
(2022) 08 OHC CK 0209
In the Orissa High Court
Case No : ARBA No.26 Of 2012

Union Of India And Others

APPELLANT

Vs

Kewal Chand Jain

RESPONDENT

Date of Decision : 23-08-2022

Acts Referred:

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

Citation : (2022) 08 OHC CK 0209

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : S. Kashyuap, A. Sanganerier

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. Mr. Kashyuap, learned advocate, Central Government Counsel appears on behalf of appellants and submits, impugned is judgment dated 7th May, 2012 of the Court below, whereby challenge to award dated 20th May, 2007 as corrected on 16th October, 2007 was rejected on ground that it was belated. He submits, the Chief Engineer was dealing with the arbitration through Garrison Engineer. The corrected award was received by the Chief Engineer on 24th April, 2008. He demonstrates this as pleaded in paragraph-10 in the application made under section 34, Arbitration and Conciliation Act, 1996. He relies on judgment dated 16th March, 2005 of the Supreme Court in Civil Appeal no. 1784 of 2005 (Union of India v. Tecco Trichy Engineers and Contractors) reported in (2005) 4 SCC 239.

2. Mr. Sanganerier, learned advocate appears on behalf of respondent and submits, the Court below took correct view that service of the corrected award to agent/pleader of appellants on 19th March, 2008 was good service and the application made on 18th August, 2008 was beyond aggregate of three months and thirty days time prescribed by sub-section (3) in section 34. He relies on view taken by a learned Single Judge of Delhi High Court in Karmyogi Shelters

Pvt. Ltd. v. Benarsi Krishna Committee and another reported in 2009 (3) Arb. LR 593 (Delhi), paragraph-20, reproduced below.

"The first submission to be considered is whether Section 31(5) and Section 34(3) insist upon delivery personally to the party to the arbitration agreement only or it can also be to the agent of the said party. In my view, "party" would include the agent of the party. In the present case, the petitioner is a juristic person. It has to be necessarily represented through natural persons. A perusal of the arbitral record shows that the petitioner in the matter of arbitration before the arbitrator, who is a retired judge of this court, was throughout represented by its advocates only and the other representatives of the petitioner appeared in the arbitration proceedings only at the time of recording of their evidence. Thus, as far as the arbitrator was concerned, the advocates representing the petitioner were the agents of the petitioner and entitled to fully represent the petitioner. The delivery of the arbitral award to such an agent of the party would be the same as delivery to the party himself/itself."

3. Two paragraphs (Indian Kanoon print) from Tecco Trichy Engineers (supra) are reproduced below.

"In the present case, the Chief Engineer had signed the agreement on behalf of Union of India entered into with the respondent. In the arbitral proceedings the Chief Engineer represented the Union of India and the notices, during the proceedings of the Arbitration, were served on the Chief Engineer. Even the arbitral award clearly mentions that the Union of India is represented by Deputy Chief Engineer/Gauge Conversion, Chennai. The Chief Engineer is directly concerned with the Arbitration, as the subject matter of Arbitration relates to the department of the Chief Engineer and he has direct knowledge of the arbitral proceedings and the question involved before the arbitrator. The General Manager of the Railways has only referred the matter for arbitration as required under the contract. He cannot be said to be aware of the question involved in the arbitration nor the factual aspect in detail, on the basis of which the arbitral tribunal had decided the issue before it unless they are all brought to his notice by the officer dealing with that arbitration and who is in-charge of those proceedings. Therefore, in our opinion, service of arbitral award on the General Manager by way of receipt in his inwards office cannot be taken to be sufficient notice so as to activate the Department to take appropriate steps in respect of and in regard to the award passed by the arbitrators to constitute starting point of limitation for the purposes of Section 34(3) of the Act. The service of notice on the Chief Engineer on 19.3.2001 would be the starting point of limitation to challenge the award in the Court."

4. Relevant dates are, the award was published on 25th March, 2007 and corrected on 16th October, 2007. Learned counsel for appellants in the reference had received copy of the award on 19th March, 2008 as per endorsement made. Appellants in their application under section 34 had said that the office of Chief Engineer received the award 24th April, 2008. The application was filed on 18th

August, 2008. According to the Court below the application ought to have been filed by 19th June, 2008, on calculation of the prescribed and extended periods, commencing from 19th March, 2008, provided in sub-section (3) of section 34.

5. Another paragraph (Indian Kanoon print) from Tecco Trichy Engineers (supra) are reproduced below.

"We cannot be oblivious of the fact of impersonal approach in the Government departments and organizations like Railways. In the very nature of the working of Government departments a decision is not taken unless the papers have reached the person concerned and then an approval, if required, of the competent authority or official above has been obtained. All this could not have taken place unless the Chief Engineer had received the copy of the award when only the delivery of the award within the meaning of sub-Section (5) of Section 31 shall be deemed to have taken place."

6. The Supreme Court in Tecco Trichy Engineers (supra) appears to have made a distinction between Government departments and other litigants, on in the very nature of working of the former. Hence, opinion rendered in the judgment that service of arbitral award on the General Manager by way of receipt in its inwards office cannot be taken to be sufficient notice so as to activate the department (of the Chief Engineer) to take appropriate steps in respect of and in regard to the award passed. The Court declared service of notice to the Chief Engineer would be starting point of limitation. At this juncture a passage from paragraph-10 in the challenge application is extracted and reproduced below.

"10. That the learned arbitrator published the award by his order dated 20.5.2007 and corrected the award on 16.10.2007 under Section 33 of the Act vide Arbitration proceeding order dated 7.7.2007. That through the award was published on 20.5.2007 yet corrections were incorporated without a notice to the petitioners or his Counsel. The ink signed copy of the award was also not dispatched to the petitioners. The Counsel for the petitioners received the copy of award on behalf of the arbitral Tribunal as directed by learned Arbitrator and sent to the Chief Engineer who received the said copy only on 24.4.2008. The petitioners have decided to challenge the award as the same was passed against them without considering their stand taken. xxx xxx xxx xxx"

7. In Karmyogi Shelters (supra) the learned Single Judge expressed view that 'party' would include agent of the party, on finding that the concerned party was represented throughout by advocates and other representatives appeared in the reference only for recording of their evidence. This Bench is in respectful agreement with the view. However, as aforesaid, the Supreme Court made a distinction between government departments, as different from other litigants, in the working of the departments. There is no dispute that office of the Chief Engineer was dealing with the reference through the Garrison Engineer. In the circumstances appellants' case is covered by Tecco Trichy Engineers (supra). The appeal succeeds.

8. Impugned judgment is set aside and the application remanded to the Court below for adjudication on merits.

9. The appeal is disposed of.

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