

(2011) 08 OHC CK 0014
In the Orissa High Court
Case No : A.R.B.A. No. 21 of 2009

Union of India and Another

APPELLANT

Vs

S.N. Kanungo and Another

RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 31(5), 33, 34, 34(3)

Citation : (2011) 2 ILR (Ori) 173

Hon'ble Judges : S.C. Parija, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Parija, J.—This appeal by the Union of India and its functionary is directed against the order dated 12.08.2009, passed by the District Judge, Khurda, Bhubaneswar, in ARB Petition No. 135 of 2009, dismissing the appellants application filed u/s 34 of the Arbitration and Conciliation Act, 1996, being barred by limitation.

2. Learned Counsel for the appellants submits that as the signed copy of the award had not been delivered to the appellant no. 2, who was the signatory to the Agreement of which, the Arbitral Tribunal is a creature and he was also a necessary party to the arbitration proceeding before the

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Arbitral Tribunal, learned Court below erred in ignoring the said fact while passing the impugned order. Learned Counsel for the appellants has referred to Section 34(3) and Section 31(5) of the Arbitration and Conciliation Act, 1996 (for short The Act") in support of his contention that the period of limitation as prescribed u/s 34(3) of the Act would only commence from the date the signed copy of the award is served on appellant no. 2. It is submitted that the signed copy of the award was served only on the appellant no. 1, i.e., General Manager, East Coast Railway, on 21.01.2009, who only sent a copy of the same to the

appellant no. 2 on 08.06.2009, which was received by him on 09.06.2009 and as the application u/s 34 of the Act was filed on 22.06.2009, the same was well within the time. In support of his contention Learned Counsel for the appellants has filed a copy of the letter dated 08.06.2009 as Annexure-3 to the affidavit to show that only a copy of the award had been sent to him by the General Manager, which was received by him on 09.06.2009. In this regard, Learned Counsel for the appellants have relied upon a decision of the apex Court in the case of Union of India (UOI) Vs. Tecco Trichy Engineers and Contractors, , wherein the Hon"ble Court had observed that in the context of a huge organization like the Railways, the copy of the award has to be received by the person who has knowledge of the proceedings and who would be the best person to understand and appreciate the arbitral award and also to take a decision in the matter of moving an application under sub-section (1) or (5) of Section 33 or under sub-section (1) of Section 34 of the Act.

3. Learned Counsel for the respondent no. 1 on the other hand submits that as the award was passed on 08.01.2009, signed copy of which was delivered to the appellant no. 1 on 21.01.2009, the application u/s 34 of the Act should have been filed by 21.04.2009 or latest by 21.05.2009, allowing one month grace period as provided u/s 34(3) proviso of the Act. It is submitted that as the application u/s 34 of the Act has been filed on 22.06.2009, the same is barred by limitation. Learned Counsel for the respondent no. 1 has further relied upon a letter of the appellant no. 2 addressed to the petitioner dated 21.05.2009, filed as Annexure-B to the affidavit, to show that the appellant no. 2 was well aware of the award passed by the Arbitral Tribunal and sanction of the competent authority has been obtained to make part payment of the admitted amount as per the items of award.

4. Learned Counsel has relied upon a decision of the apex Court in the case of Consolidated Engg. Enterprises Vs. Principal Secy. Irrigation Deptt. and Others, , in support of his contention that an application for setting aside an award has to

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be made within three months, as provided u/s 34(3) of the Act and that the said period can further be extended on sufficient cause being shown by another period of 30 days, but not thereafter. Accordingly, it is submitted that the reasons assigned by the court below, while rejecting the appellants' application u/s 34 of the Act cannot be faulted.

5. On a perusal of the impugned order it is seen that learned District Judge, has taken into consideration the plea now raised by the appellants regarding delivery of signed copy of the award and after considering the materials on record has come to find as under:

It was strenuously contended by the Learned Counsel for the petitioner that the Arbitration Tribunal had not supplied the copy of the signed award to the petitioner no. 2 and the petitioner no. 2 received a copy only on 08.06.2009 from

the office of the petitioner no. 1. As against this the Learned Counsel for the opposite party has filed a copy of the letter dated 21.05.2009 of the petitioner no. 2 addressed to the opposite party (Annexure-B to the present petition) making part payment of the awarded amount, wherein in the caption "Ref!", it has been clearly mentioned that the copy of the award was received by the petitioner no. 2 has no answer to this. Secondly, the letter filed on behalf of the petitioners along with the original application in support of the contention that the petitioner no. 1 supplied a copy to the petitioner no. 2 only on 09.06.2009, being an internal correspondence, cannot be ruled out to have been manufactured for the purpose of the case. Further in view of the Annexure-B of the present petition of the opposite party admitting the receipt of the award on 21.01.2009 by the petitioner no. 2, it no more lies in the mouth of the petitioner no. 2 that he had not received a copy of the award till 09.06.2009. Secondly, the copy of the award was received by the petitioner no. 1 on 21.01.2009 undisputedly. That being so and if it is contended that the petitioner no. 2 actually looked after the affairs to be treated as the officer directly connected and involved in the proceeding, it is not explained as to why the petitioner no. 1 kept the matter pending with him till 08.06.2009. Having latches on their own part, the petitioners can never be permitted to take advantage of the same with the plea that the petitioner no. 2 did not know about the award till 09.06.2009. Thus, in any view of the matter the petition u/s. 34 of the Act has been filed much after the prescribed period of limitation, which cannot be condoned even granting the benefit under the proviso to Sec. 34(3) of the Act.

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6. Undoubtly, Sub-Section 3 of Section 34 of the Act prescribes the period of limitation for filing an application for setting aside an award as three months from the date on which the applicant has received the arbitral award. The proviso thereto vests in the Court discretion to extend the period of limitation for a further period not exceeding 30 days if the Court is satisfied that the applicant was prevented by sufficient cause for not making the application within three months. The use of the words "but not thereafter" in the proviso makes it clear that even if sufficient cause is made out for a longer extension, the extension cannot be beyond 30 days. This is the view taken by the apex Court in Union of India Vs. M/s Popular Construction Co., which has been affirmed in Consolidated Engineering Enterprises (supra) and reiterated in a recent decision in State of Himachal Pradesh and Another Vs. Himachal Techno Engineers and Another, .

7. In the present case, from the letter of the appellant no. 2 dated 21.05.2009, as per Annexure-B to the affidavit filed by the respondent, it is seen that he was fully aware of the award passed by the Arbitral Tribunal on 08.01.2009, which was received by his office on 21.01.2009. Moreover, from the said letter it further reveals that the appellant no. 2 has made part payment of the admitted amount in terms of the said award. Hence, the plea of the appellants that the signed copy of the award has not been duly served on appellant no. 2, as provided u/s

31(5) of the Act cannot be accepted. Therefore, the decision relied upon by the appellant in *Tecco Trichy Engineers & Contractors (supra)*, has no application to the facts of this case.

8. Applying the principles of law as discussed above to the facts of the present case and considering the findings of the learned District Judge, as given in the impugned order and the reasons assigned in support of the same, no impropriety or illegality can be said to have been committed by the learned District Judge, so as to warrant any interference.

9. The appeal being devoid of merits, the same is accordingly dismissed.