Section 34 of the Arbitration & Conciliation Act, 1996 involved therein and dismissing all such proceedings on the ground

of delay.

2. Taking this Court to the provision at Section 34 of the Act, 1996 application, the limitation application and the grounds taken therein, Sri S.N.Mishra,

learned Additional Government Advocate for the appellants involving all the three cases submitted that for the ground involved therein, in spite of

sufficient reason for condonation of delay having failed to appreciate, the learned District Judge, Angul has arrived at the wrong impugned order,

which unless be interfered with and set aside, the State will be at great loss.

3. Sri A.K.Mishra, learned counsel for the respondent on the other hand taking this Court to the grounds taken in the limitation petition, the provision contained in Sections 31(5) & 34 of the Arbitration and Conciliation Act and further the observation made in the impugned order contended that there is right appreciation of the issue involved therein and there has been right refusal of condonation of delay involving Arbitration Case Nos.18, 17 & 19 of 2012 by the learned District Judge. It is in the above premises, Sri Mishra, learned counsel for the respondent prayed this Court for dismissal of the three Arbitration Appeals for having no substance.

4. Considering the rival contentions of the parties and taking into account the plea involving the limitation petition filed before the learned District Judge, Angul in the Section 34 proceeding, this Court finds, the plea of the State in paragraphs-4 to 12 of the Section 5 application therein as follows :-

4. That, in the instant case, it is the Government of Odisha in the DOWR which is the party referred to in Sub-Section (3) of Section 34 of the Act, 1996. The

Government of Odisha was not a party before the Arbitral Tribunal, even though the agreement was executed with the Government of Odisha and all payments were

being made by the Government of Odisha in the Department of Water Resources.

5. That, for the first time the Government of Odisha in the Department of Water Resources received the copy of the Award dtd.15.11.2011 on 19.3.2012 from the Appellant No.2 which was received by the Appellant No.2 on 19.11.2011.

6. That, prior to 19.3.2012, the Government of Odisha in the Department of Water Resources had no knowledge about the arbitral award dtd.15.11.2011.

7. That, since the Government of Odisha in DOWR was not a party and for the first time came to know about the award on 19.3.2012, the learned Court below ought to

have condoned the delay in filling the application U/S.34 of the Act, 1996.

8. That, the impugned order was passed on 27.12.2013. The certified copy of the Order was applied on 3.1.2014, made ready on 7.1.2014 and the same was received on

7.1.2014.

9. That on 28.1.2014, the opinion of the learned Govt. Pleader, Angul was received.

10. That, after receipt of the opinion of the learned Government Pleader as well as the connected papers, the record was placed before the Law Department for necessary approval for filing of Arbitration Appeal.

11. That, the approval of the Law Department was received vide letter dtd.28.4.2014. Thereafter, the records were handed over to the Office of the learned Advocate

General on 14.5.2014.

12. That, after discussion, the Appeal is made ready on 25.6.2014 and the same is filed on 25.6.2014. Thus, there is a delay of 85 days in filing the accompanying Arbitration Appeal.â??

5. At this stage, taking into consideration the provision applied herein, this Court finds, the provision at Section 31(5) of the Arbitration & Conciliation Act, 1996

reads as follows :-

â??31. Form and contents of arbitral award-(5) After the arbitral award is made, a signed copy shall be delivered to each party.â??

Further Sub-Section (3) of Section 34 of the Act reads as follows :-

â??34. Application for setting aside arbitral award. â?

(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.â??

Considering the plea involving the application for condonation of delay and the aforesaid provisions, this Court finds, there is no doubt, there is scope

for condonation of delay but subject to however the condition imposed in Sub-Section (3) of Section 34 of the Arbitration & Conciliation Act, 1996,

i.e., in the first step time for filing of the Appeal beyond 90 days can be extended up to 30 days, further in the event there is any delay on the part of

the party applying under Section 34 for its bona fide moving a wrong forum, the time spent therein can also be taken into account while considering

application for condonation of delay. Looking to the reason assigned in the limitation petition, this Court finds, there is no satisfaction to the extent of delay beyond the limitation period of 120 days. This Court observes that for limited scope involving condonation of delay, no ground except the time on spending bona fide in a wrong court can be entertained. Application for condonation of delay involved herein fails the above test and as such could not have been considered.

6. It is at this stage, this Court taking into account the decision of the Honâ??ble apex Court in the case of Simplex Infrastructure Ltd. vrs. Union of

India reported in (2019) 2 SCC 455 finds, the Honâ??ble apex Court taking the case of this nature vis-à-vis consideration of the application under

Section 5 of the Limitation Act has categorically held that there is no application of Section 5 of the Limitation Act to the Arbitration Proceeding and

delay can only be condoned subject to the extent indicated in Section 34 of the Arbitration & Conciliation Act, 1996 alone.

7. In the circumstance, for the clear provision of law in the Act, 1996, for the settled position of law by the Honâ??ble apex Court involving the

decision indicated herein above and for the discussions in rejecting the application for condonation of delay by the learned District Judge, this Court

finds, there is no infirmity in the impugned order requiring interference in the same. Consequently, all the Arbitration Appeals mentioned herein above

stand dismissed for having no merit.

In the circumstances, there is no order as to cost.

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